

# Submission to the Inquiry into the Environment Protection and Biodiversity Conservation (Regional Forest Agreements) Amendment Bill 2020

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**Submission to the Senate Environment and Communication Legislation Committee Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020.**

**About Doctors for the Environment Australia**

Doctors for the Environment Australia (DEA) is an independent, self-funded, non-government organisation of medical doctors in all Australian states and territories.

DEA work is based on the premise that humans need a future with clean air and water, healthy soils capable of producing nutritious food, a stable climate, and a complex, diverse and interconnected humanity whose needs are met in a sustainable way. We are therefore interested in environmental protection and restoration to promote human health and social stability.

DEA's work is supported by a distinguished Advisory Committee of scientific experts whose knowledge of medical and public health issues is fully contemporary. Our members work across all specialties in community, hospital and private practices.

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## Overview

Australia's forests and woodlands are some of the most biodiverse ecosystems on the planet. They have unique intrinsic value but also make vital contributions to human health.

It is abundantly clear that over the years they have been in operation, Regional Forest Agreements (RFAs) have failed to provide our forests and the species that inhabit them with the protections they need. Simultaneously, they have failed to meet the needs of the forestry industry.

DEA is strongly opposed to this Bill before the Senate Committee on the grounds it does nothing to address the fundamental failures of RFAs to deliver ecologically sustainable forest management. It also ignores the main messages and key recommendations from the 2019-2020 Independent Review of the Environment Protection and Biodiversity Conservation Act (Samuel Report) as they pertain to RFAs.

DEA makes the following recommendations:

- 1) That this Bill should not be supported by the Senate Committee.
- 2) That the Federal Government acknowledges the failure of RFAs to deliver upon their charter and commits to major review and reform of RFAs as a matter of urgency.
- 3) That the privileged treatment of the forestry sector under national environmental law ceases.
- 4) That the level of environmental protection afforded in RFAs is increased to align with national standards.
- 5) That reform of RFAs occurs as part of comprehensive, systemic reform of the EPBC Act. This must be underpinned by the development of a full suite of National Environment Standards and new, independent oversight bodies to ensure the law is implemented and its objectives met.

## The importance of forests for human health

As medical doctors, we know that protection of our forests is essential for health. Forests release oxygen to the atmosphere and draw down pollutants to maintain our air quality. They also act as vital carbon sinks in the face of climate change with Australia having some of the most carbon-dense forests on Earth. Climate change has been recognised as the greatest health threat facing us this century<sup>1</sup>.

In addition, forests increase the amount of water entering the soil, thereby regulating the water table. In Melbourne, there is good evidence that the forested catchment area regulates water flow, maintaining a more constant supply in times of drought<sup>2</sup>. In contrast, it has been shown that continued logging in Melbourne's water catchments could reduce the city's water supply by the equivalent of 600,000 people's annual water use every year by 2050<sup>3</sup>.

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<sup>1</sup>World Health Organisation. Climate change and human health. <https://www.who.int/globalchange/global-campaign/cop21/en/> (2019)

<sup>2</sup>Stolton S & Dudley N. Managing forests for cleaner water for urban populations. <http://www.fao.org/docrep/010/a1598e/a1598e10.htm>

<sup>3</sup>Taylor C, et al. Resource Conflict Across Melbourne's Largest Domestic Water Supply Catchment. <https://openresearch-repository.anu.edu.au/bitstream/1885/149441/5/Resource%20Conflict%20in%20Forested%20Water%20Catchment%2020181108.pdf>

Forests and the species they support are also sources of bioactive compounds, some of which are important as potential therapeutic agents. As an example, the milk of Tasmanian Devils has been found to contain novel compounds which help in the fight against antibiotic resistance<sup>4</sup>. Yet, the Tarkine region in Tasmania which is home to one of the last disease-free populations of Devils, is currently under threat from destructive logging practices.

Preservation of native habitat is also important for highly mobile pollinators such as birds and bats that disperse pollen over large areas, thereby increasing genetic variation in plant populations. This builds resilience in ecosystems, increasing their capacity to adapt to pressures from anthropogenic change<sup>5</sup>.

Forests also serve as vital places for recreation and physical and psychological restoration<sup>6</sup>. An extensive body of scientific literature exists to show that spending time in forests can lower heart rate, boost immune function, reduce anxiety and depression, attenuate the inflammatory response and accelerate recovery from illness, among other benefits<sup>7,8</sup>. There is increasing recognition of the opportunities forests provide for both preventative and therapeutic health interventions for a wide range of health problems, particularly mental illness.

Moreover, protected forests provide places for healthy long-term jobs in the spheres of eco-tourism, recreation, education, research and health interventions. As an example of the latter, in Japan, forests are protected and accredited for forest bathing or 'shinrin yoku' and physicians refer patients at high risk of stress related illness to these forests for specified periods of time. Forest bathing has not only become a major component of preventive health care and healing in Japanese medicine but also as a major source of 'green jobs' is the Japanese forest sector<sup>9</sup>.

Replacing the vast array of ecosystem services forests provide to our health would be extremely costly, if not impossible.

### **The ecological context for this Bill**

It is now irrefutable that Australia's natural environment is in a dire and deteriorating state. Australia has experienced the largest documented decline in biodiversity of any continent since colonisation<sup>10</sup>. Currently, we have the highest rate of mammal extinction and the second highest rate of biodiversity loss in the

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<sup>4</sup>Peel E, et al. Cathelicidins in the Tasmanian devil (*Sarcophilus harrisi*). *Sci Rep* **6**, 35019 (2016).  
<https://doi.org/10.1038/srep35019>

<sup>5</sup>NSW Government Office of Environment and Heritage. Planting to conserve threatened nomadic pollinators in NSW.  
<https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/habitat-restoration-for-threatened-pollinators-160519.pdf>

<sup>6</sup>Doctors for the Environment. Biodiversity Policy. <https://www.dea.org.au/wp-content/uploads/2019/11/DEA-Biodiversity-Policy-11-19.pdf>

<sup>7</sup>Oh B, et al. Health and well-being benefits of spending time in forests: systematic review. *Environ Health Prevent Med*. 22:71 (2017)

<sup>8</sup>Food and Agriculture Organisation of the United Nations. Green jobs in the forest sector.  
[https://www.greengrowthknowledge.org/sites/default/files/uploads/Alicja%20Kacprzak%20e2%80%93%20Green%20Jobs%20in%20the%20Forest%20Sector\\_1.pdf](https://www.greengrowthknowledge.org/sites/default/files/uploads/Alicja%20Kacprzak%20e2%80%93%20Green%20Jobs%20in%20the%20Forest%20Sector_1.pdf)

<sup>9</sup>Food and Agriculture Organisation of the United Nations. Green jobs in the forest sector.  
[https://www.greengrowthknowledge.org/sites/default/files/uploads/Alicja%20Kacprzak%20e2%80%93%20Green%20Jobs%20in%20the%20Forest%20Sector\\_1.pdf](https://www.greengrowthknowledge.org/sites/default/files/uploads/Alicja%20Kacprzak%20e2%80%93%20Green%20Jobs%20in%20the%20Forest%20Sector_1.pdf)

<sup>10</sup>Australian Bureau of Statistics (2010). Australia's Biodiversity. In: Year Book of Australia, 2009-10.  
<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/1301.0Feature%20Article12009-10?opendocument&tabn>

world<sup>11</sup>. We are globally recognised as a land clearing and deforestation 'hotspot', the only developed country to make the list<sup>12</sup>.

Since European settlement, approximately half of all Australian forests and woodlands have been cleared, so that now only 17 per cent of the continent has any forest cover left<sup>13</sup>. Much of this is heavily disturbed regrowth forest, interrupted by only small pockets of 'old growth' or ecologically mature forest.

The bushfires of 2019-20 summer proved catastrophic for Australia's remaining forested regions. An estimated 17 million hectares of land were burned in the fires with forests and woodlands predominantly affected. In NSW and Victoria alone, 20% of Australia's total forest biome lost<sup>14</sup>.

Preliminary data suggest that of ~1800 species listed as threatened in Australia, 49 species had at least 80% of their habitat within the fire footprint<sup>15</sup>. A further 278 species lost between 10-80% of their habitat. The impact on most species not currently listed as threatened is yet to be assessed, and may never be, but can also be assumed to be enormous.

In the early post-fire period, the Federal Government identified 113 animals as requiring urgent management intervention. Of these, a significant number were forest-dwelling and known *a priori* to be at risk from logging operations<sup>16</sup>. These included species such as the Regent Honeyeater, Greater Glider, Spot-tailed Quoll, the Koala and the Giant Burrowing Frog.

In the context of accelerating climate change, only more frequent and intense bushfires are expected for the future.

### **The EPBC Act and Regional Forest Agreements**

The EPBC Act is the Australian Government's central piece of national environment law. It exists to ensure that nationally significant animals, plants, habitats and places (Matters of National Environmental Significance, or MNES) are identified and protected.

Regional Forest Agreements (RFAs) are regional plans agreed upon between State and Commonwealth Governments that hand over assessment, approval and regulatory powers relating to forest operations to the States. Forestry operations undertaken in accordance with an RFA are exempt from the application of the EPBC Act, even when these operations impact on MNES.

RFAs were originally developed to resolve conflict between the needs of forest ecosystems and species and the needs of the logging industry. According to the Australian Government, the two primary aims of RFAs are to:

- 1) Safeguard biodiversity, old-growth forests, wilderness and other natural and cultural values, and;
- 2) Provide streamlined regulatory processes for the timber industry.

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<sup>11</sup>Waldron, A., et al. Reductions in global biodiversity loss predicted from conservation spending. *Nature* 551, 364–367 (2017). <https://doi.org/10.1038/nature24295>

<sup>12</sup>World Wildlife Fund. Deforestation fronts. Drivers and responses in a changing world. [https://wwfint.awsassets.panda.org/downloads/deforestation\\_fronts\\_\\_\\_drivers\\_and\\_responses\\_in\\_a\\_changing\\_world\\_\\_\\_full\\_report\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/deforestation_fronts___drivers_and_responses_in_a_changing_world___full_report_1.pdf)

<sup>13</sup>Australian Government Department of Agriculture, Water and the Environment. Australia's forests. <https://www.agriculture.gov.au/abares/forestsaustralia/australias-forests>

<sup>14</sup>Boer M.M., et al. Unprecedented burn area of Australian mega forest fires. *Nat. Clim. Chang.* 10, 171–172 (2020). <https://doi.org/10.1038/s41558-020-0716-1>

<sup>15</sup>Wintel A., et al. After the Megafires: What next for Australian wildlife? *Trends Ecol & Evol*, 35, 753-757 (2020). doi: 10.1016/j.tree.2020.06.009

<sup>16</sup>Environmental Justice Australia. No longer tenable. Bushfires and Regional Forest Agreements. <https://www.envirojustice.org.au/wp-content/uploads/2020/03/EJA-report-No-longer-tenable-1.pdf>

It is abjectly clear, however, that over the life of RFAs, they have failed to achieve the first of these aims. Evidence of this includes the following.

1) A 2013 legal review of RFA regimens showed<sup>17</sup>:

- inadequacy of State threatened species protections accredited by RFAs;
- insufficient provision for adaptive management;
- inadequate reviews;
- deficient monitoring, compliance and enforcement; and
- limited third-party participation rights.

The review ultimately concluded *that 'RFAs have never delivered the benefits claimed for them, for a mix of political, economic, cultural and legal reasons. ... From a legal perspective, the main reason the RFAs have failed is that the States do not take the regulatory and legal actions required to adequately protect matters of national significance.'*<sup>18</sup>

2) A 2019 investigative report<sup>19</sup> identified 48 Federally listed threatened forest-dwelling vertebrate fauna species impacted by logging operations across Australia's 11 RFA regions. In addition, it found that since the commencement of RFAs:

- 15 forest vertebrate fauna species have been listed under the EPBC Act as threatened for the first time.
- 12 forest vertebrate fauna species have been up-listed under the EPBC Act to the 'Endangered' or 'Critically Endangered' categories, while no threatened forest vertebrate species have been down-listed.
- 24 forest vertebrate fauna species in total are now listed under the EPBC Act as Critically Endangered or Endangered, with logging operations officially recognised (e.g. in EPBC Act Recovery Plans) as a threat to 20 of these.

3) In May 2020, the Federal Court found that that forestry operations in Victoria had not in the past and were unlikely in the future to comply with both state and federal laws designed to protect threatened species<sup>20</sup>. Specifically, it found significant negative impacts of VicForests' past forestry operations on the critically endangered Leadbeater's possum and the vulnerable Greater Glider, and that proposed forestry operations in 41 coupes not yet fully logged were likely to have further negative impacts. The case summary noted:

*"Not only do VicForests' forestry operations damage or destroy existing habitat critical to the survival of the two species, they also prevent new areas of forest from developing into such habitat in the future."*

4) The recently released report from the 2019-2020 Independent Review of the EPBC Act (the Samuel Report) expressed the view that *"the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES and do not align with the assessment of significant impacts on*

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<sup>17</sup>Feehely J, Hammond-Deakin N and Millner F. One Stop Chop: How Regional Forest Agreements streamline environmental destruction. [https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/One\\_Stop\\_Chop.pdf](https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/One_Stop_Chop.pdf)

<sup>18</sup>Ibid

<sup>19</sup>The Wilderness Society. Abandoned. Australia's forest wildlife in crisis. <https://www.wilderness.org.au/images/resources/Abandoned.pdf>

<sup>20</sup>Federal Court of Australia. Friends of Leadbeater's Possum Inc v VicForests (No 5) [2020] FCA 705. <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0705>

*MNES required by the EPBC Act.*<sup>21</sup> The report also commented on insufficient Commonwealth oversight of RFAs and weak assurance and reporting mechanisms. Specific note was made of the fact that RFA Act requires agreements to be subject to a 5-yearly review process, but those reviews have been consistently late by an average of approximately 3 years. The first RFA to be signed was not reviewed until 13 years after the commencement date.

- 5) Multiple other investigative reports and court cases have demonstrated numerous and repeated breaches of RFA-accredited logging laws, plans and prescriptions across RFA regions<sup>22,23,24</sup>. In each case, the result has been failure to protect threatened species and/or their habitat.

Importantly, RFAs have also failed to address the needs of the timber industry. The period of operation of RFAs has seen declining jobs, declining timber availability due to unsustainable harvesting practices and bushfire impacts, and sustained economic losses<sup>25,26,27,28</sup>. According to the Australian Bureau of Statistics, the value of Australia's native timber stocks declined by 30% to \$2 billion between 2005 and 2015, while the value of plantation timber rose by 30% to \$10 billion<sup>29</sup>. Despite the existence of RFAs and compromised environmental outcomes, unprofitable native forest logging is costing taxpayers millions of dollars in subsidies every year.

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

The Bill before the Committee seeks to amend the EPBC Act to ensure that logging operations occurring under RFAs are exempt from application of the EPBC Act under all circumstances, including where conditions of RFAs are breached. This contrasts with the current situation where logging operations are only exempt where they conducted in accordance with the laws, plans and prescriptions specified within the RFA.

It is DEA's view that this Bill represents blatant prioritisation of the interests of the forestry industry, irrespective of the costs. It does nothing to address the fundamental failures of RFAs to provide adequate protection to Australia's forests and native species – rather, through ensuring that responsible entities cannot be

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<sup>21</sup>Professor Graeme Samuel AC. Independent Review of the EPBC Act – Final Report. [file:///Users/katherinebarracough/Downloads/EPBC%20Act%20Review%20Final%20Report%20October%202020%20\(1\).pdf](file:///Users/katherinebarracough/Downloads/EPBC%20Act%20Review%20Final%20Report%20October%202020%20(1).pdf)

<sup>22</sup>Flora Fauna Research Collective. Old growth forest legal case update: September 2020. <https://faunaandfloraresearchcollective.wordpress.com/>

<sup>23</sup>Pugh, D. Compliance of Forestry Operations in North East New South Wales with Commonwealth Requirements for Threatened Species and Ecosystems. [https://d3n8a8pro7vhmx.cloudfront.net/ncec/pages/66/attachments/original/1537085676/Protecting\\_Federally\\_Threatened\\_Species\\_in\\_NSW.pdf?1537085676](https://d3n8a8pro7vhmx.cloudfront.net/ncec/pages/66/attachments/original/1537085676/Protecting_Federally_Threatened_Species_in_NSW.pdf?1537085676)

<sup>24</sup>Goongerah Environment Centre. Report exposes Labor's lawless logging. [http://www.geco.org.au/report\\_exposes\\_labor\\_s\\_lawless\\_logging](http://www.geco.org.au/report_exposes_labor_s_lawless_logging)

<sup>25</sup>National Parks Association of NSW. Regional Forest Agreements in NSW: have they achieved their aims? [https://npansw.org.au/wp-content/uploads/2016/10/139075-epa-national-parks-assoc-nsw-52pp-a4-rfa-report\\_printversion.pdf](https://npansw.org.au/wp-content/uploads/2016/10/139075-epa-national-parks-assoc-nsw-52pp-a4-rfa-report_printversion.pdf)

<sup>26</sup>The Australia Institute. Money doesn't grow on trees. The financial and economic losses of native forestry in NSW. <https://www.nature.org.au/media/213736/160320-money-doesnt-grow-on-trees-nsw-forestry-final.pdf>

<sup>27</sup>Australian Government Department of Agriculture, Water and the Environment. Socio-economic indicators—trends to 2018. <https://www.agriculture.gov.au/abares/research-topics/forests/forest-economics/forest-wood-products-statistics/socio-economic-indicators-trends-2018>

<sup>28</sup>Australian Bureau of Statistics. Discussion Paper: From Nature to the Table: Environmental-Economic Accounting for Agriculture, 2015-16.

<https://www.abs.gov.au/ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/bce44bc7acd8158fca2581e6000fb20f!OpenDocument>

<sup>29</sup>Ibid at 25.

held accountable under federal law even when RFAs are breached, it is likely to exacerbate them.

The abovementioned Samuel Report from the Independent review of the EPBC Act was clear in recommending that the standard of environmental protection afforded by RFAs be increased to align with national standards. It was also clear in recommending increased, not decreased, federal oversight of RFAs.

*'Of all streamlining processes provided for under the EPBC Act, the Review considers that the provisions for RFAs are the most unacceptable and require immediate reform. Specifically, RFAs should be required to demonstrate consistency with the National Environmental Standards and have greater Commonwealth oversight. In the immediate term, and as a condition of accreditation (Chapter 7), States and Territories should ensure, and the Commonwealth expect, RFAs be consistent with National Environmental Standards. Following this immediate step, the RFA provisions in the EPBC Act should be amended as part of the second tranche of comprehensive legislative reforms recommended by this Review. These amendments should replace the current exemption with the ability for the RFA process to be accredited where it can be demonstrated to be consistent with the National Environmental Standards. Accredited RFAs should be subject to the mandatory oversight of the Environment Assurance Commissioner.'*

*'Recommendation 15: Increase the level of environmental protection afforded in Regional Forest Agreements (RFAs).*

*a) The Commonwealth should immediately require, as a condition of any accredited arrangement, States to ensure that RFAs are consistent with the National Environmental Standards.*

*b) In the second tranche of reform, the EPBC Act should be amended to replace the RFA 'exemption' with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of the Environment Assurance Commissioner.'*

Importantly, these recommendations in the Samuel Report regarding RFAs form part of a much larger suite of recommendations for fundamental reform of the EPBC Act. Central to these is full development of the abovementioned National Environment Standards to clearly delineate the environmental outcomes the EPBC Act seeks to generate. The report also calls for the establishment of new, independent oversight bodies to ensure that the law is implemented and that its objectives are met.

The Samuel report specifically warns that "governments should avoid the temptation to cherry pick from a highly interconnected suite of recommendations". Reform of the RFA framework must be seen as part of a much broader overhaul of environmental law in Australia if the decline of our iconic places and the extinction of our most threatened plants, animals and ecosystems are to be arrested.