

Please attach the following **one-page summary** to your submission.

Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*

Summary

Name of author/organisation:

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Date:

2 Aug 2009

Which chapter(s) of the interim report are you commenting on?

Chapter 6 Forestry

Key points of submission

There is undue reliance on the Senate committee report that was only supported by Government members

This result in a lack of context for the amendment to the Tasmanian RFA that gave effect to the policy of the Commonwealth Government and duplicated agreements with other States.

Concern is also raised due to the wrong interpretation being placed on the management of the Tasmanian Wilderness World Heritage Area.

References

State Party Report on the State of Conservation of the Tasmanian Wilderness World Heritage Area (Australia) Property Id 181bis in response to decision of the World Heritage Committee WHC 31 Com 7b.43 1 February 2008

Report from the Director of National Parks and Wildlife on Public Representations Received on the Draft Management Plan 1999 – 2007 Update for the Tasmanian Wilderness World Heritage Area

Tasmanian Wilderness (Australia) Report of the Reactive Monitoring Mission 15 to 20 March, 2008

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Sunday, 2 August 2009

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West Coast branch Timber Communities Australia Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)

The West Coast branch members of Timber Communities Australia wish to comment upon two aspects of the Independent Review namely world heritage and forestry.

The chapter on forestry appears to rely upon the findings of the Senate Committee, and the same submissions considered by that committee on the RFA and Wielangta case. In some cases it appears the 'recommendations' or 'way forward' has been decided on incomplete information.

For example paragraph 6.45 states that clause 68 was amended after the judgement of Justice Marshall in the Wielangta case, however whilst it states what it was in its original form it fails to state the new clause, or the reasons behind the new clause. The review also fails to advise readers and perhaps inform itself that clause 70, clause 96, clause 97 and Attachment 2 and 3 were also amended.

The amended clause 68 now reads:

The Parties agree that the CAR Reserve System, established in accordance with this Agreement, and the application of management strategies and management prescriptions developed under Tasmania's Forest Management Systems protect rare and threatened fauna and flora species and Forest Communities.

On 23 February 2007, both Governments agreed to amendments to the RFA to clarify the policy intent of the Parties to the Agreement, following a case in the Federal Court (*Brown vs. Forestry Tasmania (No 4) (2006) FCA 1729 (19 December 2006)*)¹.

This amended clause is similar to The NSW NE RFA signed after the EPBC act had been drafted:

60. The Parties agree that the CAR Reserve System, actions under the New South Wales Biodiversity Strategy, *Threatened Species Conservation Act 1995* (NSW) and the *Endangered Species Protection Act 1992* (C'wth) (and, the equivalent parts of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwth) when it commences), *Forestry and National Parks Estate Act 1998* (NSW) and the application of a range of management strategies, management plans and the Integrated Forestry Operations Approval will provide for the protection of rare or threatened flora and fauna species and ecological communities.

¹ Department of Infrastructure Energy and Resources – Forests Amendments to the RFA at http://www.dier.tas.gov.au/forests/tasmanian_regional_forest_agreement_rfa#arfa

and similar to the Central Victoria's clause 51 "The Parties agree that the CAR Reserve System, actions under the *Flora and Fauna Guarantee Act 1988* and the *Endangered Species Protection Act 1992*, and the application of a range of management strategies in the Central Highlands Forest Management Plan provide for the protection of rare or threatened flora and fauna species and ecological communities."

In fact the amended clause is similar to all RFAs signed after the Tasmanian one, giving effect to the Policy of both governments.

The Full Federal Court said of the amendment:

The amendment to cl 68 of the RFA, insofar as it relates to CAR, simply puts in clearer language what we regard as the true meaning of the original clause. There are different ways in which this clarification could have been achieved. The way we have put it is to say that CAR affords the protection to the Priority Species. The drafting of the amendment adopts the device used elsewhere in the RFA, for example in cl 50, of having the parties agree that it affords that protection. The effect is the same. Accordingly the RFA continues to "*provide for*" the ecologically sustainable management and use of the forested areas in Tasmania.

Again the review is silent on the Full Court's decision and instead prefers interpretation by academic submitters and Lawyers for Forests.

If the Full Federal Court's observation is properly considered and incorporated into the review there is, in the opinion of my branch members, no need for the recommendations based on the perceived weakness of the RFA.

The Full Court also commented upon the criteria of the CAR reserve System detailing the JANIS Criteria and even going so far to demonstrate how these should be applied:

52 Each of these sets of criteria uses expressions such as "as a general criteria", "as far as practicable", "flexibility" according to regions, "wherever possible" and "a flexible approach where appropriate". Under the heading "Applying the CAR Reserve Criteria" and the subheading "Flexibility" the report says:

"Flexibility in the application of reserve criteria is needed in consideration of differing regional circumstances to ensure that the CAR reserve system delivers optimal nature conservation outcomes as well as acceptable social and economic outcomes. Therefore the criteria described in Section 6 are to be considered as guidelines rather than mandatory targets.

...

Flexibility is also necessary to allow for changes to the CAR reserve system as a result of changes in knowledge and changes in biota (such as through climate change)."

This particular section of the Full Court's judgment demonstrates why some criteria were not met. Instead of demonstrating an awareness of this clause the independent reviewer appears to have favoured the anti forestry protest groups' view:

"Still Wild Still Threatened also submitted that the science of the agreements was 'overwhelmed by political interference'.⁶⁵ Similarly, the International Fund for Animal Welfare suggest that 'serious flaws in the information and scientific process underpinning the RFAs undertaken to date have been identified.'⁶⁶

The other issue that is close to the hearts of my fellow West Coasters is the Tasmanian Wilderness World Heritage Area. The Commonwealth review seems unaware of the recent review of the proposed update of the WHA Management Plan².

My West Coast TCA branch members, with the assistance of partners in the community, and supervision by PWS undertook replacement of the Nora River Bridge on the Mt McCall Road. The road is used for beekeeper access and emergency access to the Franklin River. It is an important part of the heritage of the West Coast.

TCA members were of the understanding the issue had been fully debated in the community and the volunteer effort to replace the bridge was reciprocated by the WHA management committee and the Federal and State Governments committing to its retention.

Therefore it was disappointing to see the issue of road closure being raised again. Even more disappointing to see that the issue has been held over for discussion in the full review.

West Coast branch members considers it would be better for the management plan to state that the Mt McCall Rd will remain open and be promoted as part of the European heritage associated with the WHA.

However the Service has responded to our concerns by noting the commitment to retaining the road in the current management plan. "As the issue of the road has been raised it as appropriate to discuss the issue from all points of view, with all the information in the 2009 review. We will do so being mindful of the commitments in the current plan and the commitment of locals to its retention."

The Directors report also included advice on the management of forests and adjacent forestry operations.

The policy of both the Australian and Tasmanian Governments is not to expand the TWWHA to cover additional areas of potential outstanding universal significance beyond those areas noted in response to the World Heritage Committee's Decision part 3b).

This approach is in accord with the Tasmanian Regional Forest Agreement and both Governments have no plans to change this.

This approach was supported by the recommendations of the World Heritage mission report which stated:

"Recommendation 7: The area managed under the TWWHA management plan provides a good representation of well-managed tall Eucalyptus forest and there is similar forest outside the property which is also well-managed, but for both conservation and development objectives. The threats to these forests from production forestry activities are well managed and there no (sic) need for the boundary of the property to be changed to deal with such threats."

However as apparently both the Wilderness Society and the IUCN directly lobbied the Committee not to accept this recommendation of its own independent review mission> The committee bowed to the lobbying and incorporated the IUCN view on this matter and the final decision of the World Heritage Committee (32 COM 7B.41) part 5) was altered to include "reiterates its request to the State Party to consider, at

² Report from the Director of National Parks and Wildlife on Public Representations Received on the Draft Management Plan 1999 – 2007 Update for the Tasmanian Wilderness World Heritage Area

its own discretion, extension of the property to include appropriate areas of tall eucalypt forest .”

At the time the Australian representative on the IUCN was Greens Senator Christine Milne; she has since retired and has been replaced by Professor Brendan Mackey. Professor Mackey was a member of the independent reviewer’s scientific work shop and is a volunteer member of the Wilderness Society’s Wild Country Panel.

Yet the Forestry chapter makes only two references to the World Heritage Area that contains magnificent examples of our reserved forests. Paragraph 6.54 advises that stakeholders are fractious, and paragraph 6.70

The World Heritage Committee, invited to Tasmania by environmental NGOs, reported that:

the area managed under the [Tasmanian Wilderness World Heritage Area] management plan provides a good representation of well-managed tall eucalyptus forest and there is similar forest outside the property which is also well-managed, but for both conservation and development objectives. The threats to these forests from production forestry activities are well managed.

Curiously the independent review commented that this report did not provide “any detailed empirical evidence on the implementation of RFAs and the extent to which the environmental objectives which these agreements are being achieved.”

This is despite the Executive Summary of the quoted reportⁱ stating:

The area managed under the TWWHA management plan provides a good representation of tall eucalyptus forest and related ecological processes.

The Regional Forest Agreement (RFA) and the provision of reserves

Under the RFA (a Commonwealth-Tasmania state agreement, legally effective) there is a system of formal and informal reserves established under the “CAR principle” – reserves are to be Comprehensive, Adequate and Representative. The RFA instigated a detailed scientific review of forest classes and other ecological values and provided a common source of statistics for both the State Party and the environmental nongovernmental organisations (ENGOS). The total area under reserve status is almost 45% of Tasmania with the World Heritage Property amounting to 20% of the land area. The ENGOS and the State Party differ on the extent of the tall old growth wet Eucalyptus forest in The Tasmanian Wilderness Area on the basis of whether to include the E. nitida dominated forest. By including this vegetation type the State Party arrives at the statistic that the TWWHA contains 90,900ha or 38% of Tasmania’s tall wet Eucalyptus old growth forests. By excluding the E. nitida vegetation type dominated by four Eucalyptus species the ENGOS state that the TWWHA contains 28% of Tasmania’s tall old growth wet Eucalyptus forest.

The ENGOS indicate that the extent of the tall Eucalyptus vegetation types (both old growth and non-old growth) in the TWWHA represents 9% of the statewide extent in 1996. The mission was not provided the base data for these calculations.

Based on the RFA statistics, of the existing total old growth tall forest vegetation in Tasmania, 73% is in reservation. A system of formal and informal reserves, including national parks and the TWWHA, include about 79% of all remaining old growth forests and 46% of all native forest communities.

In commenting on the ENGO claim that only 8 or 9% of tall old growth forest was reserved in the WHA, the committee observed that Commonwealth figures showed that “the total extent of the tall wet eucalypt forest region in the State would be 395,500 ha with 302,900 ha or 76% under reservation. Of this, 120,800 ha are reserved within the TWWHA and areas managed under its management plan and 182,100 ha in the other reserves.”

By our calculator this is 30% reserved in the WHA and another 46% in reserves outside the WHA, surely this is empirical evidence. Further empirical evidence related to the management of the WHA and other claims by the ENGO can be found in the Commonwealth’s State Party Report on the State of Conservation of the Tasmanian Wilderness World Heritage Area (Australia) Property Id 181bis in response to decision of the World Heritage Committee WHC 31 Com 7b.43 1 February 2008

However it is the 5 year reviews of our Tasmanian RFA that contain detailed empirical evidence of the performance of the RFA. Two such reviews have been completed for my state both with detailed reports available to the reviewer that provide ample empirical evidence of the success of the Tasmanian RFA.

Thus it is the submission of my West Coast branch of Timber Communities Australia that the RFA is providing social, economic and environmental benefits, and that the World Heritage Area is well managed and not threatened by RFA forest operations. Thus there is no need to change either the RFA or the EPBC Act.

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ⁱ Tasmanian Wilderness (Australia) Report of the Reactive Monitoring Mission 15 to 20 March, 2008