

18 February 2009

Dr Allan Hawke
Independent Reviewer
Independent Review of the EPBC Act
GPO Box 787
CANBERRA ACT 2601

Dear Dr Hawke

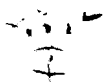
Thank you for the opportunity for the National Association of Forest Industries to appear before you on 17 February 2009 and provide evidence in relation to the terms of reference of the current independent review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

At the meeting NAFI undertook to provide you with a written copy of our opening statement and I enclose the same for your use.

NAFI advised you it was scheduled to give evidence on 18 February 2009 to the Senate Standing Committee on the Environment, Communications and the Arts which is also inquiring into the operation of the EPBC Act. You asked for a copy of NAFI's opening statement and submission to that Senate Inquiry and I now enclose those documents.

In view of NAFI's firm position on the conjunctive relationship between the EPBC Act and the Regional Forest Agreement Act 2002 and NAFI's statements citing case law, I enclose for your use the extract of NAFI's submission in relation to the decision of the Full Bench of the Federal Court in the Wielangta matter upholding the principle of the conjunctive relationship between these statutes in favour of the RFA Act and by definition, the National Forest Policy Statement of Australia.

I also take this opportunity to enclose a media article dated 13 February 2009 reporting the decision of the High Court to strike out the appeal by the NSW Government attempting to prevent an ACT resident suing that Government for damages resulting from a failed duty of care of the NSW Government in not attacking the 2003 NSW McIntyre Hut blaze when it first started which ultimately burnt into Canberra destroying over 500 homes and claiming four lives and causing injury to others. This issue goes directly to NAFI's objection for prescribed burning to be included in the EPBC Act as a matter of national environmental significance and the constitutional issues this raises should the Federal Environment Minister become, in effect, a land manager with the resultant duty of care.



NAFI also undertook to provide you with a set of arrangements to improve the environmental assessment and approvals process under the EPBC Act. As NAFI stated, the current arrangements are totally unsatisfactory and in the case of the Gunns Pulp Mill proposal for Bell Bay, the Australian Government now has the unenviable gold medal for the longest approvals process of any developed nation in approving what is a signature sustainable investment for Australia at a time when the nation and indeed Tasmania needs this project the most. NAFI will provide you with these suggested provisions in the coming weeks.

Please do not hesitate to contact me or Shane Gilbert in relation to any of these matters, and more broadly.

Yours sincerely



Allan Hansard
Chief Executive Officer



SUBMISSION

Senate Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act (1999)*

September 2008

Introduction

NAFI appreciates the opportunity to provide comment to the Senate Standing Committee on Environment, Communications and the Arts regarding the *Inquiry into the operation of the Environment Protection and Biodiversity Act 1999*.

The 'terms of reference' for this inquiry make particular reference to 'the effectiveness of Regional Forest Agreements (RFAs), in protecting forest species and forest habitats where the EPBC Act does not directly apply.'

As such, NAFI's submission deals specifically with this issue, outlining the comprehensive and effective framework employed under the RFAs to ensure the protection of ecological values. It also provides justification on why forests subject to environmental management under the RFAs are not also subject to the requirements of the EPBC Act.

Regional Forest Agreements

The RFA process was developed as part of the *National Forest Policy Statement (1992)*. RFAs are 20 year agreements between the Commonwealth and the relevant State Governments that determine the conservation and sustainable management of native forests.

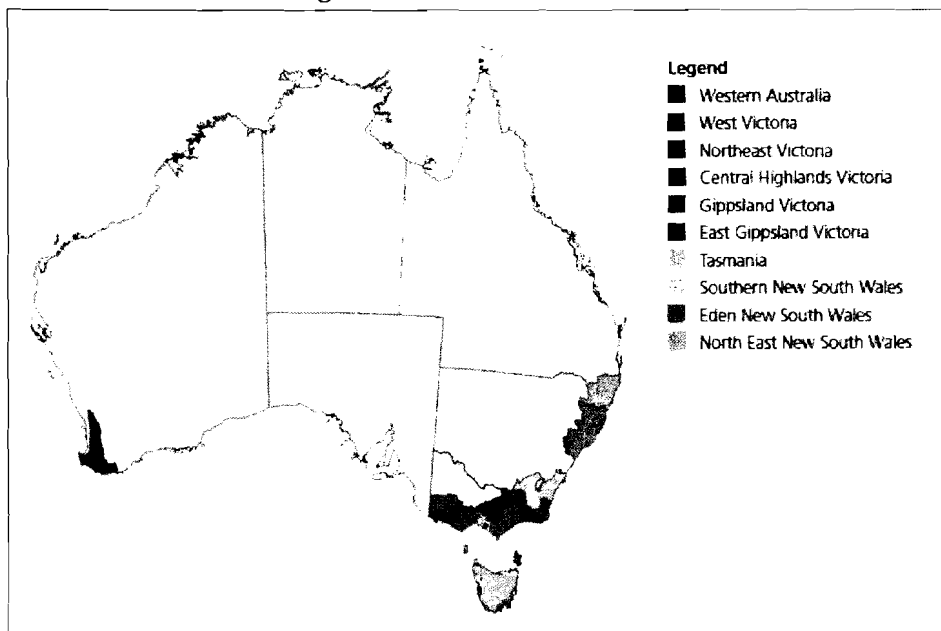
RFAs are intended to provide certainty and security for forest industries and communities which depend on forest resources. They use a science-based methodology to determine forest allocation for different uses and forest management strategies, and are the result of substantial scientific study, consultation and negotiation covering a diverse range of interests.¹

A total of 10 RFAs have been completed in Australia, covering the major forestry regions in New South Wales, Victoria, Tasmania and Western Australia (see Figure 1

¹ Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

below). Queensland did not sign an RFA, rather it completed a comprehensive regional assessment for southeast Queensland.

Figure 1: Australia's RFA areas²



Australia's RFAs have determined and prescribed:

- a comprehensive, adequate and representative (CAR) forest reserve system;
- sustainable harvest cycles and volumes for specific regions and their forest types; and
- sustainable forest management processes for protecting and maintaining forest ecology, biodiversity and social and economic benefits.

The RFAs provide a targeted forest management framework to ensure that a 'one size fits all' approach is not applied across Australia's diverse forest ecosystems. In order to prevent this, the RFAs provide for state based governance and regionally specific management of forests as this is more conducive to sustainable forest management than centralised, broadly prescriptive, commonwealth based forest management policy.

The comprehensive assessments undertaken as part of the RFA process mean that RFAs are regarded as providing at least an equivalent level of protection to that provided under the EPBC Act. Therefore, forestry operations undertaken in RFA areas do not require approval under the Act.³

The protection provided by Australia's RFAs is given legal status through the *Regional Forest Agreements Act 2002*.

² Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

³ Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

Comprehensive Regional Assessments (CRAs)

The RFAs are underpinned by extensive information and data collected for the specific purpose of determining environmental sustainability thresholds for the forests to which they apply. These comprehensive regional assessments (CRAs) were conducted over several years and are the most detailed and comprehensive assessments of forests ever conducted in Australia. They sought to investigate and set agendas for management of forest values, including:

- biodiversity;
- cultural heritage;
- wood resources; and
- soil and water values.

In relation to the CRAs, the Department of Agriculture, Fisheries and Forestry (DAFF) states:

- *CRAs provided the framework for RFAs. CRAs evaluated the economic, social, environmental and heritage values of forest regions and involved the full range of stakeholder and community groups.*
- *The \$115 million CRA process added volumes to Australia's knowledge of the country's forest uses and values - from complex ecosystems to mineral deposits, heritage values and importance to tourism and recreation.*
- *Each RFA involved at least 50 assessment projects in disciplines ranging from biology and zoology to economics and sociology.*
- *The CRAs provided governments with the information needed to make long-term decisions about forest use and sustainable development.⁴*

These CRAs, and their application as the supporting and underpinning framework for the RFAs, negate the need for the EPBC Act effectively avoiding unnecessary duplication through assessment and policy frameworks. Environmental, social and economic factors were all taken into account as part of the CRA process and forest management under the RFAs now already reflects the biodiversity and ecological conservation sentiments expressed through the CRAs and EPBC Act.

Comprehensive, Adequate and Representative (CAR) reserves

One of the key outcomes of the RFA process was the development of Australia's comprehensive, adequate and representative (CAR) forest reserve system. This system was developed to ensure that:

- there is comprehensive inclusion of flora and fauna species and ecological communities;

⁴ DAFF website. www.daff.gov.au/rfa/publications/cra-state

- there is adequate spatial coverage to ensure the maintenance of ecological communities including species diversity, viability, interaction and evolution; and
- the reserve system is representative of Australia's ecology to ensure sustainable diversity and species viability.

The overall aim of the CAR reserve system was to place in conservation reserves 15% of the pre-1750 distribution of each forest type, 60% of the existing distribution of each forest type if vulnerable, 60% of existing old-growth forest, 90% or more of high-quality wilderness forests, and all remaining occurrences of rare and endangered forest ecosystems (including rare old growth forests).⁵

There is particular attention given to the conservation needs of rare, vulnerable and/or endangered species or communities under the CAR reserve system. The motives for this, and the consequential outcomes, are reflected through the EPBC Act and the areas to which this applies. This eliminates the need for additional regulation and the associated compliance costs that would result if the EPBC Act were also imposed.

Sustainable forest management

Sustainable forest management (SFM), as practised in Australia, is distinctly different from land clearing and it is important that the Senate Standing Committee, in conducting this inquiry, recognises this distinction.

Specifically, land clearing is the removal of forest cover from the landscape, or land use change – usually converting the land for agricultural or urban development. SFM on the other hand involves the dynamic management of forests, incorporating harvesting and regeneration cycles – but as distinct to land clearing, the forest cover is maintained in the longer term.

The RFAs are part of the continual improvement of Australia's sustainability credentials for forest management. Australia now has one of the most sustainably managed production native forest estates in the world. The RFAs have ensured that suitable areas have been allocated into the CAR reserve system, as well as determining stringent environmental controls for the remaining production forest estate.

Each RFA takes into account the regionally specific environmental and ecological conditions, including species composition, forest lifecycles and ecological processes, and prescribes production management accordingly. In these production areas, the RFAs prescribe management to ensure:

- the ecological processes within forests are maintained;
- the biodiversity, species composition and interactions are protected and maintained; and
- additional environmental, social and economic benefits of forests are protected and maintained with minimal impact upon each other.

⁵ Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

The RFAs that apply to these forests, manage for similar environmental values to the EPBC Act, with the additional complexities of recognising these areas as multiple-use forests. That is, the biodiversity and ecological conditions represented in the EPBC Act must be met, while management of these forests also ensures that supplementary social and economic benefits are realised.

Codes of practice

Codes of practice are very important operationally specific instruments which underpin Australia's regulatory system for SFM and the RFAs. These codes cover the full range specific forestry activities, including planning, harvesting, forest establishment, roading, and pest, weed and fire management.

Codes of practice are generally state based and are constantly reviewed (usually every 5 to 7 years) by forest managers and agencies to ensure appropriate scientific and technical input.

While codes of practice vary in legal status between state and territory jurisdictions, they are an extremely important in ensuring the integrity of SFM at the operational level.

Forest certification

Further to the direct influences that the RFAs have played in regards to meeting biodiversity and ecological conservation needs, they have also paved the way for voluntary third party forest certification in Australia, through the development of the Australian Forest Certification Scheme (AFCS).

The AFCS and its underpinning standard for forest management, the Australian Forestry Standard (AFS), represent the extensive efforts of Australia's forestry sector to further enhance its sustainability credentials beyond the mandatory regulatory framework.

The AFS has achieved recognition through Australia's national conformity assessment framework, and as such is registered as a full Australian Standard (AS4708) by Standards Australia. The AFS was developed following a rigorous 3 year process whereby community, industry, expert scientists and government representatives came together to draft the standard

The AFS is based on internationally recognised frameworks, such as ISO 14000 environmental management standards and the criteria of the 'Montreal Process' for SFM. It has also achieved international recognition through its membership of the Program for Endorsement of Forest Certification (PEFC) schemes, the world's largest forest certification network.

Currently 95% of Australia's certified production forest estate is certified under the AFS, including nearly all public native forests (with the exception of WA which is in the process of attaining AFS certification for its forests). This ensures that the forest products being produced from Australian forests meet the highest international forest

management standards for environmental, biodiversity and ecological protection and conservation.

Forest certification is a voluntary mechanism which Australia's forestry sector has embraced in order to demonstrate world-class environmental sustainability which transforms into the market place through certified sustainably produced wood products.

Essentially, certification through the AFS ensures the protection of the environmental and ecological values for forests and is complementary to Australia's extensive regulatory framework for forest management, including the RFAs.

Wielangta case

Following legal action brought about by Senator Bob Brown, Justice Marshall of the Federal Court, in 2006, rejected the claim against the legitimacy of the Tasmanian RFA. He did, however, find that forestry operations in the Wielangta State Forest could have significant impacts on three listed threatened species.

Forestry Tasmania appealed against the ruling. In November 2007 this appeal was upheld by the Full Bench of the Federal Court and the original decision was overturned. The Bench ruled that the Tasmanian RFA did in fact provide adequate protection of forest biodiversity and ecological values as it was applied in its original form.

The Full Bench's finding in the Wielangta case clarifies the meaning of the word 'protect' in relation to the RFAs and the EPBC Act. The finding also confirms that the RFAs provide adequate protection for forest species and habitats in accordance with the sentiments of the EPBC Act, even where the Act does not directly apply.

Consequences of coverage under the EPBC Act

If the EPBC Act were to apply in addition to the RFAs, a situation of conflicting and resource intensive policy and regulatory duplication would arise. The EPBC Act guidelines would lead to the impost of added and unnecessary regulation without any additional environmental benefit.

The added burden would significantly effect the operations of the forestry sector, which is already dealing with high compliance costs resulting from more and stricter regulations over time. Increased compliance costs associated with meeting duplicative regulations would decrease the competitiveness of the sector and would undermine the integrity and effectiveness of the RFAs.

As the price of sustainably produced Australian native timber increases, international markets (including Australia's) will favour forest products from less regulated and suspect sources (which can be traded a far lower price).

Therefore, the subjection of RFA areas under the EPBC Act framework could lead to the perverse outcome, indirectly or otherwise, whereby there would be a reduction in

supply of sustainably produced Australia wood products in favour of wood from countries with weak governance structures for forest management.

Conclusion and Recommendations

NAFI contends that the RFAs provide effective protection of forest species and forest habitats in accordance with the sentiments of the EPBC Act. Consequently, there is no need for the EPBC Act to also be applied to forests covered under RFAs, as doing so would result in unnecessary policy and regulatory duplication.

While the EPBC Act does not directly apply to forest management in areas covered by an RFA, the requirements and objectives of the Act are comprehensively being met through:

- Australia's comprehensive policy and regulatory system for SFM, including the RFAs;
- the CRAs, including their development, application and review;
- the CAR forest reserve system;
- codes of practice for specific forestry activities; and
- independent forest certification, through the AFS.

NAFI strongly recommends that the integrity and effectiveness of this framework is maintained by not unduly subjecting forest areas covered under RFAs to the EPBC Act. The future competitiveness and viability of Australia's native forest industry is highly dependent on this being the case.

NAFI appreciates the opportunity to provide comment on this inquiry and looks forward to further collaboration with the Senate Standing Committee. As such, NAFI would appreciate the opportunity to provide comment at any upcoming hearings as part of this inquiry.

If there are any queries in relation to this submission, please contact NAFI's Senior Forest Policy Analyst, David de Jongh on (02) 6285 3833 or david.dejongh@nafi.com.au.



National Association of
Forest Industries

OPENING STATEMENT BY THE NATIONAL ASSOCIATION OF FOREST INDUSTRIES TO THE SENATE
INQUIRY INTO THE OPERATION OF THE ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999
PARLIAMENT HOUSE CANBERRA
18 FEBRUARY 2009

Madam Chair.

On behalf of the National Association of Forest Industries we welcome the opportunity to address the Committee this morning.

NAFI has made its submission to the Committee and stands ready to answer any questions members may wish to ask.

Before we get to that point however it will come as no surprise to Senators that NAFI and Australia's regional communities that have a strong forest industries presence are very concerned about term of reference (e) of this Inquiry and I quote *'the effectiveness of Regional Forest Agreements in protecting forest habitats where the EPBC Act does not directly apply'*.

It is useful to put NAFI's concerns in context.

Division 4 Section 38 Part 3 of the EPBC Act 1999 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA. In this case a Regional Forest Agreement has the same meaning as in the Regional Forest Agreement Act 2002.

As the EPBC Act 1999 is in fact deliberately fettered by the Regional Forest Agreement Act of 2002, it is therefore important to cite Section 6 of the RFA legislation insofar that Section 6 (4) provides that 'Part 3 of the Environment Protection and Biodiversity Conservation Act 1999 does not apply to an RFA forestry operation that is undertaken in accordance with an RFA'.

Put simply, this conjunctive legislative framework is working in Australia's national interest. It is providing the necessary forest conservation while delivering much needed investment, jobs and services in regional Australia, in Australian towns and cities and in every Australian household that relies on the use of forest products.

It is also providing, in part, the certainty the forest industries need to deliver by the year 2020:

Forest Industries House • 24 Napier Close Deakin ACT 2600 • PO Box 239 Deakin West ACT 2600
Phone (02) 6285 3833 • Fax (02) 6285 3855 • Email enquiries@nafi.com.au • Internet www.nafi.com.au

- \$19 billion of new forest industry investment;
- 16 000 new jobs, mainly in regional Australia;
- Abate over 20 percent of Australia's greenhouse gas emissions.

The policy framework the industry requires is detailed in the NAFI Strategy entitled 'Playing A Greater Role In Australia's Future: A Strategy For The Development Of Australia's Sustainable Forest Industries'. I now wish to table a copy of the NAFI Strategy for the benefit of the Committee.

You will see that the NAFI Strategy's first policy recommendation is for Australian Governments to reaffirm their commitment to Regional Forest Agreements.

Any departure from current policy will negate the investment certainty the RFAs provide.

It is also instructive for the Committee to note that the conjunctive relationship between the RFA and EPBC statutes is the product of the Keating Government's National Forest Policy Statement as ratified by COAG in December 1992.

Senators may recall the NFPS came about during the then unprecedented Parliamentary blockades and protests by timber unions, timber communities and the forest industries marching in step for the national interest and a fair go.

It is also useful to remind the Committee that the conjunctive legislative relationship between the RFA and EPBC Acts was recently tested by Senator Brown in the Wielangta matter and heard by the Full Bench of the Federal Court.

In May last year the Full Bench of the Federal Court affirmed that the Regional Forest Agreements provide adequate protection for forest species and habitats in accordance with the provisions of the EPBC Act.

Madam Chair, NAFI wishes to make two final points about the EPBC Act and current advocacy of the Australian Greens and extreme environmental groups to include prescribed burning in the EPBC Act as a matter of national environmental significance.

As significantly, the Australian Greens and the environmental advocacy also want to lock-up Australia's native forests for their carbon value.

Such an outcome would be an unmitigated disaster for Australia and the world's tropical forests.

Indeed the current Federal Environment Minister's own Department is attributed in the press as saying the Department has received a submission to include prescribed burning in the EPBC

Act and the decision on that submission is due by late 2010. Coincidentally, for those who didn't notice, this is just before the next Federal Election and during the election year for Victoria, Tasmania and South Australia.

To include prescribed burning would mean the Federal Environment Minister would become a land manager. This indeed raises constitutional issues and as we have witnessed just a week and a half ago in Victoria, it will add to the current regulatory burden in relation to bushfire management.

It would also mean the Australian Government will assume a duty of care for prescribed burning in Australia's RFA forests.

I simply say to the Committee, when will we ever learn to accept the facts about forest fire management and prevention.

Finally, to cease logging in Australia's native forests as advocated by the Australian Greens and environmental groups would see the demand for 12.5 million cubic metres of roundwood and tens of thousands of Australian jobs transferred to the international market.

Australia's demand would be met by logging an additional 100 000 hectares a year of tropical forests in countries such as Indonesia, Brazil and the Congo where there is illegal and in many cases, unsustainable logging.

Australia deserves better than this. New thinking is required. We are the world's leader in sustainable forest management. We must put the national interest first, second and third.

Thank you.

Wielangta case

Following legal action brought about by Senator Bob Brown, in 2006 Justice Marshall of the Federal Court, rejected the claim against the legitimacy of the Tasmanian RFA. He did, however, find that forestry operations in the Wielangta State Forest could have significant impacts on three listed threatened species.

Forestry Tasmania appealed against the ruling. In November 2007 this appeal was upheld by the Full Bench of the Federal Court and the original decision was overturned. The court ruled the Tasmanian RFA did in fact provide adequate protection of forest biodiversity and ecological values as it was applied in its original form.

The Federal Court's finding in the Wielangta case clarifies the meaning of the word 'protect' in relation to the RFAs and the EPBC Act. The finding also confirms that the RFAs provide adequate protection for forest species and habitats in accordance with the sentiments of the EPBC Act, even where the Act does not directly apply.

High Court clears way for fire victim to sue NSW Govt

Posted Fri Feb 13, 2009 3:20pm AEDT

A Canberra bushfire victim has had another win in his fight to sue the New South Wales Government.

• [Map: Canberra 2600](#)

Property owner Wayne West lost his home in the Brindabella National Park in a blaze known as the McIntyre's Hut fire.

Mr West alleged the NSW Government had been negligent and that the Rural Fire Service owed them a duty to prevent damage to their property.

He said fire authorities failed to attack the McIntyre's Hut blaze when it first started which ultimately burnt into Canberra, destroying homes and claiming four lives.

The NSW Government sought to strike out the application but lost in both the ACT Supreme Court and the Court of Appeal.

The Government then took the case to the High Court.

Today in the High Court the Government's lawyers asked for an adjournment to their application to be heard, noting though that it should not be seen in any way as a lack of compassion for the recent events in Victoria.

The Court refused both applications and ordered the Government to pay Mr West's costs.

The long-running compensation case will now go back to the ACT Supreme Court.

Mr West says he is pleased with the High Court's decision today and that he will keep fighting the Government for compensation.

"It's probably an issue of David and Goliath," he said.

"New South Wales has an unlimited amount of money and the New South Wales taxpayer is paying [for] a case against ourselves which we believe will not be successful at the end of the day.

"New South Wales should really consider where they're going to with this case."

Tags: [disasters-and-accidents](#), [fires](#), [bushfire](#), [states-and-territories](#), [law-crime-and-justice](#), [courts-and-trials](#), [act](#), [canberra-2600](#), [nsw](#)