

## 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](mailto: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](http://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**

Harriett

Last name	Swift			
2. Are you making this submission as an individual or on behalf of an organisation?				
<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Organisation <b>Organisation name: South East Region Conservation Alliance (SERCA)</b>				
3. If an organisation, what is its scope?				
<input checked="" 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](http://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 type="checkbox"/> Climate Change  | <input type="checkbox"/> Compliance and enforcement       | <input type="checkbox"/> Decision making        |
| <input type="checkbox"/> Public participation in decision making | <input checked="" type="checkbox"/> Biodiversity                                   | <input 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: [harriett@savetheforests.org.au](mailto:harriett@savetheforests.org.au)

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](http://www.epbcactreview.environment.gov.au)

Submission by Harriett Swift on behalf of South East Region Conservation Alliance (SERCA)

## Independent review of the Environment Protection and Biodiversity Conservation Act 1999

This submission focusses on the failure of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to adequately protect forest dwelling wildlife from logging. It makes particular reference to the 2019-20 bushfires.

The EPBC Act does not apply in areas covered by Regional Forest Agreements (RFAs), which provide the legal framework for the logging of native forests. This provision was based on the assumption that RFAs provide equivalent protection,<sup>1</sup> but this justification is getting more and more difficult to maintain.

### Bushfire Impacts

It is even less plausible now, since the recent catastrophic summer bushfires, which burned almost one million hectares of State Forest in NSW alone. It has been estimated that a billion wild creatures perished in the fires.

On the NSW South Coast, 80 percent of State Forest available for logging was burnt.

The federal Threatened Species Commissioner<sup>2</sup> has responded to the severity of the fires by listing numerous species, many of them once common, such as lyrebirds, whose conservation status is likely to have been worsened by the fires. She also recommended that two priority actions should be carried out for all high priority species:

“1) Rapid on-ground surveys to establish extent of population loss and provide a baseline for ongoing monitoring.

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<sup>1</sup> Question on Notice by Senator Lee Rhiannon, Budget Estimates 2012.

**Division/Agency:** CCD Climate Change Division

**Topic:** Wood Pellets and Regional Forest Agreements

**Senator RHIANNON asked:**

(7) On what basis has the Government decided to continue to exempt Regional Forest Agreement areas from the EPBC Act, in the absence of any evidence from the Hawke review, RFA reviews or independent scientific research that there is no concern about threatened species?

**Answer:**

7. This is a decision of the Parliament. Section 38 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides an exemption from Part 3 of the EPBC Act provided forestry operations are in accordance with 20 year Regional Forest Agreement where a Comprehensive Adequate Representative reserve system and ecologically sustainable forest management have been implemented to give an equivalent level of protection to threatened species and ecological communities as could be expected to be achieved if Part 3 of the EPBC Act did apply.

<sup>2</sup> <http://www.environment.gov.au/biodiversity/bushfire-recovery/research-and-resources>

2) Protecting unburnt areas within or adjacent to recently burnt ground that provide refuge, as well as unburnt areas that are not adjacent to burnt areas, especially from extensive, intense fire."

The federal Government recognised<sup>3</sup> the dire situation now facing many species by relaxing the process by which wildlife can be nominated as a threatened species, and is now accepting any new nominations, at any time, as an emergency measure.

Nevertheless, the Forestry Corporation of NSW has resumed logging of native forests, both burnt and unburnt and gives no sign that it will respond to the bushfire impacts on threatened species listings.

While the State Environment Protection Authority has claimed that "site specific" approvals for logging in burnt areas of State Forest are more rigorous than normal approvals, in fact they are not.<sup>4</sup>

The Minister responsible for forestry in NSW, John Barilaro has stated that any logging operations approved before the bushfires can proceed under the same conditions as in the original approvals. He told a NSW Budget Estimates Committee on 17<sup>th</sup> March:

"...those approvals are in place pre-previous fires. They have been in place with all the appropriate measures signed off and we still have an industry. "

"The truth is this: If we have access to more of the burnt areas right across the State, the less pressure there will be on the unburnt areas."<sup>5</sup>

This has highlighted the fact that logging is proceeding with no account being taken of the probability of more threatened status for many forest dwelling species.

### **Inadequate Legal Framework**

The Hawke 10 yearly review of the EPBC Act in 2009 examined the "exemption" issue but no action was taken at the time. It noted:

"While the RFA provisions of the Act read like an exemption, they operate more akin to a licence with authorisation issued on the terms outlined in the RFA. If the terms of the agreement continue not to be complied with, then sanctions should be applied."<sup>6</sup>

Clearly, this has not happened, which makes a reassessment of the effective exemption of RFA areas more urgent than ever. This cannot be ignored now.

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<sup>3</sup> [https://abcmedia.akamaized.net/radio/local\\_sydney/audio/202002/pam-2020-02-01-threatened-species.mp3](https://abcmedia.akamaized.net/radio/local_sydney/audio/202002/pam-2020-02-01-threatened-species.mp3)

<sup>4</sup> For example, in one case, South Brooman State Forest, the logging will produce an identical yield of logs from roughly half the area in the original logging plan approved before the fires. The yield includes 2,500 m<sup>3</sup> of woodchips and 1,600 m<sup>3</sup> of firewood <http://www.chipstop.savetheforests.org.au/mr-logging-resumes-in-burnt-forest.htm>

<sup>5</sup> <https://www.parliament.nsw.gov.au/lcdocs/transcripts/2353/Transcript%20-%202017%20March%202020%20-%20UNCORRECTED%20-%20PC4%20-%20Regional%20NSW%20Industry%20and%20Trade%20-%20further%20hearings.pdf>

<sup>6</sup> A Hawke The Australian Environment Act — Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (2009) at [10.12] [www.environment.gov.au/system/files/resources/5f3fdad6-30ba48f7-ab17-c99e8bcc8d78/files/final-report.pdf](http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba48f7-ab17-c99e8bcc8d78/files/final-report.pdf) n 3, at [160].

The continued exclusion of RFA areas from requirements of the EPBC Act<sup>7</sup> has meant that for a further 10 years, the Commonwealth's principal environmental law has not applied in State Forests where Australia's most intensive logging for woodchips<sup>8</sup> has been carried out. The assumption that RFAs provide "equivalent protection" to the EPBC Act has never been seriously examined by either the federal or NSW Government.

Neither Government has shown any interest in finding out whether protection is equivalent and adequate or not.<sup>9</sup> The 2014 report "One Stop Chop: How Regional Forest Agreements Streamline Environmental Destruction" documented this further.<sup>10</sup>

Since the commencement of the RFAs there have been hundreds of instances of well documented threatened species rules being breached either by the Forestry Corporation of NSW or by logging contractors engaged by it or by the Eden woodchip mill.

### **Conclusion/ recommendation**

The exclusion of RFA areas from the EPBC Act must end. While subjecting logging operations to the requirements of the Act is essential – especially since the summer bushfires – it will not solve all problems of loss of biodiversity and deforestation, but it will certainly help.

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<sup>7</sup> Part 3 of the EPBC Act exempts "forestry operations undertaken in accordance with a Regional Forest Agreement (RFA), unless the operation is being undertaken in a property on the World Heritage List, in a Ramsar wetland, or is incidental to another action whose primary purpose does not relate to forestry."

<sup>8</sup> Approximately 95% of all timber taken from logging native forest in south eastern NSW is to supply wood to the woodchip mill at Eden.

<sup>9</sup> At a meeting in Sydney between the NSW Environment Protection Authority and forest conservationists on 25<sup>th</sup> February 2013, EPA officers said: "We are not hearing a lot of concern from the Commonwealth on that." They also stated that it was a matter for RFA reviews, which did not, in fact, deal with it.

<sup>10</sup> <https://www.envirojustice.org.au/one-stop-chop-how-regional-forest-agreements-streamline-environmental-destruction/>