

The Secretary
Environment and Communications Legislation Committee (the Senate)

18 March 2021

Dear Secretary

Submission on Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020 ("the Bill")

Thank you for the opportunity to make a submission on the Bill, which I have read.

Among other documents in making a submission, I have had regard to the Explanatory memorandum accompanying the Bill, the Final report of the Independent Review headed by Mr. Samuel ("**the Review**") into the *Environment Protection and Biodiversity Conservation Act 1999* ("**the Act**"). I have also had regard to the findings of the Federal Court in *Friends of Leadbeater's Possum Inc -v- VicForests* (No 4) [2020] FVA 704 ("**the judgment**").

I write as someone deeply concerned about the widely acknowledged terrible, worsening state of Australia's ecosystems and fauna and flora, and the stewardship of our natural resources. I spend considerable time outdoors (and as a tourist intrastate and interstate), including in our national parks and other conservation reserves. I am very familiar with the considerable research published by Australian scientists about the declining state of Australia's environment. As the Review noted early in its Executive Summary of its Final report, "*.....Protecting and conserving them [“our iconic places and unique environment”] for the benefit of current and future generations is important for the nation.....The current environmental trajectory is unsustainable...*"

I respectfully, but strongly urge the Committee to recommend against passage of the Bill.

In the alternative, I respectfully but strongly urge the Committee to recommend against the passage of the Bill until the Government has addressed the recommendations of the Review by the introduction of bill(s) that accurately reflect those recommendations.

The reasons why I urge the Committee to recommend against the passage of the Bill are set out below under the heading “Reasons”.

Certain important background matters and documents

I set out the following extracts from the Review’s Final report and the Federal Court summary which are directly relevant to my opposition to the Bill:

A. From the published Federal Court summary:

*“...the Court has found that **VicForests has not engaged, and is not likely to engage, in a careful evaluation of management options** to avoid wherever practical the very real threats of serious damage to the Greater Glider which are posed by its forestry operations in the Central Highlands. The Court has found that those threats are recognised by official sources such as the Conservation Advice issued under the EPBC Act...*

*...Instead, the Court has found **VicForests relied on “desktop” and other theoretical methods, which the Court has found to be flawed, such as VicForests’ habitat mapping...The Court has found **VicForests has not considered developing its own comprehensive in-forest survey system prior to logging, preferring to rely on other agencies like DELWP, even though DELWP has insisted the responsibility for such matters lies with VicForests, as the Court has found it does under the Code...****” (Emphasis added)*

B. From the Executive Summary of the Final report of the Review:

*“...There are fundamental shortcomings in the interactions between RFAs and the EPBC Act. **The Review has low confidence that the environmental considerations under the RFA Act are equivalent to those imposed by the EPBC Act**, but recognises that some RFAs afford environmental protections that exceed the requirements of the RFA Act...*

*In May 2020 the Federal Court found that a forestry operator had breached the terms of an RFA and should therefore be subject to the ordinary controlling provisions of the EPBC Act. **Legal ambiguities in the relationship between the EPBC Act and the RFA Act should be clarified. This should be achieved by requiring that RFA’s demonstrate consistency with the National Environmental Standards to avoid the need for an EPBC Act assessment and approval. Adopting the accreditation model would support greater Commonwealth oversight of the RFAs, including the effectiveness of the State-based compliance and enforcement regimes.***

*Amendments to both the RFA Act and the EPBC Act will be required to implement these changes in a legally binding way. **But changes to these arrangements should be pursued by the Commonwealth now to provide for equivalent protections for MNES and strong Commonwealth oversight.** This will provide confidence to the community and certainty for the forestry industry, **with forestry activities able to continue under well-made, well-implemented, transparent RFAs. To do this, the Commonwealth should require a State to commit to the application of the National Environmental Standards to RFAs and consequential oversight by the EAC, as a condition of any accreditation process...***(Emphasis added)

Reasons

I respectfully, but strongly reject the Committee to recommend against the Bill for the following reasons:

1. The judgment itself is appropriate, reasonable and *should be commended* in:
 - 1.1 Its findings of what appears to be serious failures by VicForests to protect endangered species, for example, the Greater Glider listed as “*vulnerable*”, and the Leadbeater’s Possum which is listed as “*critically endangered*.”
 - 1.2 The provisions of the Act in fact enabled interested members of the public to take action when the Court subsequently found that “...*Non compliance with these mandatory parts of the Code mean that VicForests’ past forestry operations in 26 coupes were not conducted “in accordance with” the Central Highlands RFA and its future forestry operations in 41 coupes not yet fully logged are not likely to be conducted “in accordance with” the Central Highlands RFA...*”
 - 1.3 The amendment of these provisions of the Act by the Bill would have the effect of *removing* this right to take action for non-compliance by a forestry operation with its own RFAs, without providing for a replacement mechanism to ensure compliance and enforcement. So far as I am aware, there have been no bills introduced to Parliament purporting to provide for an equivalent, and accurate, replacement mechanism for compliance and enforcement.
2. Critically, the Bill is inconsistent with the content, and/or the substance, of the Review’s findings and recommendations in its Final report. It is unclear why the Explanatory Memorandum quotes from the Interim Report but fails to quote from, or engage with, the findings and recommendations of the Review through the Final report.

3. It is fundamental from the Review's findings and recommendations, including as what I have quoted above, that:

3.1 The Review had "*low confidence that the environmental considerations under the RFA Act are equivalent to those imposed by the EPBC Act.*" In short, the environmental considerations under the RFA are generally less than those of the Act, which is of deep concern since the Review found that the Act was failing in its objects, and should be "*completely overhauled...*"

3.2 It is plain from the Review findings and recommendations that clarification of legal ambiguities in the relationship between the Act and the RFA should "*...be achieved by requiring that **RFAs demonstrate consistency with the National Environmental Standards to avoid the need for an EPBC Act assessment and approval.** Adopting the accreditation model would support greater Commonwealth oversight of the RFAs, including the effectiveness of the State-based compliance and enforcement regimes...**To do this, the Commonwealth should require a State to commit to the application of the National Environmental Standards to RFA and consequential oversight by the EAC, as a condition of any accreditation process.***" (Emphasis added) I understand that it is undisputed that:

(a) The Government has not introduced National Environment Standards in a bill to Parliament, in circumstances where the Review has repeatedly stated that this should be a fundamental and major part of recommended reforms to deal with the profound failures of the Act.

(b) Furthermore, the Government has not adopted, or introduced in a Bill to Parliament the National Environment Standards "*developed in detail*" by the Review, which the Review urged should be "*implemented.*"

(c) The Accreditation model and process recommended by the Review – and noting that the Review's recommended accreditation model involved 6 key steps, commencing with "*Make National Environmental Standards*", "*Accreditation Assessment*" and "*Accreditation by the Commonwealth to provide accountability and legal certainty...*" – has not, I understand, been introduced in a bill to Parliament.

3.3 In summary, the Review's recommendation to eliminate or reduce legal ambiguity between the Act and the Act responsible for RFAs is in form, and critically in substance, dependent upon the major reforms and recommendations

proposed by the Review being adopted. I understand that the Government has not adopted the Review's major reforms and recommendations, nor has the Government introduced to Parliament a bill adopting the major reforms and recommendations.

Finally, in the absence of the matters raised in the Review being meaningfully and accurately addressed, and the fundamental failings in the Act being *appropriately remedied* as recommended in the Review and taking into account the overwhelming scientific evidence, the amendments to the Act proposed by the Bill will, unfortunately, almost certainly have the effect of exposing endangered species to increased risk of extinction, may lead to extinctions, and add to the continuing, unreasonable degradation of Australia's ecosystems.

This will ultimately have substantial direct and indirect negative consequences for Australia's environment, for jobs held by Australians generally and ultimately the Australian community.

Yours sincerely,

