



Australian Government

Department of Agriculture, Fisheries and Forestry

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S1.57 Parliament House
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Dear Mr Lawley,

Department of Agriculture, Fisheries and Forestry's response to the inquiry into the status, health and sustainability of Australia's koala population

Following your invitation of 30 June 2011 to the Department of Agriculture, Fisheries and Forestry to appear at the inquiry into the health and sustainability of Australia's koala population, please find attached a submission from the department which provides an overview of the relationship between the *Environmental Protection and Biodiversity Conservation Act 1999*, Regional Forest Agreements and threatened species.

The Department requests that the Senate Standing Committees on Environment and Communications consider the attached submission, before confirming the department's attendance at the Committee's hearing in Melbourne.

If the submission does not meet the requirements of the Senate Standing Committee, the department is prepared to appear before the inquiry on 1 August 2011.

Yours sincerely,

John Talbot
General Manager – Forestry
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22 July 2011

Department of Agriculture, Fisheries and Forestry submission to the inquiry into the status, health and sustainability of Australia's koala population

Executive Summary

This submission addresses the terms of reference of the Senate Standing Committees on Environment and Communications inquiry into the status, health and sustainability of Australia's koala population.

The Australian Government Department of Agriculture, Fisheries and Forestry's (DAFF) submission will broadly address the following points of the terms of reference:

- c) threats to koala habitat such as logging, land clearing, poor management, attacks from feral and domestic animals, disease, roads and urban development;
- d) the listing of the koala under the *Environment Protection and Biodiversity Conservation Act 1999*; and
- g) interaction of state and federal laws and regulations.

The other points constituting the terms of reference are outside the scope of DAFF.

There are different responsibilities for forest management across levels of, and within governments, many of which are brought together in an integrated governance framework through Regional Forest Agreements (RFAs) that agree responsibilities, endorse management systems (not individual operations and actions) and commit to continual improvement processes. RFAs are 20 year agreements between the Australian Government and some State Governments for the conservation and sustainable management of native forests. Implementation of the commitments in the agreements are reported on and reviewed every five years and this public reporting is jointly managed by DAFF and the relevant state agency.

DAFF coordinates this national approach to ecologically sustainable forest management (ESFM) at the commonwealth level but does not intervene in forest operations or land management arrangements in those jurisdictions where there are RFAs. This is in recognition that constitutional responsibility for land management rests with state and territory governments. Forests outside of RFA areas are managed unilaterally by the relevant state agencies.

The overarching document for species management at the commonwealth level is the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which is managed by the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC). As the committee would be aware, the koala is not listed as a threatened species under the EPBC Act, and its listing is not the responsibility of DAFF.

Forest policy and the development of Regional Forest Agreements (RFAs)

In 1992 the Commonwealth, State and Territory Governments developed and agreed to the National Forest Policy Statement (NFPS). The NFPS is a guiding document for ecologically sustainable forest management (ESFM) and an agreed set of broad national goals constitute its implementation.

One of the specific objectives and goals of the NFPS was:

“completion of comprehensive regional assessments, as outlined in Section 4.3, and negotiation of a Commonwealth-State regional agreement to form the basis for meeting wood production, nature conservation and other forest allocations”.¹

Comprehensive Regional Assessments (CRAs) provided the framework for RFAs. CRAs evaluated the economic, social, environmental and heritage values of forest regions and involved the full range of stakeholder and community groups. Each regional forest agreement involved at least 50 assessment projects in disciplines ranging from biology and zoology to economics and sociology. The CRAs provided governments with the information to make long-term decisions about forest use and sustainable development.²

RFAs are 20-year plans for the conservation and sustainable management of Australia's native forests and are an outcome of the NFPS. There are ten RFAs in place across Australia – one in Tasmania, five in Victoria, three in New South Wales and one in Western Australia.

In establishing each RFA a comprehensive, adequate and representative (CAR) forest reserve system was put in place, based on scientifically sound, nationally agreed criteria.³ The CAR reserve system is based on three principles:

- including the full range of vegetation communities (comprehensive)
- ensuring the level of reservation is large enough to maintain species diversity, as well as community interaction and evolution (adequate), and
- conserving the diversity within each vegetation community, including genetic diversity (representative).⁴

The *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia* provided the means for putting a CAR reserve system into practice. The states' with RFAs manage their CAR reserve systems, and publicly report on the implementation of the CAR reserve systems every five years.

Overall, the aim of the CAR reserve system was to set aside or protect by other means 15% of the pre-1750 distribution of each forest type, at least 60% of the existing distribution of each forest type if vulnerable, 60% of existing old-growth forest, 90% or more of high-quality wilderness forests, and as far as is practicable all remaining occurrences of rare and endangered forest ecosystems, (including rare old-growth forests).⁵

Thus, the Australian Government coordinates a national approach to ecological sustainable forest management (ESFM) that involves establishment of the CAR reserve system and accredits the states' forest management systems. However it is the states and territories which

¹ Commonwealth of Australia, 1992, 1995, *National Forest Policy Statement*, p.15.

² Department of Agriculture, Fisheries and Forestry, *Comprehensive Regional Assessments by State*, viewed 18 July 2011, <www.daff.gov.au>

³ Commonwealth of Australia 1997. *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia: A Report by the Joint ANZECC / MCFFA National Forest Policy Statement Implementation Sub-committee*.

⁴ Department of Agriculture, Fisheries and Forestry, *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia*, viewed 18 July 2011, <www.daff.gov.au>

⁵ Australian Bureau of Rural Sciences, 2008, *Australia's State of the Forests Report*, pp.185-186

have constitutional responsibility for forest management, including the operational management of RFAs.

Threats to koala habitat such as logging, land clearing, poor management, attacks from feral and domestic animals, disease, roads and urban development

Constitutional responsibility for forest management rests with state and territory governments, including the operational management of RFAs.

The NSW *Recovery plan for the koala (Phascolarctos cinereus)* examines the threats to koalas and ranks them. Loss, fragmentation and degradation of habitat are the most important threats to koalas in the areas they inhabit. Logging comes in at sixth out of the ten identified threats in NSW, behind road kills (fourth) and dog attacks (fifth).⁶

The listing of the koala under the *Environment Protection and Biodiversity Conservation Act 1999*

As stated previously, the Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) has responsibility for species management at the national level through the EPBC Act, and the koala is not listed as a threatened species.

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) has a number of objectives, including protection of the environment and promotion of ecologically sustainable development through the conservation and ecologically sustainable use of natural resources. The EPBC Act “enhances Australia’s capacity to ensure the conservation of its biodiversity” (s3(2)(e)). The Act establishes six categories of threatened species: “extinct”; “extinct in the wild”, “critically endangered”, “endangered”, “vulnerable” and “conservation dependent” (s178). The Act outlines how species are categorised and lists of species in each category are maintained as Schedules to the Act (s179). The Act also provides for the establishment and maintenance of lists of “threatened ecological communities” (s181), critically endangered, endangered and vulnerable communities (s182) and “key threatening processes” (s183).

Relationship between the EPBC Act and RFAs

Section 38(1) of the EPBC Act advises that a forestry operation undertaken in accordance with an RFA is exempt from Part 3 of the Act.⁷ Part 3 outlines requirements for environmental approvals. In 2008 the Senate Environment, Communications and the Arts Committees undertook an “Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*”. One of its terms of reference was to examine “the effectiveness of Regional Forest Agreements, in protecting forest species and forest habitats where the EPBC Act does not directly apply”.

⁶ Department of Environment and Climate Change NSW, 2008, Approved Recovery Plan: Recovery plan for the koala (*Phascolarctos cinereus*), viewed 19 July 2011, <www.environment.nsw.gov.au>

⁷ Section 42 of the EPBC Act advises that this exemption does not apply if the forestry operation is in a World Heritage Area, a site listed under the Ramsar Convention or in an area where forestry is “incidental to another action whose primary purpose does not relate to forestry”.

As stated in DAFF's submission to that Inquiry⁸, this exemption does not mean that forestry operations are exempt from taking environmental protection into account. Rather, it recognises that comprehensive regional assessments (CRA) were undertaken as part of each RFA resulting in CAR reserves and practices that protect all forest values. The Explanatory Memorandum for the Regional Forest Agreements Bill 2002 advises that the exemption: *"provides that forestry operations in regions subject to RFAs are excluded from certain Commonwealth legislation. This is because the environmental and heritage values of these regions have been comprehensively assessed under relevant legislation during the RFA process and the RFAs themselves contain an agreed framework on ecologically sustainable development of these forest regions over the next 20 years"*.⁹

The exemption also reflects the intention of the EPBC Act to improve the efficiency of Commonwealth and state assessment processes by reducing duplication.¹⁰

There are ten RFAs and each one was preceded by a Comprehensive Regional Assessment (CRA) of the environment, heritage, social and economic uses and values of the forests. The process used the JANIS criteria to identify the areas of the forest that needed protection and which parts could be used for commercial purposes.¹¹ The assessments also determined the value industry and people of each region place on the forests, including indigenous Australians. They drew on existing material as well as a wide range of specially commissioned studies and technical reports.

As a result of these assessments, all RFAs contain statements confirming the Commonwealth has fulfilled its duties in relation to environmental protection. The RFAs also take account of complementary state environmental protection legislation, including for endangered and threatened species of flora and fauna.

Interaction of state and federal laws and regulations.

As New South Wales and Victoria are the two jurisdictions where there are RFAs and koalas, the treatment of threatened species, by way of example, and specific state arrangements are outlined below:

The interaction between state-listed threatened species and RFAs

As mentioned above, RFAs take account of environmental protection legislation in each state, including for endangered and threatened species of flora and fauna. Each of the 10 RFAs has specific clauses that cover **Threatened Flora and Fauna**.

⁸ Department of Agriculture, Fisheries and Forestry, Senate Inquiry into the operation of the Environment Protection and Biodiversity Conservation Act 1999, September 2008, viewed 20 July 2011, <www.aph.gov.au/senate/committee/eca_ctte/epbc_act/submissions/sub86.pdf>.

⁹ www.commlaw.gov.au/commlaw/Legislation/Bills1.nsf

¹⁰ Environment Minister's second reading speech for the Environment Protection and Biodiversity Conservation Bill 1998, Senate Hansard, 12th November 1998, p.209.

¹¹ Commonwealth of Australia 1997. *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia: A Report by the Joint ANZECC / MCFFA National Forest Policy Statement Implementation Sub-committee*

New South Wales

The following text, sourced from the Eden RFA¹², provides an example of how an RFA deals with state-listed Threatened Flora and Fauna:

- 57 *The Parties agree that the CAR Reserve System, actions under the New South Wales Biodiversity Strategy, Threatened Species Conservation Act 1995 (NSW) and the Endangered Species Protection Act 1992 (C'wth)*¹³, *Forestry and National Parks Estate Act 1998 (NSW) and the application of a range of management strategies, management plans and the Integrated Forestry Operations Approval will provide for the protection of rare or threatened flora and fauna species and ecological communities.*
- 58 *Where threatened species, ecological communities and threatening processes restricted to New South Wales are listed under both the Threatened Species Conservation Act 1995 (NSW) and the Endangered Species Protection Act 1992 (C'wth), any new or revised Recovery Plans or Threat Abatement Plans will be jointly prepared to meet the requirements of both Acts. Where Recovery Plans or Threat Abatement Plans under the Threatened Species Conservation Act 1995 (NSW) meet the requirement of the Endangered Species Protection Act 1992 (C'wth), the Commonwealth will consider adopting them under Section 46 of the Endangered Species Protection Act 1992 (C'wth).*
- 59 *The Parties agree that the management prescriptions or actions identified in jointly prepared and agreed Recovery Plans or Threat Abatement Plans will be implemented as a matter of priority, including through the Integrated Forestry Operations Approval on State forest.*
- 61 *Recovery Plans for items listed under both Acts and extending beyond New South Wales will be prepared jointly with New South Wales and other relevant governments to be considered for adoption under Section 46 of the Endangered Species Protection Act 1992 (C'wth).*
- 62 *Parties will continue to consult on the priorities for listing threatened species, ecological communities and threatening processes, and the preparation of Recovery Plans, recognising that priorities can change in the light of new information. Currently agreed priorities and commitments for the next five years are outlined in Attachment 2.*

One of the Commonwealth's key responsibilities under the NSW RFAs is the accreditation of the NSW Forest Management System (FMS). The system includes legislation, policies, plans, codes and management practices¹⁴ and provides for continuing improvement in ecologically sustainable forest management.

In the Threatened Flora and Fauna section of the NSW RFAs, both the NSW Threatened Species Conservation Act 1995 (TSC Act)¹⁵ and the NSW Forestry and National Parks Estate

¹² The Commonwealth of Australia and the State of New South Wales (1998), Regional Forest Agreement for the Eden Region of New South Wales.

¹³ At the commencement of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) the list of threatened species consisted only of those previously listed under the Endangered Species Protection Act 1992.

¹⁴ The Commonwealth of Australia and the State of New South Wales (2001) Regional Forest Agreement for Southern New South Wales.

¹⁵ <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+101+1995+cd+0+N>

Act 1998 (F&NPE Act)¹⁶ are relevant. These two Acts complement the EPBC Act and provide the overarching legislative coverage for threatened flora and fauna. Under the TSC Act, the koala is listed as a Vulnerable Species.

The TSC Act provides for the conservation of threatened species, populations and ecological communities of animals and plants. The Act sets out a number of specific objectives relating to the conservation of biological diversity and the promotion of ecologically sustainable development in NSW.¹⁷

Under the F&NPE Act, NSW Forest Agreements⁴ have been developed by the NSW Government for the RFA regions. These agreements are regulatory instruments that set out the principles and strategic framework for the co-operative management of forests by the Office of Environment & Heritage and Forests NSW. Forest agreements contain provisions for promoting ecologically sustainable forest management, sustainable timber supply, community consultation and Aboriginal involvement in forest management. NSW forest agreements were arrived at after the CRAs had been completed and RFAs were in place.

The Integrated Forestry Operations Approvals (IFOAs) are developed under the NSW forest Agreements and regulate the carrying out of certain forestry operations in these regions. The IFOAs include terms of licence under the TSC Act, which comprise a number of general and species-specific conditions aimed at reducing negative impacts on threatened species and their habitat. The IFOAs also include survey guidelines and methods for the identification of koala habitat.

Each RFA region has a TSC Act license condition related to koala management¹⁸ which addresses threat mitigation measures. Adherence to the general and koala-specific conditions of the licence is an integral part of the management of koalas in State Forests within NSW. At the operational level, the harvesting plan will incorporate conditions from the threatened species licence, as well as other code of practice prescriptions. These are included in the harvesting plan map.

In NSW, the responsible agency for public production native forests is Forests NSW. That agency has developed Ecologically Sustainable Forest Management Plans (ESFM Plan)¹⁹ for all RFA regions that include IFOAs. Forests NSW regularly reports on the implementation of the IFOAs including measures to protect NSW-listed threatened species and ecological communities in timber production activities.²⁰

¹⁶ New South Wales Government, NSW Legislation, *Forestry and National Park Estate Act 1998, No 163*, viewed 20 July 2011,

<<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+163+1998+cd+0+N>>

¹⁷ New South Wales Government Office of Environment and Heritage, *OEH Act summaries*, 25 May 2011, viewed 20 July 2011,

<<http://www.environment.nsw.gov.au/legislation/DECCAactssummaries.htm>>

¹⁸ New South Wales Government Office of Environment and Heritage, *Southern Forest Agreement and IFOA*, 27 February 2011, viewed on 20 July 2011

<<http://www.environment.nsw.gov.au/forestagreements/southernagreement.htm>>

¹⁹ New South Wales Government Department of Primary Industry, *Ecologically Sustainable Forest Management plans*, viewed 20 July 2011, <<http://www.dpi.nsw.gov.au/forests/management/esfm>>

²⁰ State of New South Wales, 2010, *Forests NSW Annual Report 2009-10*, viewed 19 July 2011, <<http://www.dpi.nsw.gov.au/aboutus/resources/corporate-publications/forests-nsw-annual-report-2009-10>>

Victoria

Koalas are not included on the Threatened List (October 2010) under Section 10 of the Victorian *Flora and Fauna Guarantee Act 1988* (FFG Act).

Under the FFG Act, Action Statements are prepared for threatened plant and animal species, ecological communities and potentially threatening processes. They provide some background information about the species, including its description, distribution, habitat, life history, the reasons for its decline and the threats which affect it. They also state what has been done to conserve the species and what will be done. Action Statements are designed to apply for three to five years, after which time they will be reviewed and updated. As the koala isn't listed under the FFG Act, there is no Action Statement developed or in development for koalas.

Victoria has a *Victorian Koala Management Strategy*, released in September 2004 by the Department of Sustainability and Environment (DSE).²¹ The strategy aims to ensure that viable wild populations of the koala persist wherever suitable habitat occurs throughout their natural range in Victoria. Harvesting or logging of native forests is not identified as one of the 11 key issues affecting koala populations in Victoria.

In discussing forests available for commercial timber harvesting, the strategy notes that: *"In Victoria there is now relatively little overlap between commercial timber harvesting and key Koala habitat. Exceptions to this include:*

- *hardwood plantation forestry in the Strzelecki Ranges*
- *native forest harvesting in some forests in central and western Victoria.*

*Where timber harvesting occurs, the network of Special Protection Zones (where harvesting is excluded) and habitat prescriptions, minimise the impact on local Koala populations.*²²

Forest Management Plans (FMP) establish strategies for the management of state forests of the 14 forest regions in Victoria. The plans aim to balance the various uses and values of state forests, through providing an environment where forest ecosystems are maintained or enhanced, protecting water supplies and environmental and cultural values, enable timber production, and ensure recreation and other forest uses can continue to benefit local communities. Each plan addresses specific issues relating to fauna of concern.

Forest management zones set priorities and permitted uses of different parts of state forest based on the integration of information and management requirements from many sources. In developing the zoning system, DSE aims to establish a Comprehensive, Adequate and Representative (CAR) forest reserve system in accordance with nationally agreed criteria.²³

Many of the management strategies developed in the FMPs are expressed through zoning decisions which either set aside areas from timber harvesting or which permit harvesting or other activities to continue under specified conditions. Management guidelines for a number

²¹ P Menkhorst, 2004, *Victoria's koala management strategy*, Victorian Government Department of Sustainability and Environment

²² *ibid*, p.9.

²³ Commonwealth of Australia 1997. *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia: A Report by the Joint ANZECC/ MCFFA National Forest Policy Statement Implementation Sub-committee.*

of flora and fauna species considered rare or threatened have been incorporated into the zoning system, as have any Action Statements from the schedules with the FFG Act.