



**Inquiry into the Environment Protection and Biodiversity Conservation Amendment
(Retaining Federal Approval Powers) Bill 2012**

1. Lawyers for Forests Inc. (LFF) believes it to be vital that the Commonwealth develop a national, strategic framework to protect Australia's remaining native forests. To this end, it is imperative that the Commonwealth retain the power to assess proposals which affect matters of national environmental significance.

2. LFF believes that environmental protections in Australia will be undermined should the Commonwealth hand over its present powers under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* to the States. The Commonwealth is in a better position to assess matters of national environmental significance because it is better resourced and able to see the broader environmental picture. The Federal Government is the more appropriate arbiter of environmental protection legislation given issues of climate change, the protection of threatened species and ecological communities, sustainability and biodiversity. Environmental issues are not State-specific, cannot be controlled by states alone, and require Federal supervision.

3. Environmental issues are complex and lend themselves to a holistic policy and lawmaking approach. Ecosystems are not contained by borders, and nor should the ability to assess proposals be held solely by States. The complexity of environmental policy makes it impossible to divide powers neatly between the states that will adequately protect national environmental interests. This is particularly true given the trans-border challenges presented by issues such as climate change and drought.

4. LFF is also concerned about the reduction in administrative accountability that will flow from handing all powers to state governments in the environmental approval process. Members of the public and environmental organisations should be given every opportunity to debate and challenge the merits of particular proposals. If states are accredited to unilaterally assess actions which may potentially impact matters of national environmental significance, another avenue of legal review is closed to those who might wish to challenge it. In LFF's opinion, this is anti-democratic.

4. It is important that Australia has multilevel engagement in environmental regulation across both the state and federal levels. What is characterised as “overlap” and “green tape” is in fact one of the strengths of Australia’s federal system: the provision of checks and balances between policy implemented at the State and Federal levels. Such a system provides an especially useful function in environmental policy, which is inherently political, and often relies on uncertain science.¹ Where there is a lack of agreement between different governments, overlapping responsibilities provide for a greater scope for policy debate and public involvement.

5. LFF would also like to bring the Commonwealth’s attention to the poor track record of many of the states in protecting the environment. In Victoria, the principal piece of legislation which aims to protect biodiversity, the *Flora and Fauna Guarantee Act 1988* (Vic), has never been appropriately or effectively implemented by the Victorian State government.² LFF is particularly concerned about the effect of giving greater responsibilities and powers to the present Victorian state government. Since coming into power, the Bailleu government has reintroduced cattle grazing in national parks, reversed the moratorium on brown coal mining, closed down wind farm investments and allowed miners to pursue coal seam gas projects.

6. Of particular relevance to the current inquiry is Victoria’s failure to comply with current bilateral agreements under the EPBC Act.

Regional Forest Agreements (RFAs) are twenty-year agreements between Commonwealth and State governments which relate to particular areas of forest. Actions carried out under the RFAs, such as logging, are exempt from review under the EPBC Act. However, the states, who are the beneficiaries of the RFAs, have certain obligations under those agreements and, at least in Victoria’s case, there has been a pattern of disregarding those legislated obligations. These include requirements to:

- report on progress every five years³,
- manage cultural values, both Aboriginal and non-Aboriginal⁴,

¹ Robyn Hollander, “Rethinking Overlap and Duplication: Federalism and Environmental Assessment in Australia” (2010) *Publius* 40(1) at 137.

² This has typically included long delays in making Action Statements for listed species, lack of review of Action Statements, and a failure to use key powers afforded to the Minister under the FFG Act such as the ability to make critical habitat declarations and interim conservation orders.

³ *East Gippsland Regional Forest Agreement (EG RFA) between the Commonwealth and Victorian Government* (1997) cl 25; *Central Highlands Regional Forest Agreement (CH RFA) between the Commonwealth and Victorian Government* (1998) cl 35; *North East Regional Forest Agreement (NE RFA) between the Commonwealth and Victorian Government* (1999) cl 35; *West Victoria Regional Forest Agreement (WV RFA) between the Commonwealth and Victorian Government* (2000) cl 36; *Gippsland Regional Forest Agreement (G RFA) between the Commonwealth and Victorian Government* (2000) cl 36.

⁴ EG RFA cl 34; CH RFA cl 45(d); NE RFA cl 45(b); WV RFA cl 46(b); G RFA (2000) cl 46(b).

- publish future reports of internal audits of compliance with the Code of Forest Practices for Timber Production⁵, and
- produce, publish, review and update a “Forest Management Plan” in the West Victoria RFA.⁶

7. It has also been pointed out that RFAs have not adapted to consider the current availability of plantation wood, and consequently native forests continue to be significantly and unsustainably overlogged⁷. Nor do they consider the future effects of climate change or drought on native forests.

8. Due to the failure of RFAs to protect Victoria’s native forests, LFF urges the Federal government not to enter further bilateral agreements with the States which may be potentially breached, leading to irreversible biodiversity loss.

9. In a time where global environmental issues are reaching crisis point, it is imperative that the Australian Federal government retain as much power as possible to assess the impact of actions on matters of national environmental significance, in the interests of the nation and the planet. For these reasons, LFF supports the present bill.

Lawyers for Forests Inc.

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⁵ EG RFA) cl 28; CH RFA cl 43; NE RFA cl 43; WV RFA cl 44; G RFA cl 44.

⁶ WV RFA cl 67

⁷ Australian Forests and Climate Alliance, *‘Regional Forest Agreements should be abolished’*, 2012
<<http://forestsandclimate.net/rfas>>.