

COVER SHEET FOR SUBMISSIONS

OVERVIEW

The independent review of the *Environment Protection and Conservation Act 1999* (EPBC Act) welcomes your submissions in response to the discussion paper.

SUBMISSIONS INSTRUCTIONS

Submissions are due by **5pm (AEST) Friday 17 April 2020**. Please contact the EPBC Act Review Secretariat regarding late submissions.

All submissions that include this cover sheet will be considered by the review. You are **required to answer Question 1**, all other questions are optional.

Submissions should be sent to:

Email: epbcreview@environment.gov.au

Post: GPO Box 787

Canberra ACT 2601

Australia

PUBLISHING SUBMISSIONS AND PRIVACY (REQUIRED)

Unless you indicate that your contribution is confidential, or the review considers that your contribution is offensive, potentially defamatory or includes irrelevant or personal information, your contribution will be published on the review website along with your name or organisation. Your submission may be referred to, or quoted from in review reports.

Before making a submission, please read the information on how your privacy will be protected and how the information that you provide will be treated. The Department of Environment and Energy's Privacy Policy (www.environment.gov.au/privacy-policy) contains information about how to access or correct your personal information or make a complaint about a breach of the Australian Privacy Principles.

The review is committed to treating confidential information responsibly and in accordance with the law. In some circumstances, the review may be legally required to produce confidential information. Any request made under the Freedom of Information Act 1982 for access to a submission marked confidential will be determined in accordance with that Act. Please read the [Submissions Guidelines](#) on the review website for more information on how your submission will be handled.

1. Do you give permission for your submission to be published? (Required)

Yes – with my name and organisation (if applicable)

Yes – anonymously

No – please keep my submission confidential

ABOUT YOU (OPTIONAL)	
First name	Seán
Last name	Burke
2. Are you making this submission as an individual or on behalf of an organisation?	
<input checked="" type="checkbox"/> Individual <input type="checkbox"/> Organisation	
Organisation name:	
3. If an organisation, what is its scope?	
<input type="checkbox"/> Local <input type="checkbox"/> State <input type="checkbox"/> National <input type="checkbox"/> International	
4. What sector best represents you or your organisation?	
<input type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Environment <input type="checkbox"/> Legal Services <input type="checkbox"/> Transport	
<input type="checkbox"/> Academia and Research <input type="checkbox"/> Financial and Professional Services <input type="checkbox"/> Manufacturing <input type="checkbox"/> Other	
Please describe:	
<input type="checkbox"/> Construction <input type="checkbox"/> Forestry and Fishing <input type="checkbox"/> Mining	
<input type="checkbox"/> Education <input type="checkbox"/> Government <input type="checkbox"/> Scientific and Technical Services	
<input type="checkbox"/> Electricity, Gas, Water and Waste Services <input type="checkbox"/> Health Care and Social Services <input type="checkbox"/> Tourism	
5. Where are you from?	
<input type="checkbox"/> ACT <input checked="" type="checkbox"/> NSW <input type="checkbox"/> NT <input type="checkbox"/> QLD <input type="checkbox"/> TAS	
<input type="checkbox"/> VIC <input type="checkbox"/> SA <input type="checkbox"/> WA <input type="checkbox"/> Outside Australia	

6. Do you identify as Aboriginal or Torres Strait Islander?

We collect this information so that we can observe levels of engagement with Aboriginal and Torres Strait Islander people and organisations during the review, and to assess whether we need to alter our processes to encourage greater engagement.

The Reviewer of the EPBC Act, the Expert Panel and staff from the Department of the Environment and Energy working on the review will be permitted access to this information. Information about individual participants' Indigenous origin status will not be disclosed or published for any reason. However, we may publish the final total numbers or proportions of Indigenous engagement in the review.

You can seek access to our records of this information, and ask us to correct the information we hold about you, at any time. For more information, see the Privacy Policy of the Department of the Environment and Energy (www.environment.gov.au/privacy-policy).

Yes No Prefer not to disclose

7. What are your key areas of interest in the EPBC Act?

- | | | | |
|---|--|--|---|
| <input type="checkbox"/> The objects of the Act | <input checked="" type="checkbox"/> Threatened species | <input type="checkbox"/> International obligations | <input type="checkbox"/> Indigenous Australians |
| <input type="checkbox"/> Heritage | <input checked="" type="checkbox"/> Matters of National Environmental Significance | <input type="checkbox"/> Environmental Impact Assessments | <input type="checkbox"/> Great Barrier Reef |
| <input checked="" type="checkbox"/> Cumulative impacts | <input checked="" type="checkbox"/> Climate Change | <input checked="" type="checkbox"/> Compliance and enforcement | <input checked="" type="checkbox"/> Decision making |
| <input checked="" type="checkbox"/> Public participation in decision making | <input checked="" type="checkbox"/> Biodiversity | <input checked="" type="checkbox"/> Conservation | <input type="checkbox"/> Wildlife trade |
| <input type="checkbox"/> Commonwealth National parks | <input type="checkbox"/> Nuclear | <input type="checkbox"/> Water | |

8. Can the EPBC Act Review Secretariat contact you about your submission?

Yes

If Yes, please enter your email: burkesean53@gmail.com

No

LIABILITY

The views contained in published submissions are the responsibility of the authors and should not be taken to represent the views of the review, the Department of the Environment and Energy or the Australian Government. Publication does not in any way constitute endorsement of the views of the authors.

The review and the Department of the Environment and Energy does not verify the information contained in published submissions and makes no representation or warranty about the accuracy, reliability, currency or completeness of any material contained in submissions.

The review and the Department of the Environment and Energy disclaims liability, to the extent permitted by law, for any liabilities, losses, damages and costs arising from any information contained in published submissions

The review acknowledges the Traditional Owners of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to them and their cultures and to their elders both past and present.

Contact EPBC Act Review at: GPO Box 787 Canberra ACT 2601 | Telephone 1800 803 772 | Web www.epbcactreview.environment.gov.au

Dear Professor Samuel and Independent Review Panel, I would like to make a submission into the 2019-2020 Independent Review of the EPBC Act.

My name is Seán Burke and I've been campaigning for the care of our state forests here in NSW for over 30 years and I'm appalled that the Regional Forest Agreements (RFAs) are exempted from the provisions of the EPBC Act (the Act) under the assumption that the RFAs and Integrated Forestry Operations Approvals (IFOAs) provide an equivalent level of protection to fulfil the requirements of the Act.

This is clearly not the case as evidenced by the destruction of so much of the natural environment and loss of species within these forests. This situation has been further exacerbated by the recent bushfires and I don't believe that the Act is effectively delivering what it was intended to deliver in outcomes for our threatened species and ecological communities.

One of the key requirements of the RFAs was that they were to be reviewed every 5 years. The first so-called "review" was undertaken after 9 years and the second and third reviews were undertaken together at the 17 year mark. This should have resulted in an immediate cessation of their exemption from the provisions of the EPBC Act, a blatant failure of the system of administering the Act.

It should also be noted that the combined second and third review prepared by NSW Environment Protection Authority (EPA) failed to mention over 4,000 breaches of environmental protection and threatened species licence conditions by NSW Forestry (now NSW Forestry Corp) over the 10 years of the review. Even details of court actions taken by EPA against NSW Forestry were also left out of the reviews. Considering that these breaches were gained from only 187 audits of between 5,000 and 6,000 native forestry operations, one can only imagine the full extent of these breaches over the whole state. It should also be noted that the number of breaches didn't decrease over the 10 years of the 2nd and 3rd five-yearly reviews. (See *Compliance 2004-2014* attached)

Further information regarding the failure of NSW Forest Corp to abide by their own regulations can be found in *If a Tree Falls: Compliance failures in the public forests of New South Wales* and *One Stop Chop: How Regional Forest Agreements streamline environmental destruction* prepared by the NSW Environmental Defenders Office in 2011. This report highlights serious deficiencies in past implementation of the RFAs and failures in fulfilling the requirements of the Act. (See

In the last independent review of the Act, Recommendation 38 of the Hawke Review *Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* conducted in 2009 states:

Independent review of the **EPBC Act**

“The Review recommends that the current mechanisms contained in the Act for Regional Forest Agreement (RFA) forest management be retained, but be subject to rigorous independent performance auditing, reporting and sanctions for serious non-compliance.

The Commonwealth and States should agree on sustainability indicators by the end of 2010.

Subject to the concurrence of the Environment Minister, these indicators would provide a basis for performance auditing.

The RFA reviews undertaken by the Commonwealth Forestry Minister (Forestry Minister) and the relevant State party, in consultation with the Environment Minister, should be expanded to focus on the performance of RFAs in meeting their agreed outcomes, including protecting biodiversity and continuous improvement of a State’s Ecologically Sustainable Forest Management (ESFM) framework.

The Act should be amended so that the Environment Minister may apply the full protections of the Act, if, after consulting with the Forestry Minister, the Environment Minister is satisfied that the review:

- (1) has not occurred within the timeframe specified in the RFA;*
- (2) indicates serious non-performance, including*
 - (a) failure to implement and maintain forestry codes of practice;*
 - (b) failure to commit to and implement recovery plans for listed threatened species in RFA areas;*
 - (c) failure to establish management plans for Comprehensive, Adequate and Representative (CAR) reserves;*
 - (d) failure of the ESFM framework to protect species;*
 - (e) failure to investigate alleged breaches of the RFA and correct any proven breaches; or*
 - (f) the audit outcomes are not implemented to agreed standards; or*
- (3) does not provide enough information to judge if there are serious non-performance issues.*

The Review notes that a number of RFA reviews are outstanding and recommends a transitional period for the conduct of these reviews. Section 38 will continue to apply to RFA forestry operations if the Environment Minister certifies that the review process has been satisfactorily conducted within two years of the commencement of the amendments.”

There can be no doubt that rigorous independent performance auditing and reporting has not been undertaken and sanctions for serious non-compliance have not been applied, rendering the Act totally useless in protecting threatened species and ecological communities within state forests in NSW. The full protection of the Act should have been applied to these forests many years ago and RFA exemptions from the provisions of the Act must be removed as a matter of urgency.

The Senate Enquiry into Australia's Faunal Extinction Crisis Interim Report clearly found evidence overwhelmingly showed that Australia's rate of faunal extinction has continued to increase since the introduction of the EPBC Act. There is little doubt that the rate of increase has been well assisted by the exemption of RFAs from the provisions of the Act.

Now, given the recent bushfires, the outlook for our threatened species and ecological communities is catastrophic. More than 890,000ha of our state forests in NSW were burnt including 80% of forests available for logging here on the south coast. There are estimates that more than 1 billion creatures were wiped out in these fires bringing many species closer to extinction.

In this environment, NSW Forest Corp have commenced logging in 2 "test" compartments here in the south and quite a few more on the north coast. Once these operations are completed, they plan to roll the operation out across other forests. This is sheer bloody-minded given that there has been no assessment of the impact of the fires on species within these compartments nor consideration of the growing number of species now being added to the threatened species list because of the fires.

Another catastrophic situation heading our way is global climate change and I feel that this needs to be seriously considered in your review of the Act and in the operations of timber harvesting in this country. Losses of sequestered carbon to the atmosphere by turning our native forests into paper are monumental and it takes more than 100 years for the equivalent amount of carbon to be put back into the regrowing forest and they don't last that long under the current rotation regimes. Increases in temperature could have a disastrous impact on our threatened species and ecological communities.

I plead with members of the Panel to please remove the exemption of forestry activities under the RFAs from the Act as a matter of urgency before we unnecessarily lose so much more of our threatened species. They're counting on you as are we all.