

A reply to your correspondence to the Minister for the Environment – MD18/641

Dear Dr Somerset,

I refer to your emails to the Minister for the Environment, the Hon Gabrielle Upton MP and to me in my role as the Chief Environmental Regulator of the NSW Environment Protection Authority (EPA). Your emails relate to procedural justice in the Regional Forest Agreement (RFA) public submission processes. Please consider this a reply to all your correspondence to the Minister and me on this matter.

I apologise for the delay in this response.

As your letter states, the NSW and Commonwealth Governments have undertaken two recent consultation processes regarding the NSW RFAs. The first related to a combined ten and fifteen-year review of the RFAs, and was led by the EPA on behalf of the NSW Government. The second related to the renewal of the RFAs upon their expiry, and was led by the Department of Primary Industries (DPI).

This email responds only to your concerns regarding the RFA review process. Any matters relevant to the RFA extension process, which you refer to as Stage 2, have been referred to the Minister for Lands and Forestry to respond to.

Summary of what RFAs are and how they relate to other regulatory frameworks

RFAs are agreements between the Commonwealth and NSW governments for the delivery of ecologically sustainable forest management in NSW. They are high level agreements that:

1. established the NSW comprehensive, adequate and representative national park reserve system;
2. require NSW to deliver conservation outcomes and sustainable native forestry in public and private forests, including the need to maintain regulatory frameworks;
3. specify reporting against set criteria and commitments (as outlined in clause 38 of the Eden and southern RFA).

The RFAs provide balanced commitments and outcomes for conservation, industry, the economy and the community in relation to the management of all NSW native forests. However, they do not prescribe the detail of how ecologically sustainable forest management is delivered in NSW forestry areas. These are set by state based regulations – the Integrated Forestry Operations Approvals (IFOAs) which apply to State Forests, and the Private Native Forestry Codes of Practice which apply to private forests.

The dual RFA consultation processes

I acknowledge that separate NSW agencies running parallel RFA consultation process might have caused some confusion for the public. The NSW government attempted to minimise any confusion by hosting both RFA consultation processes on a single “Have your Say” website. In addition, the EPAs review and DPI’s extension websites were linked where possible, and submissions provided on the RFA review process were shared between agencies to ensure all public feedback was captured in the RFA extension process.

I note that during the public consultation period, you made inquiries to the EPA on the RFA consultation processes and confusion in submitting feedback. You discussed this with Michael Hood, the EPAs Director Forestry, and also received an email dated 31 January 2018 from Ms. Paula Pollock, who was acting Director Forestry at that time. This email outlined the steps

the EPA and DPI took to address your concerns and ensure all public submissions were considered for both RFA processes.

The public accessibility of the RFA Implementation Report

The RFA review was prepared by the NSW and Commonwealth governments to outline progress in implementing against set milestones and obligations.

This includes:

1. the milestones listed in Attachment 5 of the RFA
2. sustainability indicators set out in Clause 47 and Attachment 9 of the RFA, and
3. the actions committed to being taken by the government in response to the previous review of the RFA (as set out in the 2014 [Joint Government Response](#)).

These reporting obligations are prescribed by clause 38 - 41 of the RFAs and were further prescribed by the [Scoping Agreement](#) with the Commonwealth government. The format of the RFA implementation report is consistent with that of the first review, and of other States.

The government acknowledged the complexity and size of the RFA implementation report, and took steps to summarise this information for the public. This included a summary of the RFA implementation report (refer to Attachment A of the implementation report).

As part of the discussions on the RFA extension process, the EPA has proposed future RFAs specify streamlined and outcome based reporting requirements, and that information is presented in a more accessible manner.

Use of forestry images

The RFA Implementation report covers matters related to the establishment and management of national parks, conservation and research programs, as well as native forestry matters. It is relevant to use an image of an intact forest on the cover of the report to represent the other important elements of what RFAs deliver for NSW.

That said, I acknowledge that it is important for forestry based publications to show images of recently harvested native forestry. The EPA has taken your advice on board and intends to display more forestry images on our twitter feed @NSW_EPA, our website and in public consultation publications for upcoming native forestry reforms.

Community engagement in the RFA Review and extension

I acknowledge that the RFA consultation period ran over Christmas and New Year. The Scoping Agreement signed by the Commonwealth and NSW governments and published on the EPA's website required an eight-week consultation process. The formal consultation period ran from 19 December 2017 to 23 February 2018, covering nine weeks and four days. An additional week, through to 2 March 2018, was provided to all stakeholders who requested an extension. Despite these formal cutoffs, the EPA provided all submissions received up until 16 March 2018 through to the Independent Reviewer. In addition, all correspondence sent directly to the Premier or the Minister for the Environment pertaining to the RFA review and received up until 16 March, was also provided to the Independent Reviewer, as a submission.

Notwithstanding your concerns about the complex nature of the RFA Implementation Report, the timing for consultation and the dual consultation processes, the EPA received 5,425 submissions on the review, and DPI received about 3,100 submissions on the extension. We consider this a high level of community engagement, that represented views from across the community, industry and peak stakeholder groups.

There was a large volume of form letters on the RFA review process. I note your concerns that form letters could be perceived by the governments as less valued in consultation processes, however it is the EPAs view that they do provide an understanding of community views. All form submissions were provided to the Independent Reviewer for his consideration.

Independence of the RFA review

The EPA sent all submissions to the Independent Reviewer, Mr Ewan Waller, who has been tasked with reviewing the implementation report and the submissions and making recommendations to the two governments. Mr Waller has taken a very balanced approach to his review.

Mr. Waller requested to meet with both industry and environment groups to discuss the RFAs and the feedback provided and to assist in the development of his recommendations. These meetings occurred on 22 March 2018, and I understand that Ms Heather Kenway attended this meeting on behalf of the southern environment groups.

Mr. Waller's report to both governments will be tabled in the Commonwealth Parliament by 25 June 2018. Shortly after, the government will publicly release a joint response to Mr. Waller's recommendations.

How to get involved in upcoming native forestry reform processes

The NSW Government is currently undertaking significant reforms to the regulation of native forestry in NSW. It includes modernised legislation to improve how native forestry is regulated on both public and private land, and a remake of the four coastal IFOAs.

The IFOAs set out rules for conducting native forestry on public lands in coastal forests. The current IFOAs have been in place for over 15 years, and they have not kept pace with regulatory, environmental or forest management best practice. The new Coastal IFOA aims to be more efficient, effective and enforceable. The community will be invited to comment on the draft coastal IFOA once it is finalised this year, and I hope you will participate in this process.

If you have any further questions about this issue, please contact Michael Hood, EPA Director Forestry on (02) 6229 7091 or at michael.hood@epa.nsw.gov.au.

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