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9 November 2018  
Your reference: C/2018/3882

**RE: Review of decision regarding Dr Bronte Somerset RFA consultation**

I have been asked on behalf of Dr Bronte Somerset of 5-7 Cobargo Street, Quaama, to formally seek a review of the decision of your office communicated to Dr Somerset by correspondence dated 8 October 2018 (**enclosed**).

This review is sought on the basis that the decision of 8 October 2018 was:

- not reasonable and was not based on the information provided
- did not follow a process that was fair or appropriate, and
- was inadequately explained by the officer concerned.

I will address each of these matters below. I acknowledge at the outset that some of the matters overlap.

**A. The decision was not reasonable and was not based on the information provided.**

At all times Dr Somerset's complaint was focused on the lack of procedural fairness in the two public consultation processes regarding the NSW RFAs (Regional Forest Agreements) conducted by the EPA and DPI.

Dr Somerset's initial urgent complaint was made on 3 February 2018 during the currency of the consultations. The complaint said in part:

*Firstly, the EPA seeks public opinion by 22.02.2018 on a Report of native forest logging activities from 2004 and 2014. The background documentation comprises 411,134 words; thus, intentionally inaccessible to the public. Conservationists find that the Report includes selectively chosen records, the economic data is ambiguous and extensive officially recorded logging breaches are omitted.*

*Secondly, the DPI seeks public opinion by 12.03.2018 on the method of re-implementing the Regional Forest Agreements for native forest logging in*

*perpetuity. Their background documentation is uninformative about intended outcomes apart from stating that the RFAs will be renewed.*

*This is a highly unreasonable expectation of community members. People's experiential knowledge and their will to protect the environment take a different worldview. They see trucks on the Princes Highway with logs destined for the chip mill for export, and they understand the damage to wildlife, habitat, soil, water, carbon sequestration and beauty are the consequential results.*

...

*The process makes people feel inadequate about stating their case because their standpoint on native forest protection does not lie in the ability to evaluate and make an informed decision on 429,733 words about an industry.*

The process adopted by the two agencies allowed for less than two months, including over the Christmas and New Year break, for people to consider almost 1,000,000 words including matters contained in detailed appendices. It also required those seeking to make a submissions to review some 14 years of logging practices in NSW.

The process saw parallel consultations on matters of great detail and significant importance. It was abundantly clear that the same interest groups, citizens and campaigners would be engaged on each consultation and therefore running them in parallel effectively halved the time available to consider and respond. This fact, which was critical to the complaint, was not even addressed in the decision.

A detailed rationale setting out the basis on which procedural fairness was denied was included in the annexure to the complaint. I will not repeat each of the elements of alleged procedural breaches but note they included the following:

- 1. Voice: the parallel processes did not allow for a diversity of stakeholders to be included in decision-making processes and to be heard*
- 2. Transparency: the parallel processes did not provide adequate and accurate information in a way that is readable for the stakeholder participants*
- 3. Fairness: the parallel processes did not provide enough time for stakeholders to read the information, have discussions about the information and have questions answered*
- 4. Accessibility: the parallel processes did not provide avenues for issues to be raised and responses from the decision-making authority to be received*
- 5. Impartiality: the parallel processes by establishing as a given that the RFA's would be remade did not allow for a decision that was neutral and unbiased towards the outcome.*

This was a procedural fairness complaint. It was not addressing the merits of the proposals, although any reader would be aware that Dr Somerset did not approve of the government's plans.

Despite this fact, the complaint was dismissed, in part, on the following grounds:

*The second reason is that this office has no power to achieve what you are requesting. It is not the Ombudsman's role to intervene in matters of public policy and advocate for particular interest groups or particular policy positions such as no logging of native forests. We can only investigate and make recommendations in cases where there is clear evidence of wrong administration.*

To be clear, Dr Somerset was not seeking your office to “advocate for a particular interest group” or to “intervene in matters of public policy” but rather to review grossly inadequate administrative practices of two government agencies. It also required your office to consider how two separate processes, which even if considered to be fair on their own terms (which is not conceded), were unfair in circumstances where they were running in parallel.

For these reasons dismissing the complaint on the basis your office did was not reasonable and was not based on the information provided.

**B. Did not follow a process that was fair or appropriate, and**

The decision was not timely and failed to accurately acknowledge the extensive delay in responding.

This was an urgent complaint made by Dr Somerset in February of this year during the currency of the consultation processes. It was done at that time to seek to have a decision that would be relevant to changing the consultation processes so that their perceived inadequacies could be addressed.

Despite this the decision of your office wrongly stated that the complaint was made on 14 May 2018 (and not 3 February as was the case). Further the decision was not made until October 2018 by which time the consultation process complained of had run its course.

It is submitted that this much delayed, and inaccurately reported, decision-making did not follow a process that was fair to Dr Bronte or appropriate in the circumstances.

**C. The decision was inadequately explained by the officer concerned.**

Each of the matters above also traverses this ground of review and they are noted but not repeated.

The alternate basis on which Dr Somerset's complaint was rejected was as follows:

*First, as far as the adequacy of the consultation processes is concerned, I do not believe any practical outcome could be achieved by scrutinizing a process that has concluded. I note the EPA acknowledged some of your concerns about the process and hopefully what they have learnt will be incorporated into the design of future public consultations*

By dismissing the complaint on this basis it has allowed the failure of the Ombudsman's office to respond in an appropriate timeframe to be the reason for dismissing the complaint. This cannot in good conscience be allowed to be the basis for refusing the complaint.

Further, if the process was unfair for any of the detailed reasons set out by Dr Somerset (which reasons I endorse), then that would be an appropriate basis to seek a further consultation or re-opening of the consultations periods now passed.

Even if this was not thought achievable then a considered critique of the process adopted would be an excellent basis to hold these agencies to account in the future. It is the role of the Ombudsman to intervene where appropriate to address such systemic issues. This factor was simply not addressed other than to hope that the EPA may "have learnt" from the process.

The decision contained no evidence that the Ombudsman had raised these matters with either of the agencies or expressed to them any view either tentative or final that there were inadequacies in the parallel consultations. In short there is no evidence to suggest that if either of these agencies were to engage on a similar processes in the future that their consultation would be any less deficient.

None of these matters were addressed in the decision of 8 October 2018 and as a result, the decision was inadequate in providing a rationale for the complaint being dismissed.

For the reasons set out above, on behalf of Dr Somerset, I seek an urgent review of the decision to not progress the complaint.

If you have any queries please do not hesitate to contact my office on the contact below,

Yours faithfully,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge