



Overview

NATIVE FOREST REGULATION

1. Executive Summary

The introduction of Regional Forest Agreements (RFAs) signalled an attempt by Commonwealth and State governments to create a new regulatory framework for the logging of Australia's native forests. This framework was to provide a blueprint for the future management of our forests, and the basis for an internationally competitive and ecologically sustainable forest products industry.

RFAs were to ensure that a wide range of values – environmental, heritage, social and economic – were considered, and a spectrum of stakeholders consulted, in the decision making processes affecting the logging of native forests.

Commonwealth and State Governments committed themselves to establishing a world class forest reserve system which will safeguard biodiversity, old growth, wilderness and other natural and cultural values of forests, and ensure that forests outside the reserve system would be managed to ensure long term sustainability and contribute to the conservation of these natural and cultural values'. (<http://www.affa.gov.au/agfor/forests/policy/rfa.html>).

Once again, however, it appears that in practice such values have been marginalised in favour of granting resource security to a politically influential logging (and particularly woodchipping) industry which exploits our forests for commercial gain. Despite the rhetoric, natural and cultural values are not being protected and industrial logging continues on a massive scale.

Lawyers for Forests believes that our Governments must be reminded that the signing of the Regional Forest Agreements signified merely the beginning, and not the end, of a process of reform to the logging industry which must be significant and far-reaching if the natural and cultural values of native forests are to be protected, and ecological sustainability achieved.

Lawyers for Forests will scrutinize the practices and policies implemented pursuant to RFAs, the regulatory instruments they accredit and other relevant legislation to ensure that our Governments deliver on their commitment.

This document provides an introduction to the regulation of native forest logging, outlines the history and nature of Regional Forest Agreements, and highlights some of the problems emerging from their structure and implementation.

2 Background: Regulation of Native Forest Logging

In the last 10 years important changes have been made to the way native forest logging is regulated and managed in Australia. Native forest logging has traditionally been regulated by a range of Commonwealth and State legislation. This is because both Commonwealth and State governments have obligations in relation to the protection of the environment.

2.1 Commonwealth Regulation

Although the Commonwealth Constitution does not specifically refer to the environment or to forestry, the Federal government has enacted various pieces of legislation giving it indirect powers to control certain aspects of the conservation and management of forests.

Until last year, the most important piece of Commonwealth legislation impacting on native forest logging was the Export Control Act 1982 (Cth) and associated regulations. This set export controls on unprocessed wood and woodchips sourced from both native forests and plantations.

The year 2000 saw a major overhaul and consolidation of Commonwealth environmental legislation. As a result, the main Commonwealth Act regulating the environment is the Environment Protection and Biodiversity Conservation Act 1999 and export controls no longer apply to the native forest logging

industry. However, it is the Regional Forest Agreements Bill 1999 (Cth), which is explained at item 4 below, which will have the most impact on Australia's forests.

2.2 Victorian Regulation

In contrast to the Commonwealth, the Victorian government has a very general law making power on which it relies to legislate on environmental issues.

The Victorian Act most relevant to regulation of native forest logging is the Forests Act 1958.

This Act sets up the framework for management of Victoria's forests. General responsibility for the control and management of State forests is vested in the Department of Natural Resources and Environment (DNRE). DNRE is responsible for managing the commercial exploitation of State forests, issuing permits and licences and ensuring that the amounts of hardwood sawlogs that are authorised to be removed from a Forest Management Area do not exceed sustainable yield rates.

The most important regulatory instruments affecting native forests are a range of codes, plans, licences and permits created or granted by the DNRE pursuant to its powers under the Forests Act 1958 (Vic.).

For example, regional standards and requirements for certain forestry operations are set out in Forests Management Plans, and operational conditions for each timber harvesting site are set out in Forest Coupe Plans. Wood Utilisation Plans determine which areas of forest will be logged in a particular year.

Another important instrument is the Code of Forest Practices for Timber Production. This sets statewide minimum standards of environmental care and applies to native forests and plantations upon both public and private land. Its requirements include those relating to coupe sizes, streamside reserves, habitat and seed trees and rehabilitation.

Other relevant legislation includes:

*** Conservation, Forests and Lands Act 1987**

This Act provides a framework for a land management system in Victoria and allows for the compulsory acquisition of land on behalf of the Crown. The Act also establishes a system of land management co-operative agreements whereby landowners can enter into agreements relating to the management, use, development, preservation or conservation of their land.

*** Flora and Fauna Guarantee Act 1988**

This Act provides for conservation and management of threatened flora and fauna. The responsible Minister has the power to make interim conservation orders to conserve the critical habitat of listed flora or fauna on Crown land or in water under the control of the Crown. The order can prohibit or regulate any activity or process which takes place on Crown land or water or the use, management or development of the land or water within the critical habitat which is the subject of the order. The order may also allow for the prohibition, regulation or management of any activity or process which takes place outside the critical habitat but which is likely to adversely affect the critical habitat. Under the Act, activities which involve taking, trading, keeping, moving or processing protected flora, are prohibited without a licence or permit.

*** National Parks Act 1975**

This Act provides for the creation, control and management of National Parks, State Parks and Wilderness Parks in Victoria.

3 Reform: The National Forest Policy Statement

During the 1980s, conservationists consistently protested that the patchwork system of regulation and management of our forests was sacrificing conservation and biodiversity values to an unsustainable export woodchipping industry. The issue became increasingly contentious, and in the early nineties an attempt was made to design a regulatory system which would resolve some of the conflict between the conservation movement and the logging industry.

In 1992 the National Forest Policy Statement (NFPS) was signed by the Commonwealth and State

governments (with the exception of Tasmania which subsequently become a signatory in April 1995). The concept of managing forests on a regional basis was introduced with the intention of seeking a better balance between conservation, forest industry and community interests and importantly, achieving ecological sustainability.

The NFPS established the policy of undertaking Comprehensive Regional Assessments and developing agreements between the Commonwealth and State governments on forest use. It recognised the importance of a "comprehensive, adequate and representative network of reserves" in order to protect biodiversity values.

Following on from the NFPS, criteria for developing these reserves were agreed upon. These criteria (known as the ♦JANIS♦ criteria) prescribe that these reserves must protect:

- * 15% per cent of the pre-1759 distribution of each forest ecosystem;
- * at least 60% per cent of vulnerable forest ecosystems and all viable stands of rare or endangered forest ecosystems;
- * at least 60% per cent of existing old growth forests increasing up to 100% for rare old growth; and
- * at least 90% per cent of high quality wilderness.

Commonwealth and State governments also committed themselves to ensuring that the ♦management of public native forests outside the reserve system will complement the objectives of nature conservation reserve management♦ and ensure ♦ecological sustainability♦.

The National Forest Policy Statement can be obtained at <http://www.rfa.gov.au/rfa/national/nfps/index.html>.

4 Regional Forest Agreements

Regional Forest Agreements were then negotiated on the basis of the NFPS.

RFAs are 20 year agreements between the Commonwealth and the State governments, which effectively hand over the Commonwealth♦s indirect power to control forests to the States. An RFA itself does not give rise to legally enforceable obligations, but the Regional Forests Agreement Bill 1999, will, if it is passed by the Federal government.

Development of an RFA is a three stage process:

- (a) Firstly, a Comprehensive Regional Assessment is undertaken which involves an assessment of the environmental, social and economic uses and values of the forests in the region.
- (b) Secondly, a Directions Report is prepared which involves data analysis and identification of the issues that need to be addressed in the RFA.
- (c) Finally, the terms of the RFA are negotiated by the Commonwealth and State governments.

In Victoria there are 5 RFA regions and agreements have been signed for each of them. Those regions are:

- * East Gippsland;
- * Gippsland;
- * Central Highlands;
- * North East Victoria; and
- * Western Victoria.

These agreements can be obtained at <http://www.rfa.gov.au/>

The overall objective of RFAs is to balance a range of interests in the forests by providing resource security for industry whilst ensuring protection environmental values such as old growth forest, wilderness, endangered species, national estate and world heritage values. In particular, RFAs are designed to:

- * clarify government responsibilities and satisfy government obligations;
- * manage forests outside the reserve system with Ecologically Sustainable Forest Management Principles; and

* develop an efficient, internationally competitive timber industry.

5 Some problems with Regional Forest Agreements

Although some conservationists supported the stated objectives of RFAs, many across the spectrum believe that the interests of the timber industry have been privileged above all others, and are deeply concerned about the future of our forests as a result.

5.1 Reserve system

Many concerns have been raised about the flawed scientific basis of the reserve system, which prevents it from delivering a truly "comprehensive, adequate and representative" system of protection. Increased destruction, not protection, of forest ecosystems appears to be an alarming result of the RFAs.

For example, many conservationists and scientists have concerns about use by the DNRE of simplistic classification structures and outdated or insufficient scientific data, flaws which have enabled questionable interpretations of concepts such as ♦ecosystem♦, ♦vulnerable♦, ♦old growth♦ and ♦wilderness♦. These have, in turn, led to reserve systems which in many instances are either too small, or too spatially fragmented, to provide an effective habitat for many species.

5.2 Logging practices

There is also concern that off-reserve management practices have not been adequately reformed as required to achieve the RFAs objective of ensuring ecological sustainability. Underpinning the entire reform process was strong evidence that the practices traditionally employed by the logging industry ♦ particularly large-scale industrial woodchipping ♦ were unsustainable and highly damaging to the delicate balance of forest ecosystems. The implementation of sustainable logging practices was to complement the reserve system to ensure that environmental values are protected across the entire RFA area.

As outlined earlier, these practices are regulated by a range of instruments, such as Wood Utilisation Plans, Forest Coupe Plans, Forest Management Plans and the Code of Forest Practices for Timber Production. The concern is that entrenched practices have been maintained through the simple ♦accreditation♦ of these existing instruments, rather than genuine reform.

5.3 Impacts

As a result of the flaws in the reserve system and a failure to adequately reform logging practices, many seriously question the extent to which environmental values are protected in RFA areas and the extent to which the Government is committed to protecting such values and achieving ecological sustainability. Concerns have been raised in particular about the future of forest biodiversity and of our water resources.

1) Biodiversity.

For example, the impact on animals such as possums, gliders and owls is frequently highlighted. These species rely on hollows, which only form in mature trees, for their survival. Where a forest is regularly logged and sufficient trees are not left to form hollows, these species are unable to maintain their population and go into decline. There is already evidence of declining populations of these animals, and even localised extinctions.

More information can be obtained at <http://www.wilderness.org/projects/forests/extinctions>

2) Water resources

There are a number of water catchments currently being clearfell logged. While water yields from a logged catchment initially increase, over time water quantity is reduced. This is because young trees absorb significantly more water than an established forest. Water quality is also reduced by the logging of catchments as the logging operations lead to greater erosion and entry of sediment into catchment streams.

5.4 Lack of consultation

Many conservationists sought to participate in the RFA process to ensure that the protection of biodiversity and sustainability outcomes were delivered. However, there is widespread frustration and dissatisfaction with the process, with many considering that their contribution to the process was marginalised or ignored by the DNRE in favour of delivering results favourable to the more powerful forestry industry.

6 Concerns about the Regional Forest Agreements Bill 1999

As stated earlier, the majority of the clauses in RFAs do not give rise to legally enforceable obligations of either the Commonwealth or the State. However, Commonwealth legislation, the Regional Forests Agreement Bill 1999, has been drafted in order to give **certainty** to some aspects of the agreements. Conservationists are concerned that the Bill (if and when it is passed) will provide **certainty** to the forestry industry, but not to protection of environmental values or ecologically sustainability.

For example, the Bill removes RFA areas from the purview of the Export Control Act 1982 and associated regulations. The effect of this is that operators are no longer required to obtain a yearly licence to export woodchips and limits on the amount of woodchips which can be removed from a forest no longer apply. The result has been that in many instances more woodchips are being taken out of forests than ever before.

Further, the Bill also provides legislative reinforcement to those provisions of an RFA which require the Commonwealth to compensate a State. Such compensation is required under an RFA when the Commonwealth takes any action for the purpose of protecting environmental or heritage values in native forests which prevents or limits the use of land for forestry operations (ie. logging), the sale or commercial use of Forest Products (such as woodchips) or the construction of roads through forest areas. The knowledge that it may well be required to pay substantial compensation to a state in the event that it passes legislation or takes administrative action to protect more forest in an RFA area can only operate as a disincentive to do so. These compensation provisions further privilege industry interests over environmental values.

Another controversial issue is that most forestry operations conducted on land that is covered by an RFA will not be subject to the environmental impact assessment provisions in the Environment Protection and Biodiversity Conservation Act 1999 (Cth). This means that even if RFA forestry operations will have a significant impact on listed threatened species or ecological communities, in most cases no environmental impact assessment under Commonwealth legislation will be required.

The picture which emerges is of legislation which strengthens the position of the logging industry, but does little to create enforceable obligations to protect environmental values or ensure that ecological sustainability is achieved.

7 Conclusion

The RFA process emerged from the recognition that Australia's native forest logging practices were unsustainable, and vocal community anger that our precious forest resources were being sacrificed unnecessarily. It was underpinned by the recognition that the protection of environmental values and the achievement of ecological sustainability must be fundamental to the way in which our forests are managed. Evidence is continuing to emerge that RFAs, despite their rhetoric, are not delivering this. Lawyers for Forests will continue to pressure our Governments until the logging industry is reformed to ensure that they do.

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