

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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Monday, 3 August 2009

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

Forestry Chapter 6

Key points of submission

(please identify up to three main priorities or focal points of your submission):

The reviews report presents a major threat to future social, economic and environmental well being of Tasmanian timber families. The reviews report appears to have overlooked the balanced achievements made by the Tasmanian RFA in favour those unwilling to compromise their opposition to Tasmania's forest industry.

This extends to what appears as an acceptance by the Review of the findings of Justice Marshall in the Wielangta case, a decision that was overturned by the full Federal Court and the High Court

The documented balanced achievements of the Tasmanian RFA demonstrate significant environmental, social and economic outcomes therefore there is no need to alter the EPBC act

References (if possible, include a bibliography of any documents you may wish to make available)

Forestry Tasmania v Brown [2007] FCAFC 186

Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia A Report by the Joint ANZECC / MCFFA National Forest Policy Statement Implementation Sub-committee

Annual Report on Forest Practices 2007-08 Forest Practices Authority

Nabuurs, G.J.et al, 2007: Forestry. In Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer (eds)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA

Tasmanian Community Forest Agreement Second Anniversary Implementation Update

Confidentiality statement:

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Do you want this submission to be treated as confidential?

(please state 'yes' or 'no') **no**

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Monday, August 03, 2009

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Submission to EPBC Act Review Report

The Tasmanian State office of Timber Communities Australia provides the following comments to this review. Many of our 15 Tasmanian branches will also make separate submissions as the reviews report presents a major threat to future social, economic and environmental well being of Tasmanian timber families. The theme of many of our branch submissions is that the reviews report has overlooked the balanced achievements made by the Tasmanian RFA in favour those unwilling to compromise their opposition to Tasmania's forest industry.

The Independent Committee's report's recommendations "Ways forward" reads like a anti forestry green manifesto. Land clearing triggers, greenhouse gasses, courts to usurp the role of the Minister, increased Commonwealth involvement and the duplication of State responsibilities actions. The independent reviewer's comments on Regional Forest Agreements (RFAs) and the EPBC act will have a disastrous impact on Tasmanian regional communities that depend upon sustainable forest management and timber production.

The Independent review appears heavily influenced by submissions favouring the anti forestry campaigners, academics giving 'expert opinion' the arguments of the major green lobby groups ACF, Wilderness Society and taxpayer funded Environment Defenders Offices.

Another to comment on the legal implications was the group Lawyers for Forests, whose submission contained much of the argument they put to the Federal Court in their legal action against the Bell Bay pulp mill. The Federal Court **rejected** their application¹.

The majority Senate report findings focus on the Wielangta case quote extensively from the judgment of Justice Marshall. The Full Bench overturned his findings and found that his interpretation of key clauses of the RFA and the requirements of the EPBC Act was flawed.²

The Declarations that were overturned were:

- the appellant's forestry operations in coupes W T017E (17E) and WT019D (19D) in the Wielangta Forest area (Wielangta) in south east Tasmania, and its likely future forestry operations in other coupes in Wielangta (the forestry operations), are likely to have a significant impact on the broad toothed stag

¹ Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts [2009] FCA 330 (9 April 2009) http://www.austlii.edu.au/au/cases/cth/federal_ct/2009/330.html

² Forestry Tasmania v Brown [2007] FCAFC 186

beetle (the beetle), the Tasmanian wedge-tailed eagle (the eagle) and the swift parrot (the parrot), and

- the forestry operations have not been undertaken by the appellant in accordance with the Tasmanian Regional Forest Agreement 1997 (the RFA).

The review appears to accept the anti forestry campaigners, academic and legal activist's argument based on these declarations that the exemption to make individual applications for forest operations in a RFA region be modified.

This would destroy the balanced certainty created by the RFA process. Create an administrative burden that could not be resourced. Duplicate state processes and have no environmental benefit.

To a lay person it would seem common sense when the full court rejects the declarations of a lower court, then the declarations are wrong. To Tasmanian TCA members this means the Full Federal court has confirmed that forestry operations in Wielangta are in accordance with the RFA and are not likely to have a significant impact on threatened species.

Therefore there should be no alteration to the EPBC Act as a result of Justice Marshall's declarations or other flawed findings.

The review also takes notice of claims made by the extreme protest groups of the environmental movement such as Still Wild and Still Threatened.

This photograph of the protest site in the Upper Florentine might reveal to the reviewer just how much Still Wild and Still Threatened 'care for the forests'

TCA Tasmanian members seek to point out that this perceived imbalance against RFAs is not a true reflection of the broader Tasmanian community. In fact TCA believes that both the EPBC Act and the RFA have been effective in achieving environmental outcomes.

One of the key achievements of the RFAs was the establishment of a comprehensive, adequate and representative (CAR) reserve system based on three principles:

- inclusion of the full range of vegetation communities in the reserve system;
- ensuring the level of reservation is large enough to maintain species diversity, as well as community interaction and evolution; and
- conserving the diversity within each vegetation community, including genetic diversity.

The nationally agreed reserve criteria (JANIS) provided the means of putting this CAR reserve system into practice. These criteria pays particular attention to the needs of rare, vulnerable and endangered species and ecosystems and species as reflected in the EPBC Act and other State, Territory and local government legislation.

TCA Tasmanian members also support the principles of applying the CAR Reserve Criteria, that seem to be ignored by the independent review. They are stated in section 5.2 of the JANIS criteria³

5.2 FLEXIBILITY

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.

Though all forest species and ecosystems should be represented in the reserve system, the effort to achieve this for the last few percent of communities and habitats may reach a point of diminishing return, and in these situations nature conservation objectives may be more efficiently and effectively achieved through other strategies.

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). Although changes may include boundary rationalisations, the CAR reserve system must be predicated on the principle that security of tenure and management intent is fundamental. In the final selection of reserves, biodiversity, old-growth forest and wilderness values will be considered iteratively to most effectively capture the range of values within the proposed CAR reserve system. Providing that all criteria are considered when making the final reserve design, biodiversity should take precedence. This is of particular significance if the extent of socioeconomic impacts are such that trade-offs are required to meet all criteria.

³ *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia* A Report by the Joint ANZECC / MCFFA National Forest Policy Statement Implementation Sub-committee

The RFA, EPBC Act and the National Reserve System (NRS) have their origins in the commitments Australia made when it signed the Convention of Biological Diversity. This convention sets a target of 10% conservation of a nation's biomes. This target has been endorsed internationally by the WWF and IUCN in their joint Forest for Life policy.

According to the Commonwealth State of the Forest Report 2008, the area of Australia's native forest in formal nature conservation reserves is 23 million hectares, or 16% of Australia's total area of native forests.

In Tasmania, the RFA, so often condemned by the anti forestry campaigners, has seen the extent of native forest reserves increase to 47% of the State's native forest estate.

The whole of Tasmania is the RFA region. Nationally there are ten RFA regions and the Commonwealth invested over \$328 million in the RFA process, covering comprehensive regional assessments and structural adjustment packages and extensive stakeholder and community consultation as well as to anti forestry campaigner groups.

When the Tasmania RFA was signed in 1997 it was deemed to be consistent with the NFPS and the National Strategy for Ecologically Sustainable Developments; relevant Commonwealth environmental legislation; and State environmental, forestry, mining, planning and other land use legislation.

When the *Regional Forest Agreements Bill 2002* was submitted and passed by Federal Parliament the comprehensive regional assessment was stated as reflecting "provisions already in the EPBC Act"

Thus the EPBC Act did not require individual applications under Part 3 of the Act for forest operations in RFA regions. The individual assessment of such applications would create a bureaucratic nightmare and an opportunity to destroy the certainty created for both industry dependent families and the environment by the RFA.

According to the annual report of the Tasmanian Forest Practice Authority 924 Forest Practices plans were certified in 2007- 2008.

Forest Practices Plans (FPPs) are required for almost all forest practices on public and private land FPPs provide details of the operation area, boundaries, roads, snig tracks, landings, bridges, streams and forest areas retained for conservation purposes. They also include prescriptions for protection of natural and cultural values, planned harvest systems, and reforestation.

The Chair of the Independent Forest Practices Authority said of these plans:

The FPA has assessed a representative sample of Forest Practices Plans (FPPs) and found that the overall standard of forest practices has generally met or exceeded the requirements of the Forest Practices Code.⁴

⁴ Annual Report on Forest Practices 2007–08 Forest Practices Authority

The Tasmanian RFA has also been subject to two five yearly reviews and measured against nationally agreed criteria for sustainable forest management and requirement of environmental management standards such as the Australian Forest Standard.

The reports prepared for these reviews provide empirical evidence that the RFA is providing significant environmental benefit.

The Tasmanian RFA has also been the subject of Federal Court Action in relation to harvesting operations in the Wielangta forests. Many of the submissions to the Senate Committee and independent review committee quoted the findings of Justice Marshall.

However the Full Bench of the Federal Court upheld an appeal and overturned his decision as stated previously in this submission. The Full Bench agreed that the establishment and maintenance of the comprehensive, adequate and representative reserves and management prescriptions required under Clause 68 provides the protection.

The Australian and State Governments amended clause 68 after the original judgment in December 2006 in order to put in clearer language the true meaning of the original clause and to give effect to their policy. The appeal judges made their judgment on the basis of Clause 68 in its original form. They found that the clarification effected by the new Clause 68 would have been unnecessary but for the flawed judgment of December 2006.

The clause 68 is similar in wording to all other RFAs signed after the Tasmanian one in 1997.

This case related to three threatened species, the swift parrot, the wedge tailed eagle and the Wielangta Stag Beetle.

The other two species are subject to detailed recovery plans (one subject to current review) funded by Commonwealth moneys under various environmental programs. All three are subject to significant protection measures under the Tasmanian forest Practices system. The wedge tailed eagle is now recorded at 86% of its 1750 population.

The TCA National Office submission to the Senate Committee also addressed climate change. The Australian government is developing strategies to reduce carbon pollution, as wood is essentially 50% stored carbon removed from the atmosphere, forestry and the use of timber products can have a significant role in assisting government to achieve its goals.

When a tree is harvested, all the carbon is not immediately released back into the atmosphere. If the wood from the forest is converted into house frames, flooring, furniture, paper or other long-lived products, the carbon remains stored in those products for many years or even centuries.

Australia’s forests have the potential to provide 81 million tonnes of carbon dioxide abatement each year by 2020, which is around 20 percent of Australia’s total carbon abatement targets.

Sustainable forestry therefore can play a major role in reducing the impacts of climate change, and this in turn will enhance the survival prospects of species that are threatened by climate change.

The UN Intergovernmental panel on climate change has confirmed the environmental credentials of the forest industry:

“In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit⁵

However these environmental benefits, together with the current social and economic benefits, are threatened if the certainty created by the EPBC Act is removed.

The sovereign risk created by the removal or modification of section 38 of the EPBC Act would not only destroy an a vitally important industry to Tasmania’s economy but along with it shatter the hopes, aspiration and the social, economic and environmental well being of many thousands of timber dependent families living in small regional communities throughout Tasmania.

The Environmental performance of the Tasmanian RFA is summarized in the second anniversary report⁶ of the Tasmanian Community Forest Agreement that includes the following table:

Fast Forest Facts

Tasmanian forest industry turnover	\$1.3 billion per annum
Number of people employed in forestry in Tasmania	10,700
Area of Tasmania	6.8 million hectares
Area of Tasmania in reserves	2.9 million hectares (44%)
Area of native forest in Tasmania	3.1 million hectares
Area of native forest in reserves*	1.4 million hectares (47%)
Area of old-growth forest in Tasmania	1.2 million hectares
Area of old-growth forest in reserves	970 000 hectares (79%)
Area of old-growth harvested annually approximately	2,500 hectares

⁵ Nabuurs, G.J.et al, 2007: *Forestry. In Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [B. Metz, O.R. Davidson, P.R. Bosch, R. Dave, L.A. Meyer (eds)], Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA

⁶ Tasmanian Community Forest Agreement Second Anniversary Implementation Update

% of public native forest harvested each year	1%
Area of plantations in Tasmania)	200 000 hectares (2.9% of Tasmania
Total 1080 used in Australia	approximately 200kg
Total 1080 used in Tasmania in 2005/06	4.9 kg (2.4% of National usage)

* Excludes 45,000 hectares in new reserves aimed to be established on private land

TCA members throughout Tasmania ask that no action be taken to alter the current RFA and EPBC act in relation to forestry and that the recommendations of Chapter 6 be withdrawn from the independent review.

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