

# Submission to the Senate Inquiry on Australia's Faunal Extinction Crisis

## Seán Burke

I have been involved in trying to protect our publically owned native forests on the Far South Coast of New South Wales from the ravages of state logging industry, mainly for export woodchips, for over 30 years. I now hold an honorary position as Secretary of the South East Region Conservation Alliance, a not-for-profit alliance of a number of conservation organisations in south-east NSW, though this is my personal submission to your inquiry.

My submission relates to the exemption of the logging of our native forests from the provisions of the Environment Protection and Biodiversity Conservation Act 1999 (EP&BC Act) under the Regional Forest Agreements (RFAs) here in NSW, the ineffectiveness of the care of our threatened species under these arrangements and the corrupt processes undertaken by NSW Department of Primary Industry (DPI) and NSW Environment Protection Authority (EPA) to get the RFAs renewed. These issues relates to the following terms of reference for your inquiry:

- d. the adequacy of Commonwealth environment laws, including but not limited to the EP&BC Act, in providing sufficient protections for threatened fauna and against key threatening processes; and
- e. the adequacy and effectiveness of protections for critical habitat for threatened fauna under the Environment Protection and Biodiversity Conservation Act 1999.

The three Regional Forest Agreements in New South Wales were signed by the State of New South Wales and the Commonwealth of Australia (the Parties) on:

- [26 August 1999 for the Eden RFA](#)
- [31 March 2000 for the North East RFA](#)
- [24 April 2001 for the Southern RFA.](#)

The NSW RFAs established a 20 year framework for the management and use of New South Wales major forested regions to implement effective forest conservation, forest management and forest industry practices. The purpose of the NSW RFAs was to:

- identify a comprehensive, adequate and representative (CAR) reserve system and provide for the conservation of those areas
- provide for the ecologically sustainable forest management (ESFM) and use of forests
- provide long-term stability of forests and forest-based industries.

Under these agreements and the Integrated Forestry Operations Approvals (IFOAs), it is presumed that the requirements of the EP&BC Act are satisfied without any assessment of the effectiveness of this exemption. The EPA is responsible for monitoring NSW Forestry Commission (now Corporation) (FC) operations to ensure that their Threatened Species Licence (TSL) and Environment Protection Licence (EPL) conditions are adhered to.

Each agreement requires that five-yearly reviews be undertaken. The 1<sup>st</sup> review was done in 2009, nine years late, and the 2<sup>nd</sup> and 3<sup>rd</sup> reviews were prepared by the EPA and released for public comment in December 2017, nine and four years after they were due (see Attachment 1). Over the 10 years of that last review, there was no mention of any breaches of TSL or EPL conditions. However, I compiled a list of those breaches from the EPA annual reports and found over 4,000

breaches of licence conditions from only 187 audits (see Attachment 2). Over 2,100 of those breaches were of their TSL conditions with no reduction over those 10 years.

So how can these breaches be omitted from the review by the very department that documented them each year? I was informed that the people writing the review were instructed what to write, a very serious allegation. And how can the Commonwealth believe that the threatened species provisions of the EP&BC Act are being fulfilled by the RFAs with this level of non-compliance with TSL requirements? And given that these breaches came from only 187 audits of probably more than 6,000 native forest logging operations over those 10 years, the number of actual breaches of licence conditions can be extrapolated into hundreds of thousands. Obviously, logging contractors, FC, EPA, DPI and the NSW State Government treat the threatened species requirement with a grain of salt in breach of the expectations of the EP&BC Act.

5,425 submissions were lodged in response to the 2<sup>nd</sup> and 3<sup>rd</sup> five-yearly review with most of them opposed to the renewal of the RFAs. I pointed out these deficiencies in mine (see Attachment 3), but the report of the “Independent” Reviewer failed to properly address these concerns (see Attachment 4) with the only relevant recommendation being:

*“The Parties commit to:*

- adequately resourcing the agencies responsible for field management and compliance of logging operations*
- consider a model based on outcome performance for providing improved oversight of forestry operations.”*

The second part of the process was conducted by DPI asking for people to have a say on the future of the RFAs. The public was not asked IF the RFAs should be renewed but rather what people would like them to contain on the basis that they would be renewed on a 5-yearly rolling basis in perpetuity. This was another sham consultation process where the decisions had already been made before the so-called consultation had been undertaken. The process closed on 12th March 2019; there were about 3,000 submissions, again, mostly opposed to the RFAs. I lodged a personal submission (see Attachment 5) and Dr Bronte Somerset questioned the procedural justice of the entire public feedback process for the renewal of the RFAs from an ethical point of view (see Attachment 6). This extract from that report indicates the total inadequacy of the reviews as far as threatened species are concerned:

*Examples of serious omissions in EPA’s 2nd and 3rd Five-yearly Review relate to:*

*A) Threatened Species **missing** for Eden RFA area from lists in Table 67: Threatened species list fauna (p. 295), include:*

- Glossy black cockatoo*
- Barking owl*
- Olive whistler*
- Yellow-bellied Glider*
- Squirrel glider*
- Pink robin*
- White-footed Dunnart*

The Hawke Review of the EP&BC Act released in 2009 recommended that exemptions granted under RFAs should be reviewed and *“Dr Hawke proposes that interaction between the EPBC Act and RFA forestry operations also be clarified – the approval, which has been issued on certain terms (as*

*outlined in the RFAs themselves) allows forestry operations to occur without being subject to Part 3 of the Act, however, if the terms of the approval are not complied with, or if there is insufficient reporting information to verify that compliance, Dr Hawke recommends that the approval should be terminated” (see Attachment 7). This recommendation has unfortunately not been taken up by the government, especially given the ongoing breaches of the TSL conditions.*

It is essential that the corrupt RFAs are not renewed without a proper review of their effectiveness over the past nearly 20 years, including updating the science advances over those years. Should the RFAs be renewed, it is absolutely essential that exemption from the EP&BC Act is removed so that the threatened species in NSW have some chance of surviving the mindless onslaught of the Forestry Corporation of NSW.