

## CORRESPONDENCE BETWEEN THE NSW OMBUDSMAN'S OFFICE AND MYSELF:

1. 08.02.2018 My original complaint letter to NSW Ombudsman's Office.
2. 21.05.2018 My reply to the NSW Ombudsman upon receipt of EPA and DPI responses.

### 1. 08.02.2018 MY ORIGINAL COMPLAINT LETTER TO NSW OMBUDSMAN'S OFFICE.

The Department of Primary Industries (DPI) and the Environment Protection Authority (EPA) have simultaneously called for feedback from the public on management of past (EPA) and future (DPI) logging practices in the State's native forests of NSW.

We claim that the Federal and State Governments' processes are inaccessible to the general public and weighted towards the industry, and the outcome pre-determined and supports continued destruction of threatened species' habitat.

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 Federal and State Governments have agreed that the loss-making native forest logging sector should continue in perpetuity, so no matter how loud people's voices, they will not be heeded. There is no survey option for a person to choose not to implement the RFAs. The question *Please select your interest/s with extending the RFA* 'lures' participants into choosing honourable elements within a dishonourable practice.

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.

Conservationists think that the process is unjust, unethical, unfair, exclusive, and lacks credibility. Both departments draw assumptions regarding public knowledge, access to technology, and understanding of expressions used in the logging sector. Feedback from friends and colleagues indicates confusion and lack of comprehension; thus disempowerment. This highlights the discriminatory and questionable nature of the feedback and assessment processes. The enquiry is not based on an honest intention to benefit the people or the State forests which they own.

We urgently request that the Ombudsman halt the Report Review of the EPA and the DPI's submission process on re-implementation of the Regional Forest Agreements. Bronte, etc.

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## 2. 21.05.2018 My Reply to The NSW Ombudsman Upon Receipt of EPA's And DPI's Responses.

Ms Karen Gleeson, Senior Investigation Officer for the NSW Ombudsman.

[kgleeson@ombo.nsw.gov.au](mailto:kgleeson@ombo.nsw.gov.au)

cc: Kim Taysom, Deputy President NPA Far South Coast Branch; Sean Burke, Secretary South East Region Conservation Alliance; Paul Payten, Great Southern Forest Steering Group.

Dear Karen,



Your reference: C/2018/1094

Re: *Questioning application of procedural justice principles within the NSW Government's Regional Forest Agreement (RFA) public submission process*

My enquiry requested that the Federal and State Governments' public RFA feedback processes be interrupted as they were inaccessible to the general public, weighted towards the industry, and that the pre-determined outcome supported continued destruction of threatened species' habitat and ongoing environmental damage to over 400,000ha of native forests in south east NSW. The feedback process has ended and a report is expected to be completed by 15<sup>th</sup> June 2018.

I have received a response from Mark Gifford Environment Protection Authority (EPA) and Nick Milham Department of Primary Industries (DPI) regarding my complaint to your Office, and attach copies of their responses to this email. Please see my comments on some of the responses from these two departments.

### ENVIRONMENT PROTECTION AUTHORITY

Ministerial Correspondence Mailbox  

 Inbox - Google 23 April 2018 at 5:25 pm



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

To: Bronte Somerset

Comments re response from MARK GIFFORD PSM, Chief Environmental Regulator, EPA

Whereas the EPA response was considered, much of it was about the RFAs (which I already knew), and did not relate to the quality of the actual public feedback process; yet admission was made that it could have been improved. There was no 'testing' of the procedure and the EPA acknowledged to me personally that a pilot project 'would have been a good idea' to test the ability of the public to engage with the feedback process. Getting from one site to another was not clear cut and any one of a number of links in the pages could have been followed.

1. The EPA's acknowledgement "that separate NSW agencies running parallel RFA consultation process might have caused some confusion for the public" supports my claim re non-compliance to procedural justice.
2. The EPA also "acknowledged the complexity and size of the RFA implementation report...".
3. The EPA recognised Q 6 and will publish images of recently logged forests.
4. It appears that "the streamlining of future RFA processes" may well take the form of an automatic rollover without public input.
5. The change made to the submission date was not promoted and so disadvantaged those who were not aware of the change.

6. The total number of submissions received was 8,525 but DPI advised me that only 200 were personally written submissions, and the rest were from online campaigns to 'click and flick'. This total included those from the native forest logging industry. This also points to public confusion with the process.
7. I only received advice about the submission process via colleagues and saw nothing advertised in local media. I promoted it myself in a local paper. Public meetings were held but, due to short lead time and distance, poorly attended.
8. Only 8% of submissions to the EPA were web publishable because people didn't check the 'publish OK' button perhaps also reflecting confusion of the whole process.

The EPA admits their operations are not balanced from an environmental perspective. This is supported by conservationists and scientists but outside the parameters of my complaint which questions procedural justice principles in the public feedback process.

I have been involved in past Integrated Forestry Operations Approval (IFOA) consultation sessions and don't expect advice from the public to be taken seriously. The public has cause to construe these consultation sessions as nothing more than a 'smokescreen'. Information about the upcoming IFOA processes is outside my complaint yet the EPA admits that the IFOAs haven't kept pace with "regulatory, environmental or forest management best practice".

Of the 16 questions I posed, only one was answered directly.

Q 1: Was the Report peer-reviewed by, say, local experts, ANU scientists, The Australia Institute or CSIRO before publication? **Not answered**

Q 2: Why were these threatened species omitted from the Report? **Not answered**

Q 3: Why were these non-compliance incidents omitted from the Report? **Not answered**

Q 4: Why didn't Forest Corporation separate profit and losses from plantations and native forest logging? **Not answered**

Q 5: What precedent could be cited for a process where a government sets a decision in concrete and then asks for feedback on it? **Not answered**

Q 6: Why doesn't the Government publish post-logging pictures? **Answered**

Q 7: Upon what Government model was Stage 1 and Stage 2 feedback processes designed? **Partly answered**

Q 8: To what extent will public voice on the extension of the RFAs be regarded? **Partly answered**

Q 9: Why doesn't the Government expose the ugly truth about native forest logging? **Not answered**

Q 10: Will the NSW State Government provide a list of all the RFA stakeholder groups it has communicated with? **Not answered**

Q 11: Why hasn't the Government paid for promotion of the region's consultation sessions in the region's newspapers, on radio or on television? **Answer questionable**

Q 12: Why didn't the State Government consult with the lead conservation organisations of the Far South Coast of NSW in a timely manner before agreeing with the Commonwealth Government to extend the RFAs? **Not answered**

Q 13: How was the decision made to renew the RFAs when only the first of the three legally required 5 yearly reports had been completed at that time? **Not answered**

Q 14: Why didn't the State Government ascertain the will of the people and submit that to the Commonwealth Government prior to the signing of the Scoping Agreement? **Not answered**

Q 15: Why doesn't the Government recognise that people are keener to enjoy the natural beauty of the forests, and to protect them, than to evaluate bureaucratic documentation which supports their destruction? **Not answered**

Q 16: Why didn't the Commonwealth Government appoint a truly independent Assessor? **Not answered adequately**

## DEPARTMENT OF PRIMARY INDUSTRIES

**Nick Milham**

Inbox - Google 7 May 2018 at 1:02 pm



**Regional Forest Agreement renewal**

**To: Bronte Somerset**

Comments on extracts of the response from Nick Milham, Group Director, Forestry Policy, Research & Development, DPI.

My comments in blue

*The governments agree that the RFA model provides an appropriate framework to balance and protect the full range of environmental, social, economic and heritage values that forests provide, now and for future generations.*

Scientific and economic studies have proven that the RFA model has failed to achieve these aims over past decades, so the claim that the RFA model provides balance is questionable.

*Hence, as clearly explained at the time, whether or not the RFAs should be renewed was not within the scope of the recent public consultation process.*

It should have been within the scope of the consultation process. These are public forests, and they belong to us; the people of NSW. We should have been able to agree or disagree on this point, but were silenced.

*Rather, the partner governments were seeking feedback on the form and content of the future RFAs, including proposals such as:*

- *providing for a five-year rolling extension mechanism subject to outcomes from the previous five-yearly review.*

*This mechanism is based on 'outcomes' with ambiguous connotations.*

- *aligning five-yearly reporting obligations between RFA regions and, ideally, with other national reporting obligations (e.g. Australia's State of the Forest Report).*

*Previous similar obligations have not been met and, when they finally were met, have omitted serious elements such as a complete list of threatened species and a full list of logging breaches.*

- *updating the agreements by:*

- *simplifying structure and content;*
- *removing redundant, completed or duplicated commitments;*
- *including contemporary references to legislation, regulation, codes of practice or processes; note – not to science*
- *including contemporary commitments that reflect current and future policies that align with the National Forest Policy Statement (e.g. climate change); and*

- *reframing existing commitments to ensure they are durable, reflect contemporary understandings of sustainable forest management and are meaningful into the future. Viz., protecting the industry, not the forests. The term ‘sustainable forest harvesting’ is overused in the industry yet is invalid in practice.*

Given the history of native forest logging activities, future activities are unlikely to benefit the natural environment.

*The consultation process was designed following feedback from peak industry and environmental stakeholders ... was designed to ensure that the engagement processes were impartial and appropriate.*

Read: *“The consultation process was designed to **suit** the peak...”*. No model has been referred to.

The South East Region Conservation Alliance is a peak stakeholder as it is an alliance whose volunteers oversee environmental protection within two RFA regions. A designated meeting with the DPI was not organised, so this claim is not strictly accurate. Other problems associated with the consultation and feedback process are outlined in my *Questioning the Application of Procedural Justice Principles in the RFA Public Feedback Process*.

*Several mechanisms ... including public drop-in sessions and invitation-only seminars in six regional towns and in central Sydney. These opportunities were publicised through local print, radio and TV media, community and industry contacts, on the web and in social media.*

There was a very short lead time for these regional drop-in sessions and distance precluded attendance for most – you don’t just ‘drop in’ for a 200k round trip (200k between Eden and Batemans Bay). My promotion in a local paper was the only one I saw in print, and I heard one two-minute advertisement on Radio National at 8.57am, saw nothing on local TV, nothing via local community contacts, and nothing on FaceBook. I was informed via a peak conservation organisation and promoted the opportunity for public feedback myself on SERCA’s website, FaceBook, via Google Groups and in a local paper.

*Also, a list of all stakeholder submissions will be made public and the submissions released, where the submitters have indicated agreement. The submissions will be published on the DPI website, together with a high-level summary prepared by DPI Forestry.*

Only 50% of submissions to DPI are web publishable because people didn’t check the ‘publish OK’ button perhaps reflecting confusion of the whole process. I am unsure what elements qualify a summary to be designated as ‘high-level’.

*Input from all stakeholders will be taken into account in getting the balance right in the long-term management of our forest resources. The written submissions, suggestions and feedback provided during the meetings and drop-in sessions and the findings of the independent reviewer will all be considered in the development of improvements to the renewed RFAs.*

Mr Waller was allocated a very short time to conduct qualitative and quantitative data analysis methodologies for 8,500 submissions. Without discrediting his capability, it would take a superior effort to read, record data, interpret and evaluate it, create and categorise themes, accord importance to each theme, summarise the results and draw conclusions. Peer review would validate that interpretation and conclusions were authentically based on the data—I do not know if this occurred.

Of the 16 questions I posed, only one was answered directly.

- Q 1: Was the Report peer-reviewed by, say, local experts, ANU scientists, The Australia Institute or CSIRO before publication? **Not answered**
- Q 2: Why were these threatened species omitted from the Report? **Not answered**
- Q 3: Why were these non-compliance incidents omitted from the Report? **Not answered**
- Q 4: Why didn't Forest Corporation separate profit and losses from plantations and native forest logging? **Not answered**
- Q 5: What precedent could be cited for a process where a government sets a decision in concrete and then asks for feedback on it? **Not answered**
- Q 6: Why doesn't the Government publish post-logging pictures? **Not answered**
- Q 7: Upon what Government model was Stage 1 and Stage 2 feedback processes designed? **Answer based on an undemocratic process.**
- Q 8: To what extent will public voice on the extension of the RFAs be regarded? **Partly answered, partly believable.**
- Q 9: Why doesn't the Government expose the ugly truth about native forest logging? **Not answered**
- Q 10: Will the NSW State Government provide a list of all the RFA stakeholder groups it has communicated with? **Answered**
- Q 11: Why hasn't the Government paid for promotion of the region's consultation sessions in the region's newspapers, on radio or on television? **Answered unsatisfactorily**
- Q 12: Why didn't the State Government consult with the lead conservation organisations of the Far South Coast of NSW in a timely manner before agreeing with the Commonwealth Government to extend the RFAs? **Answered unsatisfactorily**
- Q 13: How was the decision made to renew the RFAs when only the first of the three legally required 5 yearly reports had been completed at that time? **Not answered**
- Q 14: Why didn't the State Government ascertain the will of the people and submit that to the Commonwealth Government prior to the signing of the Scoping Agreement? **Not answered**
- Q 15: Why doesn't the Government recognise that people are keener to enjoy the natural beauty of the forests, and to protect them, than to evaluate bureaucratic documentation which supports their destruction? **Not answered**
- Q 16: Why didn't the Commonwealth Government appoint a truly independent Assessor? **Not answered**

## SUMMARY

There is little evidence to support the notion that procedural justice principles were complied with during the public feedback campaign of 2017-2018 on the RFAs. The whole process was based on the principle that the Governments had agreed on an action which public opinion could not change. The analogy: *"we have decided to continue to destroy the natural environment and we now ask the public to say how we should do it"* summarises the poor intent of this public enquiry.

The Governments are dealing with situations where social conscience recognises change is required. Issues such as the corrupt behaviour of the banking industry, corruption in cricket, political donations, dual citizenship of Ministers, the need for legislative change for the LGBTI community, are all corrected under procedural justice principles.

Yet the Governments have neglected to protect the precious native forests of south east NSW by having agreed to reinstate the RFAs for the benefit of 37 chipmill workers at Eden and the Japanese paper industry.  
native forests for beauty canopy carbon climate culture habitat heritage jobs oxygen soil water wildlife

Blindsiding protection of priceless natural elements such as iconic species, water, soil, carbon and habitat for a financially and environmentally lossmaking enterprise defies logic. And the process whereby the Governments sought opinion on a decision already made, makes a mockery of public will. A colleague stated: *I still consider the most outrageous element of the RFA consultative process to be the decision by governments that the automatic rollover of the RFAs, without community consultation, was consistent with accepted ethical standards.*

It is upon this act, and other injustices to the public as outlined in the paper which questions the application of procedural justice in the public RFA feedback process, which we kindly request the NSW Ombudsman's Office take action upon.

Please feel free to communicate with me or my colleagues cc'd in this correspondence.

Yours sincerely



Dr Bronte J Somerset

Committee, South East Region Conservation Alliance Inc. <http://www.serca.org.au>

Founder, Great Southern Forest <http://www.greatsouthernforest.org.au>

