

Environment Protection and Biodiversity Conservation Amendment (Regional
Forest Agreements) Bill 2020: Senate Environment and Communications
Legislation Committee Inquiry Submission

18 March 2021

Dear Committee Secretariat,

Thank you for the opportunity to make a submission to the inquiry into the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020 (the 'Bill'). I am happy for this submission to be made public at the Committee's website, and would be available to attend an Inquiry hearing if requested.

I ('the writer') am an Australian citizen (born and lived in NSW for some decades) who has observed marked change in the natural environment in the half century since my family moved from Sydney to Bathurst on my 7th birthday in 1968. For most of my life I have resided outside Australia's major cities and have come to love the rural and natural landscapes of Eastern Australia's forested areas. However I am saddened by the ongoing degradation of those same landscapes through the unthinking neglect and sometimes deliberate depredation inflicted by we Australians.

I moved to Queensland's Wide Bay region in 2002 where I was first compelled to become involved in environmental advocacy by the destructive stupidity of the proposal to dam the Mary River at Traveston Crossing.

This submission is made on my own behalf only.

Summary

This Bill should be rejected in its entirety because if passed into law it would stymie remediation of breaches of State Government regulation.

Detailed Discussion

I understand the Bill to amend the Environmental Protection and Biodiversity Conservation Act 1999 (the 'EPBC Act') has been drafted and submitted to the Parliament in response to last year's Federal Court decision in the *Friends of Leadbeater's Possum Inc v VicForests* case - only the second case ever brought in the 22-year history of the EPBC Act that challenges the special exemption given to the logging industry from laws that protect threatened species via Regional Forest Agreements (RFAs).

Regional Forest Agreements (RFAs) are 20-year State–Federal agreements first signed between 1997 and 2001. They underpin the management of the majority of Australia's commercially productive native forests. Their objectives are to deliver certainty of resource access to forest industries, ensure that forest industries are profitable and protect environmental values, including biodiversity.

By definition, forestry operations generally occur in relatively remote locations where monitoring and oversight may be costly or logistically difficult. In essence, this requires that the community must trust that logging operations comply with their regulatory obligations.

At its website, the respondent in the Federal Court action, VicForests, is described as “a State-owned business with an independent Board of Directors, and accountable to the Victorian Government through the Minister for Agriculture and Regional Development and the Treasurer” ¹.

That is, the State Government of Victoria has a direct pecuniary interest in there being as few interruptions to VicForest’s operations as possible - and yet the same State Government is the regulator that has been unable to ensure compliance with the Code in the logging operations by VicForest that were the subjects of the *Friends of Leadbeater’s Possum Inc v VicForests* case.

In the case, in which it was found that although Regional Forestry Agreements (‘RFA’s) are ostensibly exempt from provisions of the EPBC Act because they are subject to oversight by State Government legislation, any forestry operations that are demonstrably not being conducted in accord with the precautionary principle are consequently in breach of clause 2.2.2.2 of the *Code of Practice for Timber Production 2014* (the ‘Code’), which provides the framework for regulation of commercial timber harvesting operations on both public and private land in Victoria ². As a result, any such forestry operations do not benefit from the exemption extended by s 38(1) of the EPBC Act and, not having been assessed or approved under part 3 of the EPBC Act, are unlawful.

In “Flawed forest policy: flawed Regional Forest Agreements”, *Australasian Journal of Environmental Management*, 25:3, 258-266, DOI: 10.1080/14486563.2018.1466372 ³, ANU’s Professor David Lindenmayer argues that the objectives of RFAs have not been met with five key areas being unsuccessful. RFAs have:

- (i) failed to protect biodiversity and maintain ecosystem processes;
- (ii) been characterised by poor governance and watered down forest protection;
- (iii) overseen a demonstrable lack of profitability of, and declining employment in, native forest logging industries;
- (iv) led to the overcommitment of forest resources to wood production and
- (v) failed to account for other forest values that are often much greater than wood production.

The Federal Court judgement is both welcome and unsurprising given the second of these five unsuccessful objectives.

The Bill before the Senate does not seek to remedy any of these failures; instead, the Bill seeks to amend the EPBC Act and the Regional Forest Agreements Act 2002 so forestry operations covered by a Regional Forest Agreement are automatically exempted from Part 3 of the EPBC Act, irrespective of any breaches of the Code; that is, there would no longer be any remedy to such breaches under the EPBC Act.

¹ <https://www.vicforests.com.au/about-vicforests/organisational-structure>; accessed on 17 March 2021.

² https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0016/29311/Code-of-Practice-for-Timber-Production-2014.pdf, accessed on 18 March 2021.

³ <https://www.tandfonline.com/doi/full/10.1080/14486563.2018.1466372>, accessed on 18 March 2021.

Passage of the Bill would therefore make a mockery of the very Code on which the EPBC Act relies to grant Victorian timber harvesting operations their exemption from Part 3 of the EPBC Act. The Bill would therefore remove from Victorian timber harvesting operations any and all regulatory obligations, and because Federal legislation is intended to apply throughout Australia, could arguably render moot any and all timber industry regulation throughout

As such, the Bill should be rejected in its entirety.

Thank you for considering my submission.

Yours sincerely,

David Arthur