



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

Senate Environment and Communications Legislation Committee

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## Introduction

The Wilderness Society, Australian Conservation Foundation, BirdLife Australia, Humane Society International, International Fund for Animal Welfare-Australia and World Wide Fund for Nature-Australia are members of the Places You Love Alliance (PYL). PYL represents over 60 environment groups with a combined membership of over 2 million Australians. The alliance includes major national and international groups and many conservation councils and local groups around the country.

Collectively, our organisations have engaged Commonwealth and state governments over 40 years to ensure Australia's natural environment is healthy, biodiverse and resilient to the growing impacts of climate change. We have interacted with the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and *Regional Forest Agreement Act 2002* (RFA Act), and various statutory processes under them, over the life of the Acts.

PYL was initially formed in 2012 to advocate for a new generation of effective national environment laws and institutions.

We welcome this opportunity to provide Submission into the Inquiry into the *Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020* (**the Bill**).



## Regional Forest Agreements (RFAs)

The EPBC Act is Australia's primary existing legislative mechanism for species, biodiversity, ecosystem and natural heritage conservation (known as Matters of National Environmental Significance (MNES)) and for realising the Australian Government's substantial international obligations to preserve Australia's unique biodiversity and ecosystems under international agreements to which we are signatories.

Under the RFAs, the Commonwealth Government formally removes itself from any ongoing involvement in the assessment and approval of forest logging operations, and their impact on MNES, via the so-called 'RFA exemption' clauses incorporated into the EPBC Act and the Regional Forest Agreement Act 2002 (RFA Act).

Regional Forest Agreements (RFAs) were intended to provide the framework for native forest management in Australia and to provide for the needs of conservation and industry by establishing a Comprehensive, Adequate and Representative (CAR) Reserve System, sustainably managing areas available for logging outside of reserves and providing secure access to the forest resource for the native forest logging and log processing industry. RFAs sought to resolve the long-standing conflict surrounding native forest logging, but have comprehensively failed to do so, despite granting native forestry on public land an exemption from national environment law.

As above, the Federal Government has substantial legal obligations to protect Federally-listed threatened species. In reality, since RFAs commenced 20 years ago:

- 12 forest vertebrate fauna species have been up-listed to the 'Endangered' or 'Critically Endangered' categories;
- More than a quarter Federally-listed forest dependent species that were listed when the RFAs were signed have moved closer to extinction;
- 15 forest vertebrate fauna species have been listed as threatened for the first time; and
- The CAR Reserve System is based on outdated science and technology. Additionally, many of the accredited CAR reserves ('informal reserves') lack any secure protection.

In addition, major oversight and accountability mechanisms of the RFAs have repeatedly failed:

- Five-yearly reviews have been consistently late by three years on average. The first RFA to be signed in 1997 was not reviewed until 2010, 13 years after it was signed; and
- The recent Federal Court ruling that found that state-owned logging agency VicForests breached the code of practice under the Central Highlands RFA and therefore was not exempt under the EPBC Act 1999, has profound implications for the RFAs. It throws into doubt the legality of the exemption for all RFAs<sup>1</sup>.

The needs of the industry have not been met, with sawmill closures, job losses, and a reduction in wood volume availability (due to mismanagement and the impacts of successive bushfires, which in themselves are now more frequent and severe due to the impacts of logging<sup>2</sup>). Certainty for the

<sup>1</sup> Robertson P, Young A & Milthorpe S (2019) *Abandoned: Australia's forest wildlife in crisis* The Wilderness Society, Surry Hills Australia; The Wilderness Society (2020) *Creating Jobs, Protecting Forests? The State of the Nation's RFAs* The Wilderness Society, Melbourne, Australia <https://www.wilderness.org.au/news-events/abandoned-australias-forest-wildlife-in-crisis>

<sup>2</sup> University of Queensland "Recent Australian wildfires made worse by logging" ScienceDaily 5 May 2020 [www.sciencedaily.com/releases/2020/05/200505121655.htm](http://www.sciencedaily.com/releases/2020/05/200505121655.htm)



industry in the publicly-owned native forest estate has proved elusive despite more than two decades of RFAs and an unnecessary and environmentally damaging exemption from national environment law—which is provided to forestry, unlike any other industry, on a rolling, decades-long basis.

In summary:

- **RFAs have failed to meet their core objectives:**
  - the reserve system created is inadequate to conserve biodiversity;
  - forests are not being ecologically or sustainably managed with some at high risk of ecological decline;
  - the forestry industry continues to be plagued by instability and uncertainty.
- **The RFAs grant one industry—native forest logging—an exemption** from the assessment and approvals process under the EPBC Act, yet this special treatment has not provided industry stability or security.
- **‘Duplication’ is a non-issue.** State laws are not equivalent to national environment law and are no substitute.
- **Wildlife is being pushed to extinction**, with tens of thousands of hectares of critical habitat for forest dependent threatened species, including the Swift Parrot and Leadbeater’s possum (see case study below), being logged under the RFAs.
- **Jobs and skills in the logging industry continue to decline** as does the supply of native forest wood and fibre volumes.

### Why are RFAs failing to achieve their purpose?

Firstly, there is no defined mechanism requiring state governments to secure forest species’ survival or the protection of other MNES. The 2019-2020 Independent Review of the EPBC Act by Graeme Samuel AC (Samuel Review) found that “the environmental considerations under the RFA Act are weaker than those imposed elsewhere for MNES”, and noted the lack of clear, definable and applicable environmental benchmarks against which the RFA must be consistent as requiring immediate reform.

The Samuel Review found that:

- “there is insufficient Commonwealth oversight of RFAs and the assurance and reporting mechanisms are weak”;
- environmental considerations under the RFAs “do not align with the assessment of significant impacts on MNES required by the EPBC Act”; and
- the Commonwealth relies solely on the States to undertake surveillance, compliance and enforcement, while not requiring reporting on the environmental outcomes of activities conducted under RFAs.

When repeated failures to achieve the aims of the EPBC Act or the RFAs themselves have been brought to light, forest-dependent wildlife are uplisted, or major shifts in external circumstances that affect wood supply have occurred (such as successive bushfire events), there has been either no mechanism or a marked unwillingness to trigger reviews of either wood volumes, or of forest management under RFAs. Legally mandated five-yearly reviews of forestry operations under RFAs have been consistently late by an average of approximately 3 years, with one in Victoria not conducted until 8 years after it was required by the RFA Act<sup>3</sup>.

<sup>3</sup> The Wilderness Society (2020) *Creating Jobs, Protecting Forests? The State of the Nation’s RFAs* The Wilderness Society, Melbourne, Australia [https://www.wilderness.org.au/images/resources/Creating\\_Jobs\\_Protecting\\_Forests\\_REPORT.pdf](https://www.wilderness.org.au/images/resources/Creating_Jobs_Protecting_Forests_REPORT.pdf)



There are around 48 Federally-listed threatened forest-dwelling vertebrate fauna species impacted by logging operations, including logging-associated roading and burning, across Australia's 11 RFA regions<sup>4</sup>.

The 'RFA exemption' from the EPBC Act means the Commonwealth Government appears to be unable, as well as unwilling, to intervene even when logging threatens the survival of threatened and endangered species like the Spotted-tail Quoll, Swift Parrot, Tasmanian Masked Owl, Leadbeater's Possum, Carnaby's Black Cockatoo, and Giant Freshwater Lobster.

The net result of devolved approvals via the RFAs - without a mechanism to require state governments protect MNES and without transparent, vigorous and independent oversight - is that state governments are not required to secure forest species' survival and the Commonwealth Government has abrogated its responsibilities to protect them.

**We strongly support Professor Samuel's finding that existing "Commonwealth oversight of environmental protections under RFAs is insufficient and immediate reform is needed. The National Environmental Standard for MNES should be immediately applied and RFAs should be subject to robust Commonwealth oversight."**

**The Bill currently before the Committee is inconsistent with the recommendations of the Samuel Review, and should not proceed.**

### **The Regional Forest Agreements (RFA) Amendments Bill 2020**

The apparent intention of the Bill to exempt 'any forestry operation that happens in an RFA area' from the requirement to obtain approval under the EPBC Act - rather than the current arrangement where this exemption ostensibly relies on the Commonwealth being assured that an equivalent standard of environmental protection to the EPBC Act is in place - is completely inconsistent with Professor Samuel's finding that "The National Environmental Standard for MNES should be immediately applied and RFAs should be subject to robust Commonwealth oversight".

Further exempting forestry operations from the EPBC Act would materially reduce already insufficient levels of Commonwealth oversight to effectively zero and reduce environmental standards. In addition, the apparent intention of the proposed exemption would seem to render the Commonwealth unable to use many mechanisms available under the EPBC Act to protect forest-dwelling species. For example, it is unclear how Recovery Plans would be implemented with the Government unable to regulate a primary threat - logging - to forest-dependent species' critical habitat.

The era of exemptions should be replaced with a consistent approach: national environment laws must apply equally, transparently and robustly to everyone and every sector of our economy.

The above is especially important given major changes since 1997 to the ecological context in

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<sup>4</sup> Robertson P, Young A & Milthorpe S (2019) *Abandoned: Australia's forest wildlife in crisis* The Wilderness Society, Surry Hills Australia; The Wilderness Society (2020) *Creating Jobs, Protecting Forests? The State of the Nation's RFAs* The Wilderness Society, Melbourne, Australia <https://www.wilderness.org.au/news-events/abandoned-australias-forest-wildlife-in-crisis>



which the EPBC Act and RFAs operate. These changes clearly demonstrate the need for reformed national leadership and more effective environmental governance and regulation to deal with escalating ecological crises:

- **The 2016 State of the Environment Report** found that Australia's environment is under increased pressure and that the 'condition of the environment in certain areas<sup>5</sup> is... poor and/or deteriorating'. The Report found that the major pressures impacting the Australian environment (including deforestation, habitat degradation and fragmentation) had remained the same since the previous State of the Environment in 2011. There is no suggestion this has improved.
- **Australia's extinction record** is ranked worst in the world for mammal extinctions<sup>6</sup> and second worst in the world for loss of diversity of life<sup>7</sup>. A recent study found that unless management improves, Australia's extinction rate will accelerate from a confirmed six extinctions in the last 20 years to a probable 17 in the next 20<sup>8</sup>.
- **The 2019-2020 Bushfires** are an ongoing ecological crisis, with many species and ecosystems catastrophically affected. More than 11 million hectares of land burned across the south and east of the country over a period of about six months. For some forests, this bushfire event was the third time severe fire was experienced in a matter of years. There have been significant impacts on matters for which the Commonwealth is responsible, including:
  - The Government's Wildlife and Threatened Species Bushfire Recovery Expert Panel has identified 813 priority species and ecological communities requiring urgent management intervention post the 2019-20 fires.
  - 21 nationally-listed endangered or critically endangered species have more than 80% of their modelled likely or known habitat within the burnt areas.
- **Major fire events** are now occurring with unprecedented frequency, severity and intensity, and affecting areas that, for millennia, did not burn<sup>9</sup>. In 2014, the fifth IPCC report projected an increase in days of very high and extreme fire danger would be apparent by 2020, with further increases by 2050<sup>10</sup>.

**We do not believe that the Bill constitutes a meaningful legislative response to the persistent failures of the RFAs, the Samuel Review, Australia's ongoing extinction crisis or the ecological catastrophe of the 2019-20 bushfires. As such, the Bill should not proceed.**

## Recommendations

<sup>5</sup> Especially urban, coastal populated areas and the extensive land-use zone of southern and eastern Australia

<sup>6</sup> Woinarski et al (2015) "Ongoing unraveling of a continental fauna: decline and extinction of Australian mammals since European settlement" *Proceedings of the National Academy of Sciences* 112(5): 4531-4540

<sup>7</sup> Waldron A et al (2017) "Reductions in global biodiversity loss predicted from conservation spending" *Nature* 551: 364-367.

<sup>8</sup> Gayle H et al (2018) "Quantifying extinction risk and forecasting the number of impending Australian bird and mammal extinctions" *Pacific Conservation Biology* 24:157-167

<sup>9</sup> Bowman, D, Murphy, B., Neyland, D, Williamson, G and Prior, L (2014) "Abrupt fire regime change may cause landscape-wide loss of mature obligate seeder forests" *Global Change Biology* 20: 1008-1015. doi:10.1111/gcb.12433; Dunlop et al (2012) *The Implications of Climate Change for Biodiversity, Conservation and the National Reserve System: Final Synthesis CSIRO Climate Adaptation Flagship*, Canberra

<sup>10</sup> Lucas C, Hennessy K and Bathols J (2007) *Bushfire Weather in Southeast Australia: Recent Trends and Projected Climate Change Impacts*. Consultancy Report prepared for The Climate Institute of Australia by the Bushfire Cooperative Research Centre. Quoted in Reisinger A, Kitching R, Chiew F, Hughes L, Newton P, Schuster S, Tait A and Whetton P (2014) *Australasia*. In: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* pp. 1371-1438. See [https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap25\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap25_FINAL.pdf)



The interaction between the EPBC Act and forestry operations carried out under RFAs must be reconsidered as part of a comprehensive reform of the EPBC Act and other existing legislative actions by the Government to amend the EPBC Act.

We strongly support the Samuel Reviews' findings that the implementation of the EPBC Act is "ineffective" and that its current operation requires fundamental reform. We also strongly support the finding that the provisions and current operation of the EPBC Act, including through its interaction with RFAs, "does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters".

Professor Samuel has recommended an interconnected program of fundamental reform for the EPBC Act and its relationship to other environmental legislation, noting that "governments should avoid the temptation to cherry pick from a highly interconnected suite of recommendations".

We also note that Federal Environment Minister Sussan Ley has publicly committed that the Government will "lift standards and lift environmental protections" as a "critical" element of its push to devolve environmental decision-making powers to the states (via the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020* and the *Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021* currently before the Senate).

We believe that all proponents, developments and sectors must be regulated consistently and robustly and have uniform responsibility for biodiversity conservation under the EPBC Act. We support the application of robust National Environmental Standards equally to all proponents, developments and sectors as part of a comprehensive regulatory response to address these issues.

As part of achieving the above, we note and support Recommendation #15 of the Samuel Review, which is: *Increase the level of environmental protection afforded in Regional Forest Agreements (RFAs)*

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

**On this basis, we strongly recommend that the Bill should not proceed and that RFAs should be reformed in line with and as part of the interconnected suite of reforms recommended by the Samuel Review.**

**The Commonwealth should:**

- 1. Immediately review the current performance all RFAs, with the intention of reforming the RFAs in line with Recommendation #15 of the Samuel Review.**
- 2. Immediately adopt and implement the National Environment Standards recommended by the Samuel Review, and commit to developing the full suite of standards**



recommended by the Review within 12 months.

3. **Commit to completely overhaul Australia's national environment laws in line with the recommendations of the Samuel Review and create strong and independent institutions to ensure the laws are implemented and environmental outcomes are significantly improved.**
4. **Ensure that any future forest management arrangements value and account for the full range of forest uses including; conservation, tourism, recreation, water, carbon and any limited native forest logging ongoing, including any that may form part of an industry transition.**

For further information on the topics covered in this submission, please contact Suzanne Milthorpe at



## Case study: How RFAs are enabling the extinction of the Swift Parrot

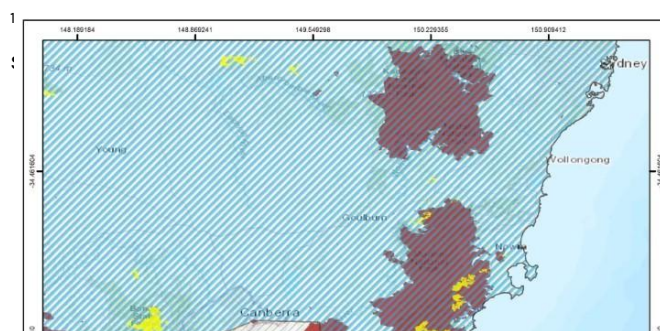
The Critically Endangered Swift Parrot is one of Australia’s most threatened bird species with an effective population of as few as 300<sup>11</sup> birds. The threats to Swift Parrots are well understood and the species’ National Recovery Plan lays out the actions necessary to restore their population. Yet Swift Parrots could be extinct within the next 12 years, as a result of cumulative factors. Chief among these is that the RFA exemptions under the EPBC Act allow clearing of critical habitat.

Swift Parrots breed only in Tasmania, migrating to the Australian mainland in autumn where they seek out mature forests to spend the winter, feeding on abundant blossom and lerp. The Spotted Gum forests of the NSW south coast are well-documented as one of the most important mainland foraging areas for Swift Parrots<sup>2</sup>. These forests have been internationally recognised for their significance to the species in their designation as part of the *Ulladulla to Merimbula* Key Biodiversity Area (KBA).

The lack of Commonwealth oversight is particularly pronounced for the Swift Parrot, which breeds in Tasmania but whose range stretches as far north as Queensland and crosses six jurisdictions. In the absence of strong national leadership, recovery actions taken in one jurisdiction may be undermined by destructive practices in another. This is clearly evident in RFAs where industry priorities can override the conservation imperative of threatened species. A 2015 report by Environment Tasmania revealed that the Tasmanian Government approved logging in areas that its own scientists identified as important Swift Parrot habitat. Most recently, in 2021 the NSW Environment Protection Authority fined the state-owned Forestry Corporation of NSW for failing to compile and include Swift Parrot records in pre-harvesting surveys, as required.

The current Recovery Plan identifies habitat loss and modification as the main threat to the species’ survival. Habitat loss from forestry activities is described as “the greatest threat to the survival of the Swift Parrot”. In the 2018 BirdLife Report *Restoring the Balance*, we detail how RFAs allow for native timber harvesting within known Swift Parrot habitat as long as native forestry operations are carried out “in accordance with” an RFA. The RFAs act as an exemption from the EPBC Act. As a result, actions taken under an RFA do not need to be consistent with the recommendations of a national Recovery Plan. Under RFAs, deforestation continues across large areas of core Swift Parrot habitat, from their breeding grounds in south-eastern Tasmania to their overwinter feeding habitat in southern New South Wales.

A moratorium on conversion of Tasmania’s Future Potential Production Forests (FPPF) to Permanent Timber Production Zone to allow logging ended on 8 April 2020. Large areas of FPPF zones intersect core Swift Parrot range and could potentially be released to become Permanent Timber Production Zone at any time from 8 April 2020. The combination of existing logging permitted under the Tasmanian RFA and potential new areas of expanded logging through the conversion of FPPF land is a key threat in the Swift Parrot breeding habitat. As an example, a large forested area of south Bruny Island is in both PTPZ and FPPF zones, and contains critical nesting habitat within the Bruny Island Key Biodiversity Area– it is one of the few remaining areas in Tasmania’s breeding habitat without an established population of Sugar Gliders, the parrot’s major, introduced predator.



genetic estimation of effective population size. *Conservation Biology*, London.





Meanwhile, birds returning now to their mainland overwintering sites will find a fire ravaged landscape on the south coast of New South Wales. The impacts of the 2019/20 bushfire crisis on Swift Parrots will not be fully known for months or even years. At a time when governments should be working together to protect remaining unburnt habitat, the NSW government continues native forest logging under the State's three RFAs, including within and adjacent to known Swift Parrot feeding habitat. Logging of fire-affected forests on the NSW South Coast commenced in March.

The Swift Parrot's decline provides a strong case for the removal of industry exemptions from national environmental law, and for new Commonwealth legislation that provides effective, strong protection for critical habitat. Without these changes, the Swift Parrot is likely to be extinct by 2032, with a multitude of other species likely to meet the same fate.