

September 14th 2009

BY EMAIL: info@environment.nsw.gov.au

Dear Sirs,

The NSW Young Lawyers thank you for the opportunity to comment on the *Draft Report on Progress with Implementation of the NSW Regional Forestry Agreements*.

The New South Wales Young Lawyers is the largest body of young and newly practicing lawyers and law students in New South Wales. The organization is Sydney based and is made up of law students and legal practitioners who are in their first five years of practice or under the age of 36. Hundreds of members participate on a voluntary basis in committees specific to particular areas of law.

This submission was authored by members of the Environmental Law Committee of the New South Wales Young Lawyers.

The Environmental Law Committee is concerned with educating and raising awareness in the community and legal profession about the importance of environmental law and protection of the environment.

If you have any questions in relation to the matters raised within the submission, please contact me at envirolaw.chair@younglawyers.com.au.

Yours faithfully

Caroline Law
Chair – Environmental Law Committee
NSW Young Lawyers

**Submission of the NSW Young Lawyers Environmental Law Committee to the
NSW Department of Environment, Climate Change and Water (DECCW) on the
Draft Report on Progress with Implementation of the New South Wales Regional
Forest Agreements**

Name of authors: Natasha Hammond-Deakin, Amelia Dixon, Kylie Maxwell & Caroline Law

Contact details:

Caroline Law

Email: envirolaw.chair@younglawyers.com.au

Tel: 0292269888

Date: 14 September 2009

Submitted to:

NSW Department of Environment, Climate Change and Water
Resource and Conservation Unit
PO Box 4290, Sydney South
NSW 1232

By email:

info@environment.nsw.gov.au; Steve.Hartlev@environment.nsw.gov.au

Introduction

The NSW Young Lawyers' Environmental Law Committee (**the Committee**) welcomes the review of the progress on implementation of the NSW Regional Forest Agreements (**RFAs**) and the opportunity to comment on DECCW's *Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements (Draft Report)*.

The Committee has reviewed the Interim Report of the Independent Review of the EPBC Act (Interim Report) and in this submission makes comments and recommendations in relation to the following issues:

- resource security contracts;
- exemptions under RFAs from Environmental Impact Assessments and Commonwealth legislative control ;
- the inability of third parties to trigger Commonwealth legislation to ensure RFAs are being complied with;
- the difficulties associated with amending RFAs;
- the problems arising from the legal unenforceability of obligations prescribed under RFAs;
- the lack of accountability of Governments under RFAs;
- the CAR reserve system;
- ecologically sustainable forest development; and
- climate change issues.

The Committee makes the following recommendations:

Recommendation 1:

The Committee recommends that the Commonwealth's environmental legislative powers are elevated so they are not subordinate to formal undertakings that apply for the duration of RFAs. A mechanism for the Commonwealth to intervene and regulate activities under an RFA in circumstances where there is a real threat to endangered species, world heritage or national estate values should be enshrined in legislation.

Recommendation 2:

The Committee recommends that the terms of RFAs include a mechanism to promote and ensure investment in value-adding plants.

Recommendation 3:

The Committee recommends the exemption of significant land clearing proposals from Commonwealth environmental impact assessment processes be removed.

Recommendation 4:

The Committee recommends that RFAs should be amended so as to specifically protect listed species under the EPBC Act and require the submission of threatened species management plans to the Federal Government as a condition for exemption.

Recommendation 5:

The Committee recommends the limit on Ministerial consideration as a consequence of section 75(28) be removed from the EPBC Act to enable the Minister to consider any adverse impacts that might arise under a RFA forestry operation under Division 4 of Part 4.

Recommendation 6:

The Committee recommends that the substantive protection of forest species and habitats requires the application of the EPBC Act to RFA forestry operations by way of a new land clearing trigger or through utilising existing triggers (such as circumstances where significant impacts on biodiversity and threatened species are a likely consequence of proposed forestry operations).¹

Recommendation 7:

The Committee recommends that legislation be amended to ensure third parties can invoke Commonwealth legislation to ensure the full protection of areas covered by RFAs under Federal law.

Recommendation 8:

Given that there is inadequate opportunity to revise badly designed RFAs initially negotiated in light of insufficient data, the Committee recommends the legal enforceability of RFAs as contractual undertakings be enforced. Further, the Committee recommends the five yearly review process be strengthened so it is more readily complied with.

Recommendation 9:

The Committee recommends the making of a clause which requires the enactment of certainty legislation to entrench undertakings under NSW RFAs,

Recommendation 10:

The Committee recommends that legislation be enacted requiring that RFAs comply with the objects of the EPBC Act and, if the exemption from the EPBC Act for RFA forestry operations is maintained, that the exemption is only applied if the RFA achieves an alternative means of promoting the recovery of a species.

Recommendation 11:

Forests outside of the CAR reserve areas must be managed stringently in accordance with the principles of Ecologically Sustainable Development (**ESD**) to ensure maximum protection of those forests that do not have the protection of the CAR reserve system.

Recommendation 12:

The Committee recommends that more thorough scientific research of the flora and fauna in off-reserve areas must be undertaken, including more research and monitoring of the impacts of logging practices on biodiversity and threatened species.

Recommendation 13:

In forests containing habitat of species threatened with extinction due to logging practices, the Committee is of the view that logging should be ceased immediately to allow for the proper regeneration of the forests and those areas should be protected within the CAR reserve system.

Recommendation 14:

The Committee recommends that, in the assessment of rate of carbon removed from the NSW forest system, the amount of carbon released from the forests as a result of bushfires should be taken into account, as well as a result of the production of forest industry end products.

Resource security contracts

RFAs specify an intention to create legally binding obligations under the RFA which may include the Commonwealth Government undertaking to refrain from exercising its environmental legislative powers for the duration of the RFA.

RFAs set out the respective detail of Commonwealth and State obligations. When an RFA is entered into, formal undertakings (or resource security contracts) are signed by the Government for the provision of compensation to forest companies for the removal of their right to extract timber. The RFAs may also specify an intention to create legally binding obligations which oblige the parties to meet their contractual commitments. As a result, the Commonwealth may be restricted from exercising its environmental legislative powers for the duration of the RFA. The State Government therefore takes positive action in providing long-term access to forests encompassed under RFAs with the Commonwealth taking no active part in regulating the decisions of State Governments. Therefore, the timber producing industry has guaranteed resource security for the period of the RFA (20 years).²

The Committee is concerned about the extent of time that the Commonwealth must refrain from exercising its environmental legislative powers as a result of making formal undertakings when entering into RFAs. Further, the Committee is concerned that no mechanism exists under the RFA system to promote and ensure investment in value-adding plants.

Recommendation 1:

The Committee recommends that the Commonwealth's environmental legislative powers are elevated so they are not subordinate to formal undertakings that apply for the duration of RFAs. A mechanism for the Commonwealth to intervene and regulate activities under an RFA in circumstances where there is a real threat to endangered species, world heritage or national estate values should be enshrined in legislation.

Recommendation 2:

The Committee recommends that the terms of RFAs include a mechanism to promote and ensure investment in value-adding plants.

Exemption from Environmental Impact Assessments

Areas subject to an RFA are specifically excluded from Commonwealth environmental impact assessment and endangered species laws. The Committee is of the view that it is inappropriate that the Commonwealth is precluded from regulating forest activities in light of its international obligations in relation to the protection of threatened species. The Committee believes the Commonwealth should play a role in the assessment of proposals for significant land clearing in areas covered by RFAs. Under section 38 of the *Environmental Protection and Biodiversity Act 1999* (Cth) (**EPBC Act**), the Commonwealth must refrain from exercising its environmental legislative powers for the duration of RFAs. The Committee is concerned the assessment exemption given to timber companies in respect of the clearing of land subject to an RFA constitutes a significant abdication of the Commonwealth's environmental responsibilities.³

The Committee believes the validity of the exclusion of areas or processes from the EPBC Act should only be permitted in circumstances where the processes for assessing such areas is equal to or of greater standard than the processes currently existing under the EPBC Act. The Committee submits that the exclusions that apply to areas involving significant land clearing proposals should be removed.⁴

Recommendation 3:

The Committee recommends the exemption of significant land clearing proposals from Commonwealth environmental impact assessment processes be removed.

Secondly, the Committee is concerned that matters of national environmental significance in RFA forests (taken to be protected by the RFA regime) are not sufficiently protected by NSW RFAs.

As section 38 of the *Regional Forests Agreement Act 2002* (Cth) (**RFA Act**) specifically excludes the application of Part 3 of the RFA Act to RFAs, matters of national environmental significance in RFA forests, therefore, cannot be challenged under the *Environmental Protection and Assessment Act 1979* (NSW) (**EPA Act**).⁵

Recommendation 4:

The Committee recommends that RFAs should be amended so as to specifically protect listed species under the EPBC Act and require the submission of threatened species management plans to the Federal Government as a condition for exemption.

Thirdly, the Committee is concerned about legislative amendments which subordinated the Commonwealth's role in relation to RFA forestry operations. In 2007, section 75(28) was inserted into the EPBC Act, which provides that when assessing whether an action is a controlled action for the purposes of the Act, the Minister is precluded from considering the adverse impacts of certain forestry operations conducted under an RFA. Therefore, the Minister must not take into account any adverse impacts of any forestry operations undertaken in accordance with an RFA (as defined by section 38) or forestry operation in an RFA region (as defined by section 40).⁶

Recommendation 5:

The Committee recommends the limit on Ministerial consideration as a consequence of section 75(28) be removed from the EPBC Act to enable the Minister to consider any adverse impacts that might arise under a RFA forestry operation under Division 4 of Part 4.

Recommendation 6:

The Committee recommends that the substantive protection of forest species and habitats requires the application of the EPBC Act to RFA forestry operations by way of a new land clearing trigger or through utilising existing triggers (such as circumstances where significant impacts on biodiversity and threatened species are a likely consequence of proposed forestry operations).⁷

The Committee submits that if the current exemption for RFAs from the EPBC Act remains in respect of forestry operations, there should be greater transparency, compliance with and enforcement of existing processes relating to biodiversity and species protection. The Committee recommends that where the environmental outcomes arising from current legislative arrangements are not demonstrated, the EPBC Act be re-instated as overriding RFAs.

The Committee argues that if the RFA exemption is not removed, significant improvements should be made to the RFA process to ensure the proper implementation, monitoring and enforcement of RFAs by the Commonwealth Government. Furthermore, the way in which RFAs are developed and the terms of RFAs themselves should undergo regular reviews and assessment to ensure they are meeting the requirements of the EPBC Act.

Should the exemption not be removed, the Committee further recommends that consequences for non-compliance are implemented in order to ensure proper adherence to the provisions of RFAs. An example may be the inclusion of a power under the EPBC Act to remove the exemption in circumstances where there is non-compliance with an RFA or where the delivery of adequate protection is not being achieved. The Committee submits that such evaluation should be undertaken by an independent committee to subvert the influence of the interests of State Governments and logging companies. Furthermore, the Committee recommends that where the provisions of RFAs constitute the sole protection of National Environmental Significance (NES) matters, the terms of RFAs should be able to be amended in line with current and evolving science in addition to providing comprehensive species and biodiversity protection. Should the Commonwealth take on greater responsibilities in monitoring and enforcing RFAs, the provisions of RFAs themselves should adequately protect the environment.⁸

In the event the standard of control exercised by the Commonwealth Government does not meet the standards automatically imposed under the EPBC Act, the Committee recommends the RFA exemption which allows logging of native forest in the absence of a proper assessment of its impacts, be removed from the EPBC Act.⁹

A further issue involves the inability of third parties to trigger Commonwealth legislation to ensure RFAs (and the associated State legislation, regulations and policies) are being complied with by forestry companies. Section 40 of the Forestry and National Parks Estate Act 1998 (NSW) specifically excludes the right of third parties to appeal against a breach of that Act, the Protection of the Environment Operations Act 1997 (NSW) or any other Act applicable to forestry operations.

The Committee is concerned that the current laws surrounding RFAs are not in alignment with common third party standing provisions that constitute a fundamental part of current environmental legislation which seeks to ensure the transparency and accountability of interested parties.¹⁰

Recommendation 7:

The Committee recommends that legislation be amended to ensure third parties can invoke Commonwealth legislation to ensure the full protection of areas covered by RFAs under Federal law.

Amending Regional Forest Agreements

This issue relates to the difficulties in amending the terms of RFAs. Where the terms of RFAs are narrow, there is inadequate opportunity to revise badly designed RFAs initially negotiated in light of insufficient data. The Committee is concerned that Comprehensive Regional Assessments (CRAs) may be based on inadequate data and formulated after hasty negotiations with there being limited opportunity to alter 20 year agreements if and when new information becomes available.

The current process involves a once-off regional assessment of the data prior to entering into 20 year resource security contracts with limited opportunity to amend the agreement. This position undermines the application of the precautionary principle which sits in favour of the ability to vary the 'Comprehensive, Adequate and Representative' (CAR) reserve in light of new information received. The difficulties that exist in relation to amending the terms of agreements are not mitigated by the requirement that RFAs are subject to five yearly reviews as administrative arrangements make it clear that agreements are unlikely to be altered. In any event, reviews are taking place well past the five yearly period, thus further undermining the utility in adopting such a review process.¹¹

Recommendation 8:

Given that there is inadequate opportunity to revise badly designed RFAs initially negotiated in light of insufficient data, the Committee recommends the legal enforceability of RFAs as contractual undertakings be enforced. Further, the Committee recommends the five yearly review process be strengthened so it is more readily complied with.

Legally binding obligations

As RFAs do not create legally binding obligations (as specified by clear statements contained in the first part of RFA documents), any undertakings by Governments may be unenforceable under the law. Therefore, future governments have the ability to diverge from previous undertakings to the effect that legislation will not be enacted if it is inconsistent with the terms of RFAs. However, the structure of RFAs may undermine the Government's capacity in this regard as the RFA arrangement obliges the Commonwealth to provide compensation to companies where the Commonwealth has enacted legislation that limits future access to, and the utilisation of, forest resources.

The Committee is concerned that the likelihood this unquantifiable obligation is enforceable will discourage future Governments from enacting limiting legislation and therefore undermine future action to adopt tighter forest conservation measures.¹²

Whether a legally enforceable contract has been agreed to requires the demonstration of an intention that the obligations are legally binding. As RFAs are agreements between Crown parties, such an intention is less readily inferred and therefore some RFAs include clear statements in relation to parties' intentions regarding particular aspects of agreements. Therefore, undertakings by parties that they will refrain from utilising their legislative powers to enact overriding or repealing legislation are legally unenforceable.

The Committee is concerned that as some RFAs are not intended to be legally enforceable documents, that they are unaccountable and hard to measure. Those RFAs that remain unenforceable are therefore not legal contracts but merely agreements involving undertakings by each party and an intention to abide by them. RFA's do not actually contain clauses that indicate that either party will enact legislation to entrench the undertakings given. Therefore, some RFAs rely on 'RFA certainty legislation', being complimentary legislation that clarifies and supports RFAs and gives rise to their legal enforceability. Thus, until such legislation has been enacted, RFAs remain unenforceable by either party. The enactment of such legislation, whilst unusual, is preferable as an Act can state that it applies regardless of any contradiction in another Act. Once such RFA certainty legislation is enacted, this should result in agreements being enforceable.¹³

Recommendation 9:

The Committee recommends the making of a clause which requires the enactment of certainty legislation to entrench undertakings under NSW RFAs.

Lack of accountability

In *Forestry Tasmania v Brown*¹⁴, the Federal Court of Appeal held that the Tasmanian RFA did not require the State to protect three threatened species, but that it is the establishment and maintenance of the CAR reserves that constitute the protection.

The Committee is concerned about the potential application of this case in NSW and the level of accountability of the NSW government in this regard, particularly where an RFA affords a lesser level of protection than that under the EPBC Act.

Recommendation 10:

The Committee recommends that legislation be enacted requiring that RFAs comply with the objects of the EPBC Act and, if the exemption from the EPBC Act for RFA forestry operations is maintained, that the exemption is only applied if the RFA achieves an alternative means of promoting the recovery of a species.

CAR Reserve System

The CAR reserve system appears to be the main mechanism for achieving ESD of RFA forests, and the Draft Report states that more than 30% of forests are in reserves.¹⁵ The Committee welcomes the addition of new reserves to the conservation estate, as this can only assist in conserving Australia's extraordinary terrestrial biodiversity.

However, the Committee considers that the regional assessments that were conducted to determine which areas were to be reserved, when RFAs were formulated, were flawed.¹⁶ The assessments relied mostly on existing information and outdated maps and no localised on-the-ground information was obtained. As a result, in many cases the science underpinning the assessments was uncertain and based on ad hoc and incomplete information.¹⁷ In addition, the assessments were conducted based on stated boundaries, not ecological criteria.¹⁸ We consider that the lack of a scientifically robust assessment based on sound ecological information and on-the-ground surveys undermines the ability of the reserve system to protect threatened species and biodiversity.¹⁹

There were also problems for the JANUS criteria, the nationally developed standard for determining which areas of forest should be protected in reserves. Despite best intentions, commentators have highlighted the narrow conceptualisation of wilderness, the simplified systems used to classify forest types and the difficulties in determining adequacy.²⁰

Commentators have also questioned whether the JANIS criteria have been adequately implemented.²¹ The initial application of the criteria in NSW identified over one million hectares of public land in north-west NSW required for addition to the reserve system to comply with the national reserve criteria.²² However, the NSW Government only added 358,200 hectares to the reserve system as a result of lobbying by the forestry industry. Also, only 29% of priority fauna populations have fully achieved reservation targets in north-east NSW.²³ The Committee is concerned that politics determined the size of areas to be reserved in NSW, even though a scientific assessment was undertaken to determine the areas required for reservation.²⁴

There is also evidence that conversion to conservation reserves will not in itself secure regional biodiversity in perpetuity. A major problem is the under representation of

certain threatened landscapes and species in reserves.²⁵ Much of reserved lands are nutrient poor and elevated, which biases representation.²⁶ Other problems are the limited management of degraded forests within new reserves, and the elusive nature of balancing conservation and timber production. Adaptive management systems are required because forests are extremely complex and dynamic systems.²⁷

The Committee submits that, for all of the reasons discussed above, there are sizable forest areas that should be, but are not, conserved within the reserve system. Therefore, it is vital that those "production forests" outside of the reserved areas are managed in accordance with the principals of ESD.

Recommendation 11:

Forests outside of the CAR reserve areas must be managed stringently in accordance with the principles of ESD to ensure maximum protection of those forests.

Ecologically Sustainable Forest Management (ESFM)

ESFM of both reserves and production forests is a key objective of the NSW RFAs. RFAs require ESFM plans, environmental management systems and cooperation among agencies on control of pests and noxious weeds, bushfire prevention and grazing management.²⁸

The concept of ESFM is scientifically complex and involves the utilization of forest resources while maintaining a range of forest values, including biodiversity, the productive capacity and sustainability of forest ecosystems, forest ecosystem health and vitality, and the promotion of long-term social and economic benefits. Central to ESFM is the aim to maintain or increase the full suite of forest values for present and future generations.²⁹

The Committee submits that, despite the rhetoric around ESFM and the fact that the Draft Report indicates completion of a number of related Milestones that relate to ESFM, forest management practices are not achieving ESD.

While the production of wood products produced from native forests across Australia has declined over the last decade by 10%,³⁰ there is evidence that logging remains a key threat to biodiversity. Kingsford et al have identified the loss and degradation of habitat as the first of the six major threatening processes driving biodiversity decline in Oceania, threatening more terrestrial species than any other process. In Australia about 70% of remaining forests are ecologically degraded from logging,³¹ and this includes NSW forests.

There are 69 endangered and vulnerable populations in the area covered by the Eden and Southern RFAs. The Koala, Longfooted Potoroo, Sooty Owl and possibly the Barking Owl are said to be on the verge of extinction in the Eden region as a result of logging practices there.³² Commentators note that there are discrepancies between Forests NSW and the information available from the National Parks and Wildlife Service (NPWS) regarding data on the numbers of threatened species in particular areas.³³ More thorough research of the flora and fauna in RFA areas is clearly needed, as well as more research and monitoring of the impacts of logging practices on biodiversity and threatened species.

In areas logged too heavily or frequently complex forest communities, over time, become transformed into predominantly single-species, similar aged regrowth forests. Such logging practices have a major impact on biodiversity and habitat, totally destroying the complexity of ecosystems, removing major elements and altering the basis of soils and microclimates. Little is known about the effects on invertebrates, but many observations of birds and mammals indicate a drastic reduction in the number of species present in these altered forests.³⁴ The Committee submits that more research and information is required about the impacts of logging practices in NSW on forests.

These logging practices are clearly not sustainable and are not consistent ESD nor ESFM.

Recommendation 12:

The Committee recommends that more thorough scientific research of the flora and fauna in off-reserve areas must be undertaken, including more research and monitoring of the impacts of logging practices on biodiversity and threatened species.

Recommendation 13:

In forests containing habitat of species threatened with extinction due to logging practices, the Committee is of the view that logging should be ceased immediately to allow for the proper regeneration of the forests and those areas should be protected within the CAR reserve system.

Climate Change

Climate change impacts the environment in a vast number of ways, but has an especially significant relationship with forests.

While a loss of biodiversity affects climate change through a net loss of carbon sinks, it should also be recognized that the dramatic change in climatic conditions through global warming has a serious impact on biodiversity. As weather conditions change, there is the risk of certain species going extinct, and certain other species attempting to migrate to warmer or cooler regions depending on the geographic area of their natural habitat.

Climate change also creates a serious problem for Australian forests - as weather conditions become more extreme, the risk of bushfires in Australian forests increases, and the burning of vegetation results in the release of massive amounts of carbon into the atmosphere,

Accordingly, it is essential that as many natural carbon sinks as possible are maintained and allowed to flourish. While the Committee commends the Government's assessment of maintenance of the forest global carbon pool within NSW, the Committee would like to raise the issue of carbon release through bushfires, which, as mentioned in the Draft Review are a consistent problem within NSW.

It appears from the Draft Review that in the Government's calculation of the amount of carbon sequestered (at p150) by NSW forests, the damage created by bushfires has not been taken into account. At p151 of the Draft Review, it is stated that: "the rate at which carbon is removed, even though temporarily, from the system, can be assessed by accounting for the different end products from forest industries". However, massive amounts of carbon are lost from vegetation that is burnt in bushfires and accordingly, it would seem prudent to factor in the effect of bushfires within the relevant regions of NSW in order to give a more accurate account of carbon sequestration.

Recommendation 14:

The Committee recommends that, in the assessment of rate of carbon removed from the NSW forest system, the amount of carbon released from the forests as a result of bushfires should be taken into account, as well as a result of the production of forest industry end products.

-
- ¹ See also the Australian Network of Environmental Defender's Offices 'Submission to the 10 year review of the Environment Protection and Biodiversity Conservation Act 1999' (2009) <<http://www.edo.org.au/policy/090219epbc.pdf>>
- ² Jan McDonald, 'Regional Forest (DIS)Agreements: The RFA Process and Sustainable Forest Management (1999) 11(2) Bond Law Review,295 <www.austlii.edu.au/au/journals/BondLRev/1999/20.html>
- ³ Forestry in Victoria'(2009) *Environmental Law Online* <http://www.envirolaw.org.au/articles/habitat_and_biodiveristy/forest_protection>
- ⁴ Ibid.
- ⁵ Above n 1 .
- ⁶ Above n 2 .
- ⁷ See also the Australian Network of Environmental Defender's Offices 'Submission to the 10 year review of the *Environment Protection and Biodiversity Conservation Act 1999* (2009) <<http://www.edo.org.au/policy/090219epbc.pdf>>
- ⁸ Australian Network of Environmental Defender's Offices 'Submission to the 10 year review of the *Environment Protection and Biodiversity Conservation Act 1999* - interim report' (2009) <http://www.edo.org.au/policy/090810epbc_interim_report.pdf>
- ⁹ Ibid.
- ¹⁰ Lucy Turner, 'Regional Forests Agreement Bill' (2001) <www.lawyersforforests.asn.au/pdf/Bolkus.pdf>
- ¹¹ Above n 1 .
- ¹² Above n 1 .
- ¹³ Jane Tribe, 'The post RFA future - legal enforceability of RFAs' *The Fenner School of Environment and Society, ANU College of Medicine, Biology and Environment* <<http://sres-associated.anu.edu.au/rfasymposium/speakers/tribe.html>>
- ¹⁴ *Forestry Tasmania v Brown* (2007) FCAFC 186
- ¹⁵ Draft Report at 2 and Milestone 21 at 42.
- ¹⁶ ANEDO *Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999* September 2008 at 46.
- ¹⁷ Hollander, R "Changing Place?: Commonwealth and State Government performance and regional forest agreements" (2004) Paper presented to the Australasian Political Studies Association Conference, University of Adelaide; Redwood J "Sweet RFA" (2001) 26 *Alternative Law Journal* 255; McDonald, J 'Regional Forest (DIS) Agreements: The RFA Process land Sustainable Forest Management' [1999] *BondLReview*; (1999) 11(2) *Bond Law Review* 295.
- ¹⁸ Hollander, R, n 17.
- ¹⁹ See also ANEDO *Submission to the Inquiry into the operation of the Environmental Protection and Biodiversity Conservation Act 1999* September 2008 at 47.
- ²⁰ Hollander, R, n 17; Mackey, B "Regional Forest Agreements – business as usual in the Southern Region?" (1999) 43(6) *National Parks Journal* 10.
- ²¹ McDonald, J n 17 at 308.
- ²² Pugh, D "Establishing a CARR reserve system in North-East New South Wales" (1998) *Nature Conservation Council and North East Forest Alliance*.
- ²³ Flint, C, Pugh, D, Beaver, D (2004) "The good, the bad and the ugly: sience, process and politics in forestry reform and the implications for conservation of forest fauna in north-east New South Wales" in *Conservation of Australia's Forest Fauna* (2nd ed) 2004, Royal Zoological Society of New South Wales at 222-225.
- ²⁴ Ibid.
- ²⁵ McAlpine et al "Conserving forest biodiversity across multiple land ownerships: Lessons from the Northwest Forest Plan and the Southeast Queensland regional forests agreement (Australia)" (2007) 134 *Biological Conservation* 580: note that this article examines biodiversity conservation in the context of the management of production forests under the Queensland RFAs.
- ²⁶ Kingsford et al "Major Conservation Policy issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.
- ²⁷ McAlpine et al "Conserving forest biodiversity across multiple land ownerships: Lessons from the Northwest Forest Plan and the Southeast Queensland regional forests agreement (Australia)" (2007) 134 *Biological Conservation* 580: note that this article examines biodiversity conservation in the context of the management of production forests under the Queensland RFAs.
- ²⁸ *Eden RFA*, clauses 42–46; *NE RFA*, clauses 44-48; *Southern RFA*, clauses 42-47.

²⁹ Park, H “Fragments of Forest Management, A Private Practice: An Assessment of the Implementation of the Regional Forest Agreements on Private Land in the Southern and the Eden Regions of NSW” [2006] 10 (2) *The Australasian Journal of Natural Resources Law and Policy* 183.

³⁰ Australian Government, Bureau of Rural Sciences *Australia's forests-at-a-glance 2009* at 45-46.

³¹ Kingsford et al “Major Conservation Policy Issues for Biodiversity in Oceania” (2009) 23; 4 *Conservation Biology* 834.

³² The Greens *Saving Southeast NSW Forests* at 6-8 and the National Parks and Wildlife Service *Atlas of NSW Wildlife* (2006).

³³ The Greens *Saving Southeast NSW Forests* at 8.

³⁴ The Greens *Saving Southeast NSW Forests* at 7.