

4 January 2019

Mr Michael Barnes  
NSW Ombudsman

vbrogden@ombo.nsw.gov.au  
cc Karen Gleeson, Sanya Silver, Sarah Unwin, Veronica Brogden

Dear Mr Barnes,

Your reference: R/2018/67

Thank you for your response to my request to review the Ombudsman's Office's (OO) final outcome of my complaint. The Office's decision not to act was unacceptable, especially since issues I raised in my original complaint regarding the public feedback process on the Regional Forest Agreement have since been included in the Independent Assessor's Consultation Summary.<sup>1</sup>

#### **SUBSTANTIVE NEW ISSUES**

As per your undertaking to consider action on substantive new issues (p.3 of your letter of 18.12.2018), such new issues have arisen, since their RFA public consultation process ended, as a result of subsequent actions taken by the DPI and the EPA with demonstrable failings. To this end, I provide brief evidence that, as a result of this consultation:

- 1) Public feedback sought and given was ignored;
- 2) Only a tiny percentage of public submissions were published; hence, compliance accountability is not possible;
- 3) Interpretation of the Independent Assessor's Consultation Summary was not made faithfully; and,
- 4) Content from a published submission shows how the feedback process 'baited' participants.

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<sup>1</sup> Renewing NSW Regional Forest Agreements – Consultation Summary. p.5 and throughout.  
<http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/rfa/nsw-rfa-renewal-consultation-summary-report.pdf>

- 1) Public feedback sought and given was ignored in subsequent actions.

Of the 10,500 submissions received from the Governments' public feedback processes, 85% of the public submissions opposed native forest logging (pers.com. DPI, Dec 2018). This fact was ignored, as late last year, the State and Federal Governments reimplemented the Regional Forest Agreements.

The Government-appointed Assessor stated in his Consultation Summary that 153 online form submissions were received for the RFA feedback process.<sup>2</sup>

*From the online form submission there were 146 comments asking for the RFAs not to be renewed, however the Australian and NSW governments had both committed to renew the RFAs and the consultation was requesting input on how the RFA would be renewed.*<sup>3</sup>

This figure represents **95%** of the total of respondents to this online feedback process. This percentage was ignored. Is a government legally entitled to ignore public opinion which it has requested?

- 2) Only a very tiny percentage of public submissions were published; hence, accountability impossible to ascertain.

Very few public submissions have been published on the DPI and the EPA websites. The 'do not publish' option may have affected this, yet friends and colleagues have questioned why their submissions have not been published.

For example, for Submissions to the Environment Protection Authority (EPA) NSW Regional Forest Agreements Second and Third Five-Yearly Review: out of the 5,425 submissions received, only 108 were published online—1.9%, including those with names withheld.<sup>4</sup> On the DPI website<sup>5</sup> another 50 submissions have been published but, there is no heading to indicate to the public exactly what these submissions represent.

Thus, failure to publish public submissions renders it impossible for the public, from whom opinion was sought, to hold the Governments to accountability.

- 3) The Independent Assessor's Consultation Summary was not responded to faithfully

The Independent Assessor, former regional forestry manager Ewan Waller, who evaluated the public submissions, said he had hoped *it would have been taken as an opportunity to get agencies working together to tackle environmental challenges, but*

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<sup>2</sup> Renewing NSW Regional Forest Agreements – Consultation Summary. p. 10  
<http://www.agriculture.gov.au/SiteCollectionDocuments/forestry/rfa/nsw-rfa-renewal-consultation-summary-report.pdf>

<sup>3</sup> Ibid. p. 15

<sup>4</sup> <https://www.epa.nsw.gov.au/your-environment/native-forestry/about-public-native-forestry/regional-forest-agreements-assessments/review-regional-forest-agreements>

<sup>5</sup> <https://www.dpi.nsw.gov.au/forestry/regional-framework/public-submissions>

he said the (RFA) documents fell short of the mark, that key obligations had been removed in the new agreements and that, *The missing element in these RFAs is what are they being judged on.*<sup>6</sup> Thus, the Assessor was misrepresented in the Governments' interpretation of his summation.

- 4) Evidence from an actual submission demonstrates how a participant was 'baited'. This post-feedback evidence shows ambiguity in the consultation process (from just one published submission). Both screen shots are from the same person's submission.<sup>7</sup>

The 1<sup>st</sup> screen shot shows the request to *select your interest/s with extending the RFAs* which lured this person into supporting extension of the RFAs whereas the 2<sup>nd</sup> screen shot shows he opposed extension of the RFAs. The ambiguity shown in this example is quite clear.

Please select your interest/s with extending the RFA:

- Forest management framework in New South Wales
- Sustainable access to timber resources
- Research and development
- Conservation reserve system
- Threatened species
- Aboriginal connections to forests
- Heritage values
- Employment in forest and wood products industries
- Recreation and tourism
- Mineral and petroleum interests
- Other interests (please list below)

2<sup>nd</sup> screen shot from within the body of this same person's submission.

**We do not support the extension of the RFAs, because we believe that that the body of evidence shows they are a failed model for forest management, despite being an effort to reconcile conservation and timber extraction.** Instead we urge the Commonwealth and NSW Governments to:

Expanded evidence to support these four demonstrable failings of the Governments to represent the will of the people would be made available upon request.

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<sup>6</sup> *Native forest logging agreement raises accountability issues, says independent reviewer.* [ABC South East NSW](https://www.abc.net.au/news/2018-12-17/regional-forest-logging-agreement-with-no-end-date-criticised/10623906). By Peta Doherty, Claire Wheaton, Simon Lauder and Jen Hunt. Posted 17 Dec 2018, 6:26am <https://www.abc.net.au/news/2018-12-17/regional-forest-logging-agreement-with-no-end-date-criticised/10623906>

<sup>7</sup> <https://www.dpi.nsw.gov.au/forestry/regional-framework/public-submissions>

## CLARIFICATIONS

I agree that the date your investigation into the complaint began was 14.05.2018 as that was the time I presented responses from the DPI and EPA.

Ms Sanya Silver informed me on 08.10.2018, that: *We can only investigate and make recommendations in cases where there is clear evidence of wrong administration.* My complaint about lack of procedural justice in the public feedback process did relate to mal-administration. The OO failed to make this connection.

In your letter of 18.12.2018, your comments were mostly about your review process and less about the essence of the Government's failure to apply procedural justice principles in their public feedback process. However, regarding page 2, para 5 of your letter, my complaint went far beyond the nature of the parallel consultations and it being weighted towards the industry. The consultation process lacked merit because it failed to apply basic principles of procedural justice in many other aspects—forms of procedural justice which the leaders of a nation would expect others to comply with. I acknowledge that the recommendations stated on p.3 of your letter are outside the purview of a complaint to the OO.

I disagree with your claim that the DPI and the EPA *took specific steps* in response to my concerns because the process was already underway and could not be altered. Of the 16 specific questions I raised, only one was answered: that pictures of logged forests would be published. To my knowledge, neither department has published images of logged forests.<sup>8</sup>

During the process, your staff have offered me several well-deserved apologies; but, a more considered evaluation of my complaint would have been preferable. Your office recognised the complicated nature of the topic, and I don't think it has had the capacity to recognise the implications of this whole process, the consequential grievances caused to both public opinion and to the natural heritage of this country.

Realistically, given the poor management of the OO's process of dealing with my complaint, it is less likely that one could expect your office to be in a position to evaluate the failings and mis-management of the process of others. After nearly a year of false belief, I realise my expectations failed.

Yours sincerely,



Dr Bronte Somerset

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<sup>8</sup> With respect, the term 'harvested' is an inaccurate euphemism and should not be applied to the damage which the industry inflicts on a native forest which takes 100 years or so to regain its natural capacity to supply hollows for wildlife—they don't grow back in the next season ready for reharvesting!