



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

Lawyers for Forests Inc (LFF) is a voluntary association of legal professionals working towards the protection and conservation of Australia's remaining old growth and high conservation value forests.

LFF is writing to make a submission to the Senate Environment and Communications Legislation Committee inquiry into the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020 (Bill).

LFF strongly opposes the Bill, which seeks to remove the requirement that Regional Forestry Agreement (RFA) forestry operations be in accordance with an RFA to be “exempted”¹ from Part 3 of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). It is LFF’s submission that this Bill should not be passed because it:

- will further weaken national environmental protections for RFA forestry operations and thereby exacerbate Australia’s extinction crisis;
- is inconsistent with Parliament’s original intention; and
- is inconsistent with the recommendations in the recent Final Report of the Independent review of the EPBC Act.

The EPBC Act is already failing our forests. Section 38(1)’s “exemption” of native forest logging from the statutory protections of the EPBC Act has resulted in Australia becoming an unenviable world-leader in extinction and deforestation. The current statutory framework guarantees that iconic native species, such as the critically endangered Leadbeaters possum, Greater glider and Swift parrot (to name but a few) are being pushed to the brink of extinction due to clear-fell logging of their critical habitat.

Due to the significant problems with the RFAs and their ineffectiveness to meet the objectives of the EPBC Act, it is LFF’s longstanding position that forestry operations covered by RFAs should not be exempt from Part 3 of the EPBC Act. LFF has previously provided submissions to Senate Committees setting out this position. It has also documented the problems with the EPBC Act exemption and RFAs, most recently in a 2018 submission on the third five-yearly review of the Victorian RFAs. In that submission we clearly articulate why the underlying rationale for subsection 38(1) of the EPBC Act - ‘that in each Regional Forest

¹ Technically logging activities do not have the benefit of an exemption under the EPBC Act. Instead, section 38 of the EPBC Act permits logging activities to occur without obtaining the approvals that would otherwise be necessary under Part 3 of the EPBC Act. The nature of section 38 is that logging operations occur pursuant to an arrangement akin to a licence. This “licence” is granted on the basis that the RFAs, CAR reserves and State forest management systems provide for ecologically sustainable timber harvesting. However, for convenience, this submission refers to section 38 of the EPBC Act as “an exemption”.

Agreement region a comprehensive assessment... has been undertaken to address the environmental, economic and social impacts of forestry operations’ – is flawed. A copy of our 2018 submission is available on our website at www.lawyersforforests.org.au/wp-content/uploads/LFF-submission-to-the-RFA-review-2018.pdf.

Removing the words “that is undertaken in accordance with an RFA” from section 38(1), as proposed in the Bill, removes a critical requirement and environmental protection for logging in RFA areas.

Deleting these words from the EBPC Act will remove the balancing act that must exist between the economic exploitation of the forests and their environmental protection and preservation for the common good of all Australians.

The Explanatory Memorandum to the Bill is transparent in the Bill’s intention to effectively nullify the Federal Court decision in *Friends of Leadbeater’s Possum Inc v VicForests* (No 4) [2020] FCA 704. This was a landmark decision of Justice Mortimer, which took into consideration the significant evidence presented establishing non-compliance with the RFAs. The central breach of the RFAs found by the Court was that VicForests did not comply with precautionary principle laws in certain forests where Greater Gliders are living, because those logging operations do not avoid serious or irreversible damage to the species wherever practical. The species is known to be threatened by logging yet logging occurred, and is planned, in habitat where Gliders have been sighted.

In order to undo the judicial decision the Bill seeks to remove the alleged ambiguity of what it means to be “undertaken in accordance with a Regional Forest Agreement”. However, rather than clarify or explain the so-called ambiguity, the Bill completely removes the phrase in its entirety.

The deletion of the phrase “that is undertaken in accordance with an RFA” (which is virtually half of clause 38(1)) is justified on the basis that the “intent of the Commonwealth and Regional Forest Agreement signatory states in relation to subsection 38(1) has always been for it to be interpreted to mean “any forestry operation that happens in an RFA area”. However, it is LFF’s submission this was not Parliament’s intent. The history of the section and the accompanying Explanatory Memoranda in no way suggest that the words “that is undertaken in accordance with an RFA” were supposed to be devoid of meaning.

When the EPBC Act was passed in 1999, the original wording of section 38(1) was very similar to the current wording. It read:

38 Approval not needed for forestry operations permitted by regional forest agreements

(1) A person may undertake RFA forestry operations without approval under Part 9 for the purposes of a provision of Part 3 if they are undertaken in accordance with a regional forest agreement.

The Explanatory Memorandum at the time expressly stated (with underlining added) “RFA forestry operations that are undertaken in accordance with a regional forest agreement do not require approval for the purposes of any provision in Part 3.”

In 2002 the EPBC Act was amended to the current wording, with the passing of the Regional Forest Agreements Act 2002. Again, the Explanatory Memorandum specifically referred to the words that this Bill seeks to remove. It stated (with underlining added), “This item repeals section 38 of the EPBC Act and provides that Part 3 of the Act does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.”

Finally, and importantly, it is LFF’s view that the Bill is inconsistent with the recommendations in the Final Report of the Independent review of the EPBC Act conducted by Professor Graeme Samuel. The final report concluded that “Commonwealth oversight of environmental protections under RFAs is insufficient and immediate reform is needed”. It went on to say “The National Environmental Standard for MNES should be immediately applied and RFAs should be subject to robust Commonwealth oversight.” Unfortunately, the Bill in no way supports this recommendation.

Thank you for your consideration of our submission. If you wish to contact us about the contents of our submission, we can be reached at: lawyersforforests@gmail.com.
Lawyers for Forests Inc

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