SUBMISSION COVER SHEET

Tasmanian Regional Forest Agreement Third Five-Yearly Review

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PLEASE COMPLETE:

Name: (*first name and surname*)	Jess Feehely
Name of organisation: (*only if representing an organisation*)	EDOs of Australia
Position in organisation: (*only if representing an organisation*)	Principal Lawyer - EDO Tasmania
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Your submission and completed cover sheet can be submitted by email to Review.RFA@stategrowth.tas.gov.au or by post to:

ATTN: Tasmanian RFA Review
Department of State Growth
GPO Box 536
Hobart 7001

Phone Enquiries can be made to (03) 61663499

Please note that submissions received after close of business (5 pm) on 29 May 2015 may not be accepted. Submissions provided without a completed cover sheet will not be accepted.

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Dear Dr Kile

Third Review of the Tasmanian Regional Forests Agreement

EDOs of Australia (**EDOA**) is a national network of environmental lawyers who help people to use the law to protect the environment; providing legal advice and representation, community legal education and undertaking policy and law reform work. We welcome the opportunity to comment on the third review of the Tasmanian Regional Forests Agreement (***Tas RFA***).

We are disappointed by the delay in undertaking this review, the restriction of considerations to compliance in the period to 2012 and the clear indication that the review is being undertaken in the context of a pre-determined decision to roll-over the RFAs. We urge the review committee to use the opportunity to consider whether Tas RFA is the most effective mechanism by which to deliver environmental outcomes and resource security, and whether the exemption RFA forestry currently enjoys from the approval requirements of the *Environment Protection and Biodiversity Conservation Act 1999* is appropriate.

Summary

The Tas RFA was entered into by the Commonwealth and Tasmanian governments in 1997. Like other Regional Forest Agreements, the Tas RFA was designed "*as a means of managing forest resources to deliver environmental outcomes as well as economic and resource security to the forest sector.*"[1]

A detailed overview of the history, context and content of RFAs is provided in the *One Stop Chop* report[2] and is not repeated in this submission.

While the principal mechanism for protecting forest areas under the Tas RFA (and the Supplementary RFA) was reservation, reservation alone does not deliver security for biodiversity. Instead, "biodiversity outcomes of RFAs are also determined by the forest management practices applied to harvest strategies."[3] As a result, the Tas RFA required forests to be managed in accordance with the principles of Ecologically Sustainable Forest Management (***ESFM***), implemented through the Tasmanian forestry legislation

The extent to which the two key objectives of RFAs - providing long-term security to the forest industry and protecting the natural and cultural values of forest areas - have been delivered remains a contentious issue. There is a range of views regarding the role of reservation of land to protect biodiversity, the extent of reservation necessary to secure that

[1] Commonwealth Government. 2009. *Hawke Review Fact Sheet 4: Regional Forest Agreements*. Available at http://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/fact-sheet-4-regional-forest-agreements.pdf

[2] Feehely, J., Hammond-Deakin, N. and Millner, F. 2013. *One Stop Chop: How Regional Forest Agreements streamline environmental destruction*, Lawyers for Forests, Melbourne Australia (***One Stop Chop***). Available at www.edotas.org.au/wp-content/uploads/2013/10/One-Stop-Chop-Final-report.pdf

[3] Department of the Environment, Water, Heritage and the Arts. October 2009. *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999: Final Report* (the ***Hawke Review***), 10.17. Available at www.environment.gov.au/epbc/review/publications/final-report.html. The *Weilangta* decision (see below) exemplifies this concern – the three species considered to be at risk in that case all occurred within CAR reserves, but were found by Justice Marshall not to be adequately protected by the forest management system.

outcome, and how "sustainable yields" are determined – many submissions to this review will address those issues.

EDOA's comments focus instead on the legal framework for delivering the protections outlined in the Tas RFA, particularly examining whether the forest management practices which are endorsed by the Tas RFA are appropriately assessed, monitored and enforced.

Unlike other activities with the potential to significantly impact on threatened species and ecological communities, forestry operations carried out under a Regional Forest Agreement are not required to obtain approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (***EPBC Act***).

This provision is often described (including in this submission) as the 'RFA exemption'. However, the independent review of the EPBC Act (the ***Hawke Review***)[4] noted:

> *Rather than being an exemption from the Act, the establishment of RFAs … actually constitutes a form of assessment and approval for the purposes of the [EPBC] Act. Correspondingly, like other activities assessed and approved under the Act, RFAs should be regularly monitored and audited to ensure they continue to meet the agreed conditions of that approval.*[5]

The "conditions of that approval" presume that the biodiversity conservation objectives of the EPBC Act will be upheld in assessments and approvals issued under the RFA regime.[6] EDOA is of the view that, in practice, the exclusion of RFA forestry activities from the operation of the EPBC Act had reduced the protections afforded to biodiversity, particularly threatened species and ecological communities. As a result, it is our view that the presumption supporting the RFA exemption cannot be justified.

As outlined in a recent report prepared by EDO Tasmania, *State Forests, National Interests*,[7] Tasmania's laws do not achieve equivalent standards of protection to those offered under the EPBC Act. In particular:

- current "duty of care" provisions under the *Forest Practices Code* effectively prevent forestry officers from refusing to certify forest practices plans, or certifying subject to stringent conditions, where they are concerned about impacts on threatened species and ecological communities
- the Commonwealth government is largely unable to take action in response to failings in the forest practices system which lead to adverse impacts on matters of national environmental significance;
- lack of enforcement means there is little effective deterrence against non-compliance;
- monitoring of biodiversity losses and on-ground compliance is inadequate;
- delegating assessment to internal forestry officers and under-resourced councils, based on standardised management prescriptions, continues to compromise the protection of threatened species in Tasmania's forest estate;
- the current regime that regulates forestry does not effectively apply the precautionary principle to ensure new information is factored into decision making;
- the forest practices system provides very limited public access to information or opportunities for public participation in decision-making processes;
- opportunities for third parties to challenge forestry decisions that will impact on

[4] Department of the Environment, Water, Heritage and the Arts. October 2009. *The Australian Environment Act – Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999: Final Report* (the ***Hawke Review***). Available at www.environment.gov.au/epbc/review/publications/final-report.html
[5] Hawke Review, above n5, s. 10.10-11, p197
[6] See, for example, the judgment of Justice Marshall in *Brown v Forestry Tasmania and Other (No 4)* [2006] FCA 1729 at [310].
[7] EDO Tasmania. 2015. *State Forests, National Interests: A Review of the Tasmanian RFA*. Available at http://www.edotas.org.au/?p=2534

threatened species and ecological communities are extremely limited. Given the lack of rigorous monitoring and enforcement programmes within government, the absence of third party appeal rights is likely to result in a number of breaches going unenforced.

EDOA believes that, unless significant changes are made, the Tas RFA regime will not achieve 'ecologically sustainable forest management'. Instead, the exclusion of forestry operations under the Tas RFA regime from the operation of the EPBC Act will compromise the protection of matters of national environmental significance and threaten Australia's ability to comply with international obligations.

On that basis, EDOA recommends the removal of the RFA exemption and a range of amendments to the Tas RFA to more effectively deliver ecologically sustainable forest management and allow for public participation in management decisions.

Review period

EDOA is concerned that the significant developments in the forestry sector over the last 3 years are essentially being ignored by this review process. These developments include:

- The abandoning of the Tasmanian Forest Agreement (***TFA***) by the government following the election in March 2014.
- The repeal and amendment of legislation that implemented the TFA.
- The revision and replacement of the Tasmanian Government Policy For Maintaining A Permanent Native Forest Estate in December 2014
- The enactment of new laws in relation to protest activity which specifically addresses forest protests in 2014.

This review comes 3 years too late, however, it should not ignore important recent developments.

Overview of Tasmanian framework

The Tas RFA effectively accredits Tasmania's forest practices system, including legislation, policies, codes of practice and general management documents, as appropriate to implement and achieve Ecologically Sustainable Forest Management. The principal elements of Tasmania's system are:

Maintaining the CAR reserve and forest estate

- *Forest Management Act 2013*
- *Forestry (Rebuilding the Forest Industry Act) 2014*
- *Nature Conservation Act 2002*
- *National Parks and Reserves Management Act 2002*

Forest management

- *Forest Management Act 2013*
- *Forest Practices Act 1985*
- *Forest Practices Regulations 2007*
- *Forest Practices Code 2000*
- *Land Use Planning and Approvals Act 1993*
- *Nature Conservation Act 2002* (Schedule 3A
- *Threatened Species Protection Act 1995*
- Reserve Activity Assessments

These elements are outlined briefly below.

Forest Management Act 2013

The *Forest Management Act 2013* replaced the *Forestry Act 1920*, following the introduction of legislation to implement the Tasmanian Forests Agreement in 2013. Key elements of the *Forest Management Act 2013* include:

- Forestry Tasmania (a government business enterprise) continues to be responsible for managing Tasmania's public commercial forest estate, renamed "Permanent Timber Production Zone" land.
- Existing forest reserves and approximately 100,000 ha of former production land became reserved under the *Nature Conservation Act 2002*. Responsibility for management of this land was transferred to the Parks and Wildlife Service.
- Forestry Tasmania must make the minimum aggregate quantity of timber available to industry each year from the Permanent Timber Production Zone (the 'wood production supply'). The minimum aggregate supply (currently 137,000 cubic metres) can be altered by regulation.[8]
- Forestry Tasmania may prevent access to forestry roads (including by foot) by members of the public.[9]

Forestry (Rebuilding the Forest Industry) Act 2014

The *Forestry (Rebuilding the Forest Industry) Act 2014* was introduced to repeal the *Tasmanian Forests Agreement Act 2013*, following the Liberal government's election in 2014. Key elements of the legislation include:

- Approximately 400,000 ha of land identified as potential reserves under the Tasmanian Forests Agreement was declared "Future Potential Production Forest Land" (***FPPF land***) and pledged for access to the timber industry for future growth.[10]
- FPPF land may be exchanged for production forest land. The Crown Lands Minister is to consider a request to exchange in light of the size, location and conservation values of the land (though there is no "like for like" requirement). The Minister must also consider the impact of the proposed exchange on the availability of special species timber, and any implications for Forestry Tasmania's efforts to obtain Forest Stewardship Council certification for its operations. If the Crown Land Minister accepts the request, the Forestry Minister is to make a 'land exchange order', which must be accepted by both Houses of Parliament before taking effect.[11]
- From April 2020, FPPF land may be converted to production forest. The decision to convert is made by the Crown Land Minister, having regard to the reasons for the conversion request, the size, location and conservation values of the FPPF land, an assessment of forest resources and the social and economic impacts of the proposed conversion and any implications for Forestry Tasmania's efforts to obtain Forest Stewardship Council certification.[12]
- The Forestry Minister is to develop a special species timber management plan, in consultation with industry and the public.
- From 2017, permits may be granted for special species harvesting in the FPPF land, provided the proposal is consistent with the special species management plan and the required timber is not available outside the FPPF land.

[8] Section 16, *Forest Management Act 2013*
[9] Section 23, *Forest Management Act 2013*
[10] Approximately 26,000 ha of FPPF land is located within the area added to the Tasmanian Wilderness World Heritage Area in 2013, but is not subject to the *National Parks and Reserves Management Act 2002*. As a result, the FPPF land is not proposed to be covered by the revised management plan for the Tasmanian Wilderness World Heritage Area – see section 3.3 below
[11] Section 6, *Forestry (Rebuilding the Forest Industry) Act 2013* and s.11A, *Forest Management Act 2013*
[12] Section 7, *Forest Management Act 2013*

Forest Practices Act 1985

All "forest practices", including activities in State forests and on private land and clearing for purposes other than commercial forestry, are subject to the *Forest Practices Act 1985*. Subject to some limited exemptions[13], the following forest practices cannot be conducted without a certified forest practices plan, prepared in accordance with the *Forest Practices Code*:

- clearing more than 1 ha of vegetation
- clearing more than 100 tonnes of vegetation
- clearing and conversion of any volume of a threatened native vegetation community (listed in Schedule 3A of the *Nature Conservation Act 2002*)
- clearing any volume of vegetation on vulnerable land (including habitat for listed threatened species, land within a waterway buffer or land susceptible to land slide).

The *Forest Practices Code* prescribes how forest practices should be conducted, including standards for forestry planning, harvesting, conservation, establishment and maintenance of forests, construction of roads and quarries and the use of chemicals and pesticides within forests.

Significantly, the Code sets out a landowners' duty of care in relation to the conservation of natural and cultural values. The Forest Practices Authority has adopted a *Guiding Policy for the operation of the Forest Practices Code* (the ***Guiding Policy***). Clause 8.4 of that policy is set out below.

> ***8.4 Duty of care***
>
> *The contribution of forest owners to the conservation of environmental and social values and the sustainable management of Tasmania's forests is determined by –*
>
> 1. *All measures that are required under relevant legislation[14]; and*
> 2. *The prescribed duty of care under the Forest Practices Code, which include:*
>
> - *all measures that are required to protect soil and water values as detailed in the Forest Practices Code; and*
> - *the exclusion of forest practices from areas containing other significant environmental and social values at a level of up to an additional 5% of the existing and proposed forest on the property for areas totally excluded from operations or at a level of up to an additional 10% where partial harvesting of the reserve area is compatible with the protection of the values.*
>
> *The conservation of values beyond the duty of care in the Forest Practices Code is deemed to be for the community benefit and beyond what can reasonably be required of landowners and should be achieved on a voluntary basis through relevant governmental and market-based programs and incentives.*

Agreed Procedures between the Department of Primary Industries, Parks, Water and Environment (***DPIPWE***) and the Forest Practices Authority[15] provide for DPIPWE to provide advice to the FPA regarding application of the duty of care provisions. However, the Agreed Procedures note that, for public land (including Permanent Timber Production Zone land) the duty of care thresholds must not be exceeded. DPIPWE "may use other mechanisms to

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[13] Set out in regulation 4 of the *Forest Practices Regulations 2007*

[14] Listed in Table 1 of the Guiding Policy – legislation includes LUPAA, EMPCA and the *Threatened Species Protection Act 1995*

[15] The Agreed Procedures are discussed in more detail at 3.3 below, and are available at http://www.fpa.tas.gov.au/__data/assets/pdf_file/0010/57718/FPA_and_DPIPWE_agreed_procedures_2014.pdf.

enhance the conservation outcomes", but cannot require reservation or exclusion of more than the threshold areas in order to achieve such outcomes.

Documents disclosed in February 2015 under the *Right to Information Act 2009* to Environment Tasmania give an indication of the manner in which the 'duty of care' provisions have been implemented, effectively impeding recommendations for higher retention rates than those referred to in the Guiding Policy and the Code (see box below).

Case study: Duty of care to protect threatened species

In March 2015, Environment Tasmania released a report, *Pulling a Swiftie* (the ***Swift Parrot Report***[16]), detailing the assessment of five proposed forestry operations with the area of eastern Tasmania identified as an Important Breeding Area for the endangered Swift Parrot (*Lathamus discolor*). The total population of Swift Parrot has been estimated at less than 2,500, with recent studies finding that, without significant conservation efforts to reverse population decline, the species is "on a trajectory to extinction".[17]

Key threats to the survival of the Swift Parrot include loss and fragmentation of breeding habitat, particularly through logging of mature hollow-bearing trees.[18] Documents disclosed to Environment Tasmania through a Right to Information request included specialist advice addressing cumulative loss of such habitat across eastern Tasmania:

"…There has been ongoing loss of breeding habitat over the past 20 years on public and private land within the 'southern forests' area of Tasmania (see PI type, Hanson et al. (2013), mature habitat layers). Cumulatively this loss is significant in terms of both area and the impact on the potential of the species to reproduce and to forage…. Ongoing priority research into population monitoring of the swift parrot (undertaken by DPIPWE) indicates that in some years the majority of the population relies on sub-sections of the southern forest region to breed. Monitoring has identified that during these years almost all the remaining habitat in these areas is occupied by the birds…"

"Ensuring adequate foraging and nesting habitat within foraging range of each other is key to the maintenance of breeding habitat in which birds can successfully breed in the region"

Each of the five forestry proposals examined in the Swift Parrot report had been referred to DPIPWE for expert advice, as the proposals were not able to meet endorsed standard management prescriptions for protection of the Swift Parrot. In each case, the specialist advice raised concerns that loss of foraging and breeding habitat and further fragmentation of suitable habitat was "likely to interfere with the recovery objectives" and result in ineffective conservation management for the species.

Despite these concerns, the final DPIPWE advice to the FPA in respect of several of the proposed coupes was that the duty of care threshold and voluntary contributions by Forestry Tasmania would "*make a reasonable contribution to the conservation of the species*."

The advice in respect of another of the proposed coupes was that proposed management prescriptions, while less than those set out in the Threatened Fauna Advisor, were likely to be stronger than prescriptions imposed in a formal assessment "*given [the] current operational environment*."

The examples described in the Swift Parrot Report demonstrate the extent to which the duty of care provisions influence the assessment of forestry proposals, and highlight concerns that such assessments may not result in the imposition of stringent management prescriptions.

[16] Pullinger, P. 2015. *Pulling a Swiftie: Systemic Tasmanian Government approval of logging known to damage Swift Parrot habitat*. Report prepared for Environment Tasmania, March 2015. Available at www.et.org.au/swiftie

[17] Heinshon, R et al. 2015. "A severe predator-induced population decline predicted for endangered, migratory swift parrots (*Lathamus discolor*)" 186 *Biological Conservation* 75-82

[18] Threatened Species Scientific Committee. 2011. *Commonwealth Listing Advice on Lathamus discolor (Swift Parrot).* Available at http://www.environment.gov.au/biodiversity/threatened/ species/pubs/744-listing-advice.pdf

Forest practices plans (***FPPs***) are detailed documents describing how specific forestry operations are to be carried out, including road specifications, location of planned harvesting areas, reforestation provisions, stocking standards for revegetation and measures for the protection of natural and cultural values, such as exclusion areas, wildlife corridors, habitat clumps and scheduling harvesting to avoid breeding seasons.

Other key elements of the Act include:

- establishing the Forest Practices Authority to oversee the forest practices system
- providing for delegation of day-to-day responsibility for forest practices (including certification of forest practices plans) to Forest Practices Officers (***FPOs***)
- declaration of Private Timber Reserves to exempt areas of private land from the operation of the planning system
- requiring forest practices to be carried out in accordance with the Forest Practices Code and specific Forest Practices Plans
- providing for a limited range of disputes to be determined by the Forest Practices Tribunal[19]

Following a comprehensive review of the biodiversity provisions within the Forest Practices Code in 2009, a broad range of improved planning and biodiversity management tools have been developed by the Forest Practices Authority and are being implemented through the assessment of applications to certify FPPs. A recent review of the Forest Practices Code by the Forest Practices Authority and Forest Practices Advisory Council concluded that no major revision to the Code was required to give effect to those tools. Instead, the "Guiding Policy" discussed above was proposed to be formally incorporated into the Code – public consultation on this proposal has been undertaken, but a final determination is yet to be made.

Land Use Planning and Approvals Act 1993

The *Land Use Planning and Approvals Act 1993* (***LUPAA***) regulates land use activities in Tasmania by requiring planning permits to be issued in respect of most use and development.

However, forestry practices in State forests or on private land that has been declared to be a Private Timber Reserve are not subject to LUPAA.[20] In most rural areas, vegetation clearing will be "permitted" provided a forest practices plan has been certified in respect of the activity. Therefore, it is rare that planning authorities have power to refuse to allow forest practices proposed in their municipality.

Nature Conservation Act 2002

The *Nature Conservation Act 2002* is primarily concerned with the reservation and protection of land, and managing the taking of wildlife (other than threatened species). The key provisions relevant for the forest management system include:

- The purposes for which Conservation Areas and Regional Reserves may be declared specifically include special species harvesting (variously qualified by "sustainable use" and "while protecting the natural and cultural values of the land").[21]

[19] The Tasmanian government's 2014 budget announced the abolition of the Forest Practices Tribunal: http://www.premier.tas.gov.au/budget_2014/budget_releases/boards_and_committees_savings. However, no further details regarding this proposal have been released and no legislative amendments to give effect to the abolition have been put forward.
[20] Section 20(7), *Land Use Planning and Approvals Act 1993*
[21] These reserve purposes were amended by the *Forest Management (Consequential Amendments) Act 2013* and the *Forestry (Rebuilding the Forest Industry) Act 2014*

- Schedule 3A establishes a list of threatened native non-forest vegetation communities, pursuant to the commitment at clause 48 of the Supplementary RFA. Applications to clear and convert any listed native vegetation community are subject to special considerations under the *Forest Practices Act 1985* (see below).
- Any person who has had an application for a Private Timber Reserve declaration or certification of a Forest Practices Plan refused on the basis that the application will adversely impact on natural and cultural values may apply for compensation from the State government. Such compensation cannot be paid unless the landowner agrees to enter into a conservation covenant over the land.

  Section 44 currently provides that if an application for compensation is refused, the applicant may reapply for a forest practices plan over the land. Worryingly, s.44(8) provides that the Forest Practices Authority has no power to refuse the subsequent application in those circumstances. The consequences of this are discussed in more detail in section 3.3 below.

National Parks and Reserves Management Act 2002

The *National Parks and Reserves Management Act 2002* is the legislation under which management plans are developed for any reserve land. Activities on reserved lands are managed in accordance with approved management plans, which in turn are to be consistent with the management objectives set out in the Act.

For Conservation Areas and Regional Reserves, these management objectives include special species timber harvesting. A number of forest areas previously reserved as forest reserves under the *Forestry Act 1920* as part of commitments made in the Tasmanian Community Forests Agreement 2005, including the North Styx, have now been proclaimed as Conservation Areas and Regional Reserves under the *National Parks and Reserves Management Act 2002*. This transition has meant that areas previously protected from forest practices are now available for special species timber harvesting (subject to a forest practices plan and restrictions under the *Forestry (Rebuilding the Forest Industry) Act 2014*.

As discussed above, the *National Parks and Reserves Management Act 2002* does not apply to the Future Potential Production Forest land.

Threatened Species Protection Act 1995

Generally, activities which involve:

- "taking" (including killing or removing) a threatened species from any land; or
- disturbing a threatened species on land covered by an interim protection order, conservation covenant or land management plan,

may only be carried out in accordance with a permit issued under the *Threatened Species Protection Act 1995.* However, forestry operations carried out in accordance with a certified forest practices plan are exempt from this requirement.[22]

Instead, the Forest Practices Code provides that threatened species and inadequately reserved plant communities (presumably including any native vegetation community listed in Schedule 3A of the *Nature Conservation Act 2002*) will be managed "*in accordance with procedures agreed between the Forest Practices Board [now Authority] and DPIWE [now DPIPWE]*." These agreed procedures are discussed in more detail below.

[22] Section 51(3), *Threatened Species Protection Act 1995*

Assessment against Commonwealth standards

As outlined above, the RFA effectively accredits Tasmania's forest practices system, including legislation, policies, codes of practice and general management documents, as appropriate to implement and achieve Ecologically Sustainable Forest Management.

This part addresses a range of the key standards, exploring how those standards are applied under the EPBC Act and the Regional Forest Agreement and the extent to which the implementation of the Tasmanian forest practices system achieves the same standards.

The precautionary principle

Clause 62 of the RFA provides that the parties commit to continuous improvement and "*the establishment of fully integrated and strategic forest management systems capable of responding to new information*."

Despite this provisions, and generic references in the Tas RFA and its definition of ecologically sustainable forest management to the precautionary principle, there is no explicit and mandatory mechanism requiring forest practices officers or the Forest Practices Authority to apply the precautionary principle or otherwise respond to significant new information.

Neither the *Forest Practices Act 1985* nor the *Forest Practices Code* explicitly require decision makers to apply the precautionary principle in deciding whether to certify forest practices plans, or what management prescriptions to apply.

The flexible approach adopted by the Forest Practices Authority to its biodiversity assessment practices (that is, relying on planning and management tools, rather than amending the Forest Practices Code) allows for new information to be readily adopted in practice. The considerable effort that has gone into the development of these tools, and training to implement them, is to be commended. However, this approach also means that there is no statutory basis on which to insist that a precautionary approach be adopted, or that new information be incorporated into decision making tools.

The lack of flexibility in the RFA itself is evidenced in the way that the agreement deals (or, rather, does not deal) with climate change. The second review of the RFA noted the need for significant new information regarding the contribution, both positive and negative, that forests and the forest industry make to climate change to be factored into forest management. In its response, the Tasmanian government stated that it "recognises the importance of forests for sequestering carbon". The Forest Carbon study completed in 2013 further confirmed the value of Tasmania's forests as carbon stores. However, neither the RFA nor Tasmania's forestry legislation has been amended to reflect this knowledge. The proposed "Guiding Principles" provide:

> ***8.15 Forest carbon***
>
> *Forest practices will be conducted in a manner that enhances the sequestration and storage of carbon by avoiding unnecessary damage to forest growing stock and soils, by maintaining site productivity and by ensuring the prompt reforestation and growth of forests after harvesting.*

This recognition of forest carbon storage capacity is welcome, but provides no guidance on what measures will be adopted to assess forest stock, avoid "unnecessary damage" to forest stock and identify compensation opportunities in relation to avoided deforestation.

In general, the 20 year time frame for RFAs has meant that they are inflexible and unable to respond effectively to new data that should influence forest management, such as the impact of bushfire or drought on sustainable yields, unexpectedly high rates of decline in biodiversity and emerging biosecurity threats. The 'exemption' from the EPBC Act will apply

provided that forestry operations are conducted in accordance with the *current* RFA, irrespective of whether new knowledge indicates that compliance with the terms of the RFA will have significant impacts on matters of national environmental significance.

Ecologically sustainable development

Unlike other legislation forming part of Tasmania's resource management and planning system, the *Forest Practices Act 1985* is not explicitly subject to the objective of promoting sustainable development. However, the Forest Practices Authority is required to advance the objective of the forest practices system:

> *[T]o achieve sustainable management of Crown and private forests with due care for the environment and taking into account social, economic and environmental outcomes …*

The *Forest Management Act 2013* also requires Forestry Tasmania to perform its functions

> *in a manner that is consistent with the principles of forest management set out in the Forest Practices Code, as a contribution to the sustainable management of Tasmania's forests*.[23]

While RFA forestry operations are required to adhere to the principles of ecologically sustainable forestry management, these provisions are included in the non-binding section of the RFA.

The minimum annual timber supply requirements under the *Forest Management Act 2013* arguably compromise implementation of ecologically sustainable forest management in a manner that effectively responds to changing natural values and new information. That is, requiring a minimum supply to be made available, irrespective of assessed impacts, is inherently inflexible. Maintaining ecological resilience could be better achieved through mechanisms that accommodate variations to wood supply; for example, through providing for proportionate 'headroom' volumes to account for future wood supply reduction, yield and wood utilisation improvements.

International obligations

Neither the *Forest Practices Act 1985* nor the *Forest Practices Code 2000* explicitly requires forest practices to be carried out consistently with international obligations. However, a range of practices are intended to meet those obligations.

Threatened species

As outlined above, the assessment and management of threatened species in forest practices plans is subject to agreed procedures between the Forest Practices Authority and experts within the Department of Primary Industries, Parks, Water and Environment.[24] These procedures, and concerns raised regarding their efficacy, are outlined in more detail in *State Forests, National Interests*. Significantly, an independent expert panel has raised concerns regarding monitoring of these procedures:

> *[I]t is unclear whether and how this process actually happens. What monitoring of efficacy of prescriptions for the protection of threatened species has been done? How adequate/defensible are the data to address the question of adequacy of prescriptions?*[25]

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[23] Section 15, *Forest Management Act 2013*

[24] Agreed Procedures for the Management of Threatened Species under the Forest Practices System**:** http://dpipwe.tas.gov.au/conservation/threatened-species/agreed-procedures-for-the-management-of-threatened-species-under-the-forest-practices-system

[25] Forest Products Association. *Review of the biodiversity provisions of the Tasmanian Forest Practices Code: A Report to the Forest Practices Authority*, April 2009. Available at www.fpa.tas.gov.au/__data/assets/pdf_file/0018/58140/Biodiversity_review_report.pdf

The Forest Practices Authority has undertaken considerable work over the past five years to update its planning tools, and to provide forest practices officers with training in how to apply appropriate management prescriptions. However, it remains the case that FPOs rarely have any qualifications in relation to threatened species management, and are generally engaged by industry. As a result, there is no guarantee that desktop or on-ground assessments will necessarily identify all potentially impacted species, or that management prescriptions will be adequate to protect species in a particular coupe.

Furthermore, while assessment practices and management prescriptions are reflected in non-statutory policy documents and practice only, there is no way to ensure that the standards are met.

Without third party oversight, rigorous monitoring or any requirement to routinely consult with DPIPWE to determine if prescriptions are appropriate, it is difficult to be confident that threatened species are being managed in a manner that avoids significant impacts.

Unlike other RFAs, the Tasmanian RFA does include an enforceable provision regarding threatened species.[26] However, the provision is limited to an agreement that management prescriptions imposed under the forest practices system "will provide for" maintenance of relevant species. Prior to its amendment in February 2007[27] (following the decision in *Brown v Forestry Tasmania*), clause 96 of the Tasmanian RFA required management prescriptions to "be adequate to maintain" priority threatened species.

Even where the Commonwealth Government was satisfied that management prescriptions under the Tasmanian forest practices regime were not providing sufficient protection, the only recourse for the Commonwealth government is a power to institute lengthy dispute resolution proceedings.

Threatened native vegetation communities

Pursuant to the commitment at clause 48 of the Supplementary RFA, Tasmania is required to implement statutory mechanisms to "prevent clearing and conversion of rare, vulnerable and endangered non-forest native vegetation communities."

These communities are identified in Schedule 3A of the *Nature Conservation 2002.* Section 19(1AA) of the *Forest Practices Act 1985* prevents certification of a forest practices plan to clear or convert listed vegetation communities unless the forest practices officer or FPA is satisfied that:

- **(a)** the clearance and conversion is justified by exceptional circumstances;
- **(b)** the activities authorised by the forest practices plan are likely to have an overall environmental benefit;
- **(c)** the clearance and conversion is unlikely to detract substantially from the conservation of the threatened native vegetation community;
- **(d)** the clearance and conversion is unlikely to detract substantially from the conservation values in the vicinity of the threatened native vegetation community.

Environmental offset guidelines provide some indications as to what is required to demonstrate "overall environmental benefit" and when clearing will "detract substantially" from conversation values. However, in the absence of clearer statutory guidance, it is not possible to assess whether this section satisfies the requirements of clause 48 of the Supplementary RFA.

A recent situation also highlights a potential regulatory gap in respect of protection for threatened species and vegetation communities.

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[26] *Tasmanian Regional Forests Agreement 1997*, clause 96

[27] Commonwealth Government and Tasmanian Government. 2007. *Variation to the Tasmanian Regional Forest Agreement – February 2007*. Available at www.daff.gov.au/__data/assets/pdf_file/0015/156003/variation-tas-rfa.pdf

Case study: Protecting threatened vegetation when compensation refused

In 2009, a landowner's application to clear and convert approximately 1,800 hectares of forest in eastern Tasmania was refused by the Forest Practices Authority on the basis that the proposed clearing did not adequately protect threatened species and natural values. The landowner appealed to the Forest Practices Tribunal, however the Tribunal upheld the decision to refuse the application.[28]

Pursuant to s.41 of the *Nature Conservation Act 2002*, the landowner applied for compensation for the refusal to certify the forest practices plan. No compensation was granted – it is not clear whether this was a result of the landowner's refusal to enter into a conservation covenant, or any other assessment of values.

The landowner subsequently re-applied for a forest practice plan over the same area of land. The Forest Practices Authority approved the application. The Forest Practices Authority determined that pursuant to s.44(8) of the *Nature Conservation Act 2002*, it had no authority to refuse to certify the plan, despite its previous assessment that the impacts on a listed threatened vegetation community would be unacceptable.

Fortunately, because the proposed clearing is for agricultural purposes, rather than commercial forestry, the RFA exemption does not apply. As a result, the Department of Environment has advised that it will seek referral of the proposed clearing under the provisions of the EPBC Act.

The decision to issue the Forest Practices Authority is currently subject to judicial review in the Supreme Court. However, it is concerning if s.44(8) should lead to a situation in which the FPA lacks authority to impose restrictions to protect threatened species and communities, even where risks were significant, simply because compensation was not granted to a landowner. This would apply even where compensation was not granted due to the landowner's own unwillingness to enter into a conservation covenant to protect natural and cultural values, or budgetary constraints at a government level. For example, the recent 2015-2016 budget indicates a target of no new covenants on private land or related compensation – without access to compensation allowances, the FPA will be unduly constrained in its assessment of whether clearing that protects only 10% of habitat will be acceptable.

The situation also highlights the importance of Federal government involvement. If the proposed clearing had been for commercial harvesting, the Federal Minister would have had no power to assess the proposed to clear and convert a significant threatened vegetation community. The involvement of the Federal Minister will allow an opportunity for assessment against the EPBC Act criteria, public access to application material and judicial review of any approval which fails to adequately avoid or minimise impacts on the listed threatened ecological community.

World heritage values

Under the *Forestry (Rebuilding the Forest Industry) Act 2014* a number of areas within the Tasmanian Wilderness World Heritage Area (***TWWHA***) are FPPF land in the Regional Reserve or Conservation Area class. These lots may be subject to:

- special species harvesting (where the land is within the FPPF land, such harvesting cannot occur before 2017 and must be consistent with a Special Species Management Plan)
- after 2020, conversion to, or exchange for, permanent timber production land, on which harvesting may occur.

[28] *Tucker v Forest Practices Authority* [2009] TASFPT 8

The FPPF land within the TWWHA is also not covered by the TWWHA management plan, despite being part of the TWWHA property.

Given repeated comments from the World Heritage Committee regarding the threat forestry operations pose to world heritage values, the 2013 extension of the boundaries of the TWWHA in recognition of those values and the 2014 refusal to modify the boundaries to exclude land for forestry activities, it is likely that allowing harvesting to occur would be inconsistent with our international obligations.

Furthermore, the exemption from the operation of s.38 only applies to forestry operations that occur on World heritage areas. Forestry operations adjacent to world heritage areas are subject to s.38 and would not require approval under the EPBC Act, even where harvesting would threaten world heritage values through, for example, fragmentation of vegetation communities, loss of habitat for priority species or compromising visual amenity or cultural landscapes. The Federal Court has previously held that activities taking place outside a World heritage area that affect threatened species whose habitat range includes the World Heritage area may be characterised as having a significant impact on World Heritage values.[29]

The *Forest Practices Act 1985* does not explicitly provide for any assessment of impacts on world heritage values. In 2013, the Tasmanian and Commonwealth governments entered into a conservation agreement under s.305 of the EPBC Act in respect of State forests land separating the TWWHA from wood production zones.[30] That agreement requires that the identified State forest be managed as if it were an informal reserve under the RFA, with the objective of:

- protecting and conserving the biodiversity values; and
- supporting efficient and effective forestry operations on adjacent land.

The fact that such a Conservation Agreement was considered necessary indicates that the world heritage values within the TWWHA may not have been protected had the standard forest practices system been relied upon in assessing an application for harvesting on the land adjacent to the TWWHA.

Permanent Native Forest Estate

Clause 60 of the RFA required the Tasmanian government to adopt a broad policy framework to "maintain an extensive and permanent Native Forest Estate". In 2005, as part of commitments made in the Tasmanian Community Forest Agreement, the government introduced a *Policy for Maintaining a Permanent Native Forest Estate* (***Native Forest Estate Policy***) that provided for the retention of 95% of the 1996 level of native forest through:

- phasing out broadscale clearing on public land by 2010
- phasing out broadscale clearing on private land by 1 January 2015, or when the 95% threshold is reached – whichever is earlier.

This was recognised in the policy as one mechanism by which to achieve ecologically sustainable forest management.

The *Native Forest Estate Policy* is implemented through the forest practices system, with a restriction on the issuing of forest practices plans for broadscale clearing. In particular, plans would not be certified covering more than 40ha on a single property over a 12 month period. From 1 January 2015, this was to be further limited to 20ha over a five year period.

[29] *Booth v Bosworth* [2000] FCA 1878

[30] Commonwealth of Australia and State of Tasmania. August 2013. *Conservation Agreement for the protection and conservation of areas of State Forest separating the Tasmanian Wilderness World Heritage Area from adjoining wood production coupes*

However, in December 2014 the Tasmanian government announced that these new restrictions would not take effect until 1 January 2016 and a review of the broadscale clearing limits would occur as part of the RFA review process. A revised *Native Forest Estate Policy* (December 2014) maintains that:

> *2.1. A minimum of 95 per cent of the 1996 CRA native forest area is to be maintained on a statewide basis.*

However, the revised policy also provides:

> *If on 1 January 2016 the level of retention of native forests exceeds 95 per cent, then small scale clearing and conversion of native forest on private land may continue until the 95 per cent level is reached.*

This is a weakening of the protection previously provided by the *Native Forest Estate Policy*. In particular, the previous version recognised the 95% retention rate as the minimum level of protection and imposing the broadscale clearing ban from 1 January 2015 even if that threshold had not yet been achieved. In contrast, the new provision will allow broadscale clearing to occur until the threshold is completely exhausted.

Two further concerns exist regarding the application of the Policy:

- The assessment of the policy at a Statewide level ignores the impact on regional communities. For some of these bioregions, including Ben Lomond, the 95% threshold has already been exceeded and no further broadscale harvesting of native forest should be permitted.
- The revised Policy provides that the clearing thresholds will not apply to clearing that the Minister considers "demonstrates substantial public benefits". This further compromises the achievement of harvesting limits, particularly in the absence of clear guidance as to what is required to demonstrate "public benefit".

The quarterly monitoring of the native forest estate by the Forest Practices Authority in January 2015[31] indicates that approximately 5,500ha is available before the 95% threshold is reached.

However, because responsibility for clearing associated with building and development is delegated to local authorities under the *Forest Practices Regulations 2007*, reporting and monitoring of regional clearance levels is fragmented. The quarterly monitoring is based on volumes recorded in forest practices plans – it does not account for unlawful clearing that is not reported, clearing for exempt activities (such as infrastructure corridors or fire hazard management) or clearing regulated by local governments.

This fragmentation compromises the capacity to monitor native vegetation loss and ensure that the 95% threshold is not exceeded. The lack of certainty provides a further reason why 95% should remain as a minimum goal, rather than planning to clear right up until the threshold is reached.

Practical, effective enforcement options

The Forest Practice Authority describes Tasmania's forest practices system in this way:

> *The system is based on a co-regulatory approach, combining self-management by the industry and independent monitoring and enforcement by the FPA. Forest Practices Officers (FPOs) are employed within the industry and trained and authorised by the FPA to plan, supervise, monitor and report on forest practices.*[32]

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[31] www.fpa.tas.gov.au/__data/assets/pdf_file/0011/103403/Monitoring_of_the_permanent_native_forest_estate_1_Jan_2015.pdf

[32] Forest Practices Authority Annual Report 2013-2014. Available at www.fpa.tas.gov.au

This co-regulatory approach can be criticised for its potential for conflict of interest and encouraging coo-operative, rather than punitive, approaches even in circumstances where deterrent action may be required.

FPOs have a range of enforcement options available, including warnings, rectification notices, fines and prosecutions.

It is an offence to carry out forest practices otherwise than in accordance with a forest practices plan. Offences are punishable by a fine of up to $130,000 which is considerably lower than fines available under the EPBC Act. The Forest Practices Authority may also allow a person who has unlawfully cleared vegetation to salvage the timber and retain the profits for any use of the wood.[33] Depending on the value of the wood, this can compromise any deterrent effect that a punishment may have.

The Forest Practices Authority may also revoke a forest practices plan, or vary the conditions to provide for rehabilitation or to impose additional restrictions. However, the FPO Manual 2015 advises that this is a rare occurrence:

> *Sometimes the recommendations for threatened species may change during the course of operations under a FPP. Generally, once an FPP is certified the FPA will not require changes to be made other than in exceptional circumstances, for example where new information indicates that the impact on a threatened species may be substantially greater than previously known.*[34]

The principal hurdle for enforcement is lack of monitoring. The council in *Gunns Ltd v Kingborough Council*[35] expressed concern that the fact that only 10% of FPPs are audited made the system "wide open for non-observance" and unable to guarantee that natural values would be protected.

As observed in the Hawke Review:

> *The problem has been that the [RFA licence] has continued to operate irrespective of the extent to which the commitments contained within the agreements have been implemented, particularly in relation to environmental outcomes. The absence of transparent mechanisms to test non-compliance with RFAs and assess governments' performance on RFA obligations causes community concern and mistrust. The lack of transparency also limits the ability of parties to verify whether core environmental commitments or 'license conditions' of the RFAs are being met. In the absence of such verification, the credibility and sustainability of RFAs is at risk.*[36]

On-ground compliance and lack of enforcement remains a fundamental weakness of the Tasmanian forest practices system. Without more rigorous oversight by government agencies and effective deterrence, the system will not deliver ecologically sustainable outcomes and protection of natural values.

More fundamentally, the Commonwealth government does not have monitoring, compliance and enforcement mechanisms in place to determine if the RFAs are achieving their desired outcomes or powers to take action where the outcomes are not being met.

Since signing the Tas RFA, the Commonwealth Government is largely powerless to take compliance and enforcement action in relation to breaches of the RFAs. Their powers to respond to breaches or lack of action by Tasmania are limited to 'behind the scenes' negotiations and processes. While the Commonwealth may ultimately cancel the Tas RFA, unless the State government consents to the termination, the cancellation cannot take effect until protracted dispute resolution procedures have been undertaken. This is the case even if

[33] Section 47D, *Forest Practices Act 1985*
[34] Forest Practices Officers Manual (Revised January 2015), p59. Available at http://www.fpa.tas.gov.au/__data/assets/pdf_file/0008/103787/FPO_Manual_v_29_Jan_2015.PDF
[35] [2005] TASRMPAT 150
[36] Hawke Review, s.10.12.

the actions (or failures to act) by the State causes significant decline in matters of national environmental significance.

Access to information

There is currently no statutory requirement to make forest practices plans available to immediate neighbours or to the broader public.

The second review of the RFA recommended that forest practices plans be provided on request to neighbours, and information regarding the values to be protected in a FPP be provided to any interested person.

Forestry Tasmania has adopted a policy of making FPPs in relation to State forest available to adjoining neighbours, subject to a briefing with an FPO. The FPA supports the release of FPPs, but generally refers requests to the FPO or landowner in the first instance.

In practice, neighbours receive notice of proposed forestry operations within 30 days of the proposed harvesting commencing. This is rarely sufficient time for concerned neighbours to obtain a copy of the forest practices plan, consult with the Forest Practices Officer, obtain technical advice and, if necessary, seek to change the plan to impose stronger protections for natural or cultural values. It can also be confronting for a neighbour to have to contact the landowner or FPO directly to obtain a copy of the plan.

Parties other than neighbours find it difficult to access information and often have to rely on Right to Information requests to obtain details of forest practices, as outlined in the Swift Parrot Report case study above. As a result, details can take several months to obtain and may be incomplete.

The Hawke Review also noted that monitoring and reporting remains a weakness of the RFA system:

> *Reporting on the biodiversity outcomes of RFAs, particularly the on-ground performance of RFAs and adaptive management capacity of forest management practices, has been patchy and has not been delivered according to agreed RFA timeframes. Failure to complete timely reviews and inadequate processes for public complaints has fuelled public mistrust in the management of RFA forests and does not engender the level of confidence needed to continue the current treatment of RFA forestry operations under the Act*.[37]

This third review of the Tasmanian RFA was due to be completed in 2012. As outlined above, the delay in the conduct of the review means that the review ignores a number of significant changes to the operation of the forest practices system since the original review date.

Public participation

There is no statutory opportunity for public comment on an application for forest practices plan. However, the Forest Practices Code provides for notice of proposed forestry operations to be given to landholders within 100m of the boundary of the operation at least 30 days before the clearing commences.

In practice, landholders are given an opportunity to consult the responsible Forest Practices Officer regarding the clearing. However, in the absence of a statutory requirement for this to occur, the timing of advice, availability of detailed information and willingness to engage varies between Forest Practice Officers and individual situations.

One of the key aims of the RFA process was to reduce conflict between the forestry industry and conservationists. However, without clear opportunities for interested parties (which

[37] Hawke Review, 10.18

frequently extends beyond immediate neighbours) to participate in decision making around forest practices, concerned community members may resort to protest action.

The recently enacted *Workplaces (Protection from Protesters) Act 2014* seeks to deter protest activity at forestry sites by restricting lawful activities and imposing significant penalties on protestors. This fails to address the core issue leading to protest activity – lack of transparency leading to lack of confidence in the rigour of forestry assessments.

Third parties appeals

The capacity for interested third parties to challenge environmental decisions is a key pillar of access to justice, as articulated in the *Aarhus Convention*[38].

The opportunity to appeal against decisions to certify (or refuse to certify) forest practices plans is restricted to the applicant – neighbours or other third parties have no right to appeal.

As forestry operations are generally not subject to the planning system, there are limited opportunities to appeal to the Resource Management and Planning Appeal Tribunal against approvals for clearing. However, in the few cases where an appeal has been available, the Tribunal has been satisfied that additional protections were warranted, raising concern that the protections imposed by the forest practices system alone are not sufficient to protect biodiversity.

A "person aggrieved" may apply to the Supreme Court for judicial review of decisions made by the Forest Practices Authority (or a forest practices officer). However, such actions are made difficult by the costs involved, the need to establish standing and the difficulty in establishing judicial review grounds where the Code provisions are relatively vague.

In the absence of civil enforcement options under the Tasmanian forest practices system, concerned third parties are limited to actions in the Federal Court seeking to demonstrate that the forestry operations are not carried out in accordance with the RFA and therefore do did not enjoy the protection of section 38 of the EPBC Act. The amendments to the RFA since the Wielangta case have made any application for injunctive relief extremely unlikely to succeed.

Recommendations

One principal difficulty with the RFA regime occurs where a State's interest in securing the forest industry conflicts with the protection of matters of national environmental significance. The Tas RFA regime does not provide adequate mechanisms to effectively promote the national interest in the face of such conflicts.

The most effective way to address that conflict is to ensure the Commonwealth government has authority to regulate forestry activities that are likely to have a significant impact on matters of national environmental significance. For this reason, EDOA believes that ecologically sustainable forest management and the protection of MNES is best achieved by the removal of the RFA exemption.

EDOA notes that a range of recommendations to improve the operation of the Tasmanian forest practices legislation are set out in *State Forests, National Interests*. This submission endorses those recommendations, but focusses on recommended changes to the EPBC Act and the Tas RFA.

Amendments to the EPBC Act

1. Delete Part 4, Division 4 – Forestry Operations on Certain Land in its entirety (that is, remove the 'RFA exemption').

[38] Australia is not a signatory to the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice, but has expressed support for access to justice principles in the past. Principle 10 of the Rio Declaration on Environment and Development also provides that effective access to judicial proceedings should be provided to the community.

2. Alternatively, include a provision similar to s.59 of the EPBC Act in Part 4, Division 4, allowing the Federal Minister to suspend or cancel the operation of the 'RFA exemption' for forestry operations in Tasmania where she or he is satisfied that:

a. Reporting requirements have not been met; or

b. Environmental outcomes are not being achieved (that is, where appropriate monitoring reveals that forestry operations are resulting in significant impacts on MNES).

This is consistent with recommendations made by the Hawke Review, noting that the 'RFA exemption' was "*akin to an approval issued on certain terms… If the terms of that approval are not complied with… then the approval should be terminated.*"[39] As outlined in the Hawke Review[40], suspension or termination of the RFA exemption would have significant consequences, and a transparent process must be followed in which the Tasmanian government is given an opportunity to respond to any proposal to take such action.

This amendment would be complemented by 'escalation' provisions in any future RFA which provide for the Commonwealth Minister to take increasing steps towards regaining power over a particular action. This approach has been proposed in the draft approval bilateral agreements in recognition of the need for the Commonwealth to ensure that EPBC standards are being met by any accredited approval process.[41] Where they are not, the Commonwealth may step in.

3. Require the Federal Minister to consider at each 5 yearly review whether the 'RFA exemption' should be suspended or cancelled (that is, to consider whether the powers in the provision proposed in Recommendation 2 should be exercised).

Formally requiring consideration and determination of this question could allow third parties to review the Minister's decision not to exercise those powers.

4. Amend s.42 to extend the restriction on the operation of s.38 to any forest activities likely to impact on the world heritage values of a World Heritage place. This would allow the Federal Minister to review logging activities proposed on the boundaries of the TWWHA to determine if the logging will impact on the natural values of the protected area.

5. Amend the EPBC Act to allow the Federal Minister to direct that compliance audits and investigations be undertaken where she or he is concerned that matters of national environmental significance are being unduly impacted by forestry activities.

Amendments to the RFA

1. Provide for future RFAs to be declared as an endorsed plan under the strategic assessment provisions of the EPBC Act. Rather than 5 year "reviews", the RFA would be subject to re-assessment every 5 years to determine whether the plan maintains its status as a strategic assessment allowing activities conducted in accordance with the plan to avoid the need for approval under Chapter 9 of the EPBC Act.

2. Amend clause 91 (Sustainability Indicators) to require monitoring and reporting to address any decline in protection of MNES within the RFA region.

3. Ensure that all reserves added to the reserve estate since 2005, including the FPPF land, are included in the CAR reserve system, in reserve classes in which logging is prohibited.

[39] Hawke Review, 10.14
[40] Hawke Review, 10-37-10.39
[41] See, for example, clause 16 of the Draft Tasmanian Approval Bilateral Agreement

4. Require the tenure of the FPPF land within the TWWHA to be amended so that the land can be covered by the TWWHA management plan. Ideally, the tenure of land would be national park or State reserve.

5. Require the Tasmanian government to advise the Commonwealth Minister of any forest practices that are likely to impact on matters of national environmental significance and invite comment. For example, this could include forestry operations adjoining the TWWHA.

6. Introduce 'escalation' provisions that allow the Commonwealth Minister to suspend the operation of the s.38 exemption if the Minister considers that intervention is required to protect a matter of national environmental significance.

7. Allow the RFA to be terminated or suspended by the Commonwealth for "significant non-compliance", without the need for dispute resolution procedures. Significant non-compliance can include repeated failures to comply (for example, repeated failure to report) or any breach that threatens protection of a matter of national significance.

8. Ensure that all Federally and Tasmanian listed species and vegetation communities are described in the schedules

9. Set rolling benchmarks for completion of recovery plans for threatened species.

10. Require the parties to develop and have regard to conservation advice for any listed species.

11. Set objectives for protection of species, rather than just reservation designed to protect species. For example, thresholds could indicate that species decline is kept to 1% across the board, or set specific species targets. Where any thresholds are exceeded, a review of the biodiversity provisions of the forest practices system must be reviewed.

12. Provide for 5 yearly reviews to consider new issues, rather than simply reviewing performance against requirements. In particular, the RFA review should explicitly consider the impact of climate change on MNES and wood supply, as well as the potential impact that forestry activities conducted under the RFA will have on climate change mitigation.

13. Require the Tasmanian government to develop and implement a policy on carbon storage in the forest estate, based on the scenarios set out in the Forest Carbon Study. The policy should identify areas where avoided deforestation may be eligible for carbon credits.