

For Official Use Only

18 December 2018

Our reference: R/2018/67

Dr Bronte Somerset
5-7 Cobargo Street
QUAAMA NSW 2550
bj Somerset@gmail.com

Dear Dr Somerset

Your request for a review of your complaint about Environment Protection Authority

I refer to your email of 18 October 2018 in which you request a review of Ms Sanya Silver's decision to take no action on your complaint of 14 May 2018. We further received representations on your behalf by The Hon David Shoebridge MLC on 9 November 2018.

How we conduct a review

Our review process is set out in our policy, Request for Review of Decision. When complainants explain their disagreement with a decision made by our staff to close their complaint, another officer will be asked to re-examine the matter. The second officer considers the complaint and takes into account any new information provided with the review request. They will recommend to me whether the original decision should be changed or not. I will then review the matter and inform the complainant of my decision.

In your case, Ms Veronica Brogden, Division Manager, re-examined your matter.

The outcome of your review request

Ms Brogden has recommended that I uphold Ms Silver's decision not to take further action on your complaint. Having considered your complaint, your review request and Mr Shoebridge's representations, Ms Silver's actions and the reasons for the decision, as explained in her letter to you of 8 October 2018, I have decided to confirm that decision.

Firstly, I would also like to acknowledge the delays in responding. Your first complaint was received on 8 February 2018, and we provided you with advice on 15 February 2018 that the matter was premature, and provided you with referral information to make your complaint with the agency directly in the first place, in accordance with our policies. A new complaint was received on 14 May 2018.

During June, you provided additional information to Ms Gleeson, who originally had carriage of your complaint. It was at this same time that Ms Gleeson was transferred internally. While an attempt was made to finalise this matter in addition to her new duties, it became apparent that this would not be possible upon reviewing her workload, and the file was reallocated to another Senior Investigation Officer in August.

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Our file notes demonstrate that after reviewing the information, Ms Unwin contacted you in September by phone and apologised for the delay, advising that an outcome could not be expected until late November. You had a detailed conversation at this time, and based upon the content of that conversation, Ms Unwin gave advice about our role, particularly that we were unable to intervene in government policy about logging.

Due to the dissatisfaction you expressed, Ms Unwin sought the assistance of a Manager, who agreed to expedite the assessment and communicate their outcome to you as a priority. As a result, Ms Silver made her determination and informed you of the outcome, including an apology for the delay, both by phone and formally in her letter.

In your correspondence and Mr Shoebridge's representations, and also confirmed during your telephone call with Ms Brogden, I am acutely aware of your concerns that Ms Silver's brief response to your detailed complaint represents a failure of my office to take your complaint seriously. Ms Silver has advised that the response was only brief, in part due to the fact that she had provided substantial information during your phone call, as it related to our role, our powers and why she decided to take no action.

Your correspondence, both to this office and to the agencies concerned is detailed, articulate, well referenced and compelling. However, I do not consider that further action is required by my office for the following reasons.

I acknowledge your views that the public consultation process denied procedural fairness or a "meaningful opportunity to effect change". It is your view that the consultation was unfair because the two consultations running in parallel was confusing, that the consultation was inaccessible to the public and weighted towards industry.

In my view, the EPA and DPI took specific steps in response to your concerns, including ensuring that information was shared on both consultations to ensure best capture of comments, that they acknowledged the size and complexity of the report, and as a result provided a summary of report, took on your suggestions to include images of recently harvested native forestry. That there were in excess of 8500 submissions, in my view, demonstrates that there was significant engagement with the community.

While you hold concerns about the numbers of submissions that were, or in this case, were not published, it was a matter for each relevant person who made a submission to opt into this. Your suggestion that they failed to check "publish OK" because of the confusion the consultation process caused might otherwise be interpreted as an individual's decision as to their right to privacy.

Ultimately, I do not consider that there is sufficient evidence that the consultation process was flawed in such a way that would warrant my suggestions to the agencies to repeat the process.

In my view, they have been responsive to your concerns. There is insufficient evidence to suggest that the agencies will not or have not considered the submissions made.

I would also like to address the additional issues you have raised. In asking my office to intervene, you also made the following recommendations:

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1. *That the NSW Ombudsman's Office act as a referee to facilitate a bond from the industry to insure against environmental degradation under the precautionary principle.*
2. *That Forest Corporation pay a deposit of \$10 million to insure against logging breaches and the 'minimal disturbance' often claimed as their intention in the draft IFOA document.*

And / or:

1. *That the State Government buy back the wood supply contracts (as originally suggested by the Natural Resource Commission) and that the industry's workers be transitioned into jobs in plantations and native forest restoration and protection.*
2. *That principles of procedural justice be applied to a clean public YES/NO vote on native forest logging.*

I would like to confirm the advice that Ms Unwin and Ms Silver have provided you in relation to these specific issues, and that it is not a matter for my office to intervene in the government's policy decisions on logging.

Our policy allows for only one review of a matter. This is because we need to ensure our limited resources are equitably applied to address the concerns raised by both current and potential future complainants. All reviews are conducted carefully and thoroughly, and appropriate reasons are given for the review decision.

Our 'one review' policy also means that, where we have finalised a review and the complainant continues to write to us about the matter, their correspondence is read and filed. We will not acknowledge or respond to it unless, in our opinion, it raises some substantive new issue that warrants our action.

I appreciate that you may not be happy with the outcome of my review. However, I hope this letter helps you to understand the reasons for my decision.

Yours sincerely



Michael Barnes
NSW Ombudsman