

# The Institute of Foresters of Australia

ABN 48 083 197 586



5 August 2009

**EPBC Review  
GPO Box 787,  
Canberra ACT 2601**

Dear Dr Hawke

## ***IFA Submission on the Interim Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)***

The Institute of Foresters of Australia (IFA) welcomes the opportunity to provide a submission on the Interim Report for the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). Our submission is attached with the summary cover note and responds to issues raised in the Interim Report on forest subjects. IFA would be pleased to make a member, or members, available to discuss the submission and any other issues of relevance to your review of the EPBC Act.

IFA is a professional body of around 1300 members who are engaged in all branches of forest management and conservation, forest industry, academia, research and sustainable natural resource management in Australia and overseas. IFA is strongly committed to the principles of sustainable forest management, sustainable use of biodiversity, conservation, provision of sustainable livelihoods, poverty alleviation and the management processes, systems and practices which translate these principles into ecological sustainable development and sustainability outcomes. Through this submission, IFA offers its professional expertise in environmental protection, conservation and sustainable use of biodiversity, natural resource management, management of ecosystem services, land development, the application of the ecosystem approach and forest science, planning and management.

The Institute offers comment on international obligations associated with forests and the relationship with the EPBC Act and Regional Forest Agreements. Our submission comments on the following matters:

- The EPBC Act, forestry and Regional Forest Agreements;
- RFA reviews;
- Identifying and monitoring biodiversity;
- Environmental impact assessment and strategic environmental assessment;
- EPBC preamble; and
- Convention on Biological Diversity, ecologically sustainable use and the ecosystem approach.

IFA has a comprehensive suite of forest policies, many of which are relevant to your report. Extracts of key IFA policy statements, which are relevant to your review, are annexed to the submission. The full set of IFA policies may be accessed at <http://www.forestry.org.au/ifa/g/g0-ifa.asp>.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Volker', written over a white background.

Dr Peter Volker FIFR RPF  
President

Please attach the following **one-page summary** to your submission.

**Comments on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)**

**Summary**

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**Date: 3 August 2009**

**Which chapter(s) of the interim report are you commenting on?**

Chapter 2 Commonwealth Role and EPBC Act Objectives, Chapter 3 Scope of Environmental Impact assessment Under the EPBC Act, Chapter 4 Environmental Impact Assessment, Chapter 6 Forestry, Chapter 10 Strategic Assessment and Bioregional Planning and Chapter 14 Protected Areas.

**Key points of submission**

(please identify up to three main priorities or focal points of your submission):

- Regional Forest Agreements satisfy international obligations and are based on substantial assessment work and science. The Australian mainland (ie all except Tasmania) Agreements require review and Governments should be responsible for undertaking them in a comprehensive, robust and timely manner.
- Identification and monitoring biodiversity is particularly important and needs to be more extensively discussed in the Review. Implementation of a comprehensive source of forest information referred to in the RFA Act needs to occur as a priority.
- The EPBC Review needs to consider the guidance provided in Decisions from the Convention on Biological Diversity and how this effects mechanisms in the Act ,particularly the consideration of sustainable use, application of the ecosystem approach and strategic environmental assessments in terms of implementing the Act.

**References** (if possible, include a bibliography of any documents you may wish to make available)

References included in the body of the submission

**Confidentiality statement:**

Note that all submissions unless otherwise indicated will be published on this website. You **MUST** indicate on your submission if you wish for your submission not to be published. If you wish for your submission to not be published please mark your submission as 'Confidential'. You should note that even if your submission is not published, the title of your submission and the name of the submitting organisation or individual will be published on the web site. If you wish to not have your details published please contact the Secretariat before making a submission. Contact details from of individuals making submissions will be limited to name, suburb and State/Territory.

**Do you want this submission to be treated as confidential?**

(please state 'yes' or 'no') **No**

## **Institute of Foresters of Australia: Submission on the Interim Report for the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)**

The Institute of Foresters of Australia (IFA) supports biodiversity conservation and sustainable use of Australia's forests as part of a broad based approach to the conservation, sustainable management and use of. This underpins ecological sustainable development and human wellbeing. Such a strategy is articulated in the objectives and intent of the legal articles of the Convention on Biological Diversity (CBD). It is also the basis of the EPBC Act, the Regional Forest Agreement (RFA) Act and RFAs themselves.

Managing the balance of conservation and the sustainable use of biodiversity underpins the objectives of the Act, the principles of Ecological Sustainable Development (ESD) found in the Act (Section 3A) and the general operational intent of the Act. Such a balance is important in meeting two Australian Government policy objectives:

- “to promote the sustainability of Australia’s economic development to enhance individual and community well-being while protecting biological diversity and maintaining essential ecological processes and systems; and
- to facilitate delivery of Australia’s international obligations.”<sup>1</sup>

### **The EPBC Act, Forestry and Regional Forest Agreements**

Chapter 6 of the Interim Report deals with forestry and regional forest agreements (RFA). As noted in the report the subject matter and the relationship between RFAs and the EPBC Act is both contentious and polarized. Regional forest agreements satisfy international obligations and are based on substantial strategic and scientific assessment. Objectives of the RFA Act equate with the objectives of the EPBC Act. IFA provides some insights and views on both forestry, and the relationship between RFAs and the Act.

IFA attests that the assessment processes used in developing and negotiating RFAs were based on best practice and given the complexity of the subject matter, equal to or better than those processes currently used in the EPBC Act. Significant scientific rigour was applied to the assessment processes and JANIS criteria (Davey et al 2002)<sup>2</sup>. In IFA's view the criticism outlined in Section 6.61 of the Interim Report is not warranted. Considerable amounts of information related to biodiversity and resource management were collected during the CRAs. Much of this information is still used to support the management of the forest estate (public, private, reserve, non-reserve).

RFAs were developed to balance the objectives of conservation and sustainable use of biodiversity. They were designed to promote long term ecological sustainable development of forest industries and regional communities by providing long term stability of forests, forest management and forest industries. Current agreements reflect a satisfactory balance of these objectives and are consistent with international obligations and the objectives of the EPBC Act. Much of the disquiet about RFAs and the associated RFA provisions in the EPBC Act reflect the general perception that the EPBC Act is primarily about environmental protection rather than the balanced conservation and sustainable use of biodiversity and natural resources in meeting ecologically sustainable development outcomes - as expressed in the objectives of the Act. RFAs support the both the balance of conservation and the sustainable use of forest biodiversity to help realise the ecologically sustainable development of forest industries and the sustainable livelihoods of rural and regional communities.

<sup>1</sup> Adopted from the Terms of Reference to the EPBC review (Interim Report (I-R) page 2).

<sup>2</sup> Davey, SM, Hoare, JRL and Rumba, KE (2002) Science and its Role in Australian Regional Forest Agreements. *International Forestry Review* 4(1), 39-55.

RFAs arose primarily as a mechanism to undertake comprehensive strategic forest assessments replacing the annual non-strategic and generally inefficient Commonwealth-State impact assessment process of the early 1990s on compartments or coupes that were scheduled to be logged.

The RFA mechanism was outlined in the 1992 National Forest Policy Statement (NFPS)<sup>3</sup> and is an adopted national strategy for the purposes of 6(a) of Article 6 (General Measures for Conservation and Sustainable Use) of the Convention on Biological Diversity (Commonwealth of Australia 1998a)<sup>4</sup>. Regional Forest Agreements satisfy Article 6(b) as sectoral plans for forest regions as they “integrate the conservation and sustainable use of biological diversity” in forests (Davey et al 2001)<sup>5</sup>.

Development of the RFA process during the mid 1990s was relevant to both domestic and international forest policy associated with forest protection, conservation, ecosystem approach, sustainable forest management, ecologically sustainable development, forest monitoring and reporting and international environmental obligations as well as the requirements expressed in the NFPS (discussed in Commonwealth of Australia 1995a,b,c<sup>6</sup> and Davey et al. 1997<sup>7</sup>). In particular development of the CRA assessment processes and design features of RFAs were mindful of international approaches to forest biodiversity, forest environment and sustainable forest management particularly given the discussion at COP2 in 1995. The Conference of Parties to the Convention on Biological Diversity made a statement on biological diversity and forests to the Intergovernmental Panel on Forests (Annex to Decision II/9) that set the scene for international consideration on forest biodiversity issues. Paragraphs 12 and 13 (reproduced below) were of particular importance in shaping Australia’s approach to sustainable forest management and the processes used to develop RFAs.

12. The Conference of the Parties recognizes the need to develop and implement methods for sustainable forest management which combine production goals, socio-economic goals of forest-dependent local communities, and environmental goals, particularly those related to biological diversity. Sustainable forest management should ensure that components of biological diversity are used in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs of present and future generations (Convention on Biological Diversity Article 2). Sustainable forest management should take an ecosystem approach and aim at securing forest quality as related to the Convention on Biological Diversity, comprising such elements as forest composition, natural regeneration, patterns of ecosystem variation, ecosystem functions and ecosystem processes over time. Special attention should be paid to components of biological diversity under threat.
13. *In situ* forest conservation activities in accordance with Article 8 of the Convention on Biological Diversity, including the establishment and management of protected areas, have an important role to play in the achievement of biological diversity goals for sustainable forest management, and should be integrated in national forest and land-use plans. In this context, the conservation of primary/old-growth and ecologically mature secondary forest ecosystems is of particular importance. All stakeholders, in particular managers, should engage in an open, transparent and participatory decision-making process that can explicitly incorporate the multiple functions of forests and involve all interested parties, including indigenous and local communities

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<sup>3</sup> Commonwealth of Australia (1992) National Forest Policy Statement – A new focus for Australia’s forests, Australian Government Publishing Service, Australia.

<sup>4</sup> Commonwealth of Australia (1998a) Australia’s National Report to the Fourth Conference of the Parties to the Convention on Biological Diversity. Environment Australia (Australia’s First National Report to the CBD)

<http://www.cbd.int/doc/world/au/au-nr-01-en.pdf>

<sup>5</sup> Davey, SM, Hoare, JRL, Rumba, KE, Ryan, MW and Stephens, M (2001) Australia’s approach to sustainable forest management practice. In *Assessment, Conservation and Sustainable Use of Forest Biodiversity*, (pp 78-79). Secretariat of the Convention on Biological Diversity, CBD Technical Series No. 3, Montreal. <http://www.cbd.int/doc/publications/cbd-ts-03.pdf>

<sup>6</sup> Commonwealth of Australia (1995a) *Regional Forest Agreements. The Commonwealth Position*. February 1995.

Commonwealth of Australia (1995b) *The Economic and Social Assessment Process for Deferred Forest Assessment and Regional Forest Agreements - A Discussion Paper*. Commonwealth Department of Primary Industries and Energy. August 1994.

Commonwealth of Australia (1995c) *National Forest Conservation Reserves Commonwealth Proposed Criteria - A Position Paper*. Australian Government Publishing Service, Canberra. July 1995.

<sup>7</sup> Davey, S, Hoare, J, Binning, C and Bright C (1997) Assessment of Ecologically Sustainable Forest Management for Regional Forest Agreements. In *Preparing for the 21<sup>st</sup> Century* (eds EP Bachelard and AG Brown) pp.235-46. Proceedings of the 4<sup>th</sup> Joint conference of the Institute of Foresters of Australia and the New Zealand Institute of Forestry, April 1997, Canberra, Australia.

Davey et al. (1997) describe the development of the ecologically sustainable forest management (ESFM) assessment process and how these assessments were used during the RFAs. Assessments were based on nine ESFM principles:

- maintain the full suite of forest values for present and future generations
- maintain and enhance long-term multiple socio-economic benefits to meet the needs of society;
- protect and maintain biodiversity
- maintain the productive capacity and sustainability of forest ecosystems;
- maintain forest ecosystem health and vitality;
- protect soil and water resources;
- maintain forest contribution to global carbon cycles;
- maintain natural and cultural heritage values;
- utilize the precautionary principle for preventing environmental harm.

Forest sustainability indicators (Montreal Process Indicators) were developed for the purpose of RFA and national reporting (Raison et al 1997, 2001<sup>8</sup>, Commonwealth of Australia 1998b<sup>9</sup>). McDonald (1999)<sup>10</sup>, Bartlett (1999)<sup>11</sup>, Commonwealth of Australia (2000a) and Mobbs (2003)<sup>12</sup> provide perspectives and good background on RFA and issues associated with RFAs. Davey et al. (2002) report on the role science played in the development of RFAs. Scientific assessment was substantial during the CRA phase of the RFAs and involved field-based studies and collection of new forest information. The JANIS reserve criteria<sup>13</sup> which specified targets for forest reservation in regions, was based on the work of the Commonwealth Scientific Advisory Group (Pitman et al 1995)<sup>14</sup>. RFAs became an Australian case study of the application of the Ecosystem Approach in forests submitted to the CBD (Commonwealth of Australia 2000b)<sup>15</sup>. Further discussion of regional forest

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<sup>8</sup> Raison, RJ, McCormack, RJ, Cork, SJ, Ryan, PJ and McKenzie, NJ (1997) Scientific issues in the assessment of ecologically sustainable forest management, with special reference to the use of indicators. In *Preparing for the 21<sup>st</sup> Century* (eds EP Bachelard and AG Brown) pp. 229-34. Proceedings of the 4<sup>th</sup> Joint conference of the Institute of Foresters of Australia and the New Zealand Institute of Forestry, April 1997, Canberra, Australia.

Raison, RJ, Brown, AG and Flinn, DW (2001). Application of criteria and indicators to support sustainable forest management: some key issues. In *Criteria and Indicators for Sustainable Forest Management* (eds Raison, RJ, Brown, AG and Flinn, DW), pp. 2-18. CAB International Publishing, London, UK.

<sup>9</sup> Commonwealth of Australia (1998b) A Framework of Regional (Sub-National) Level Criteria and Indicators of Sustainable Forest Management in Australia. Montreal Process Implementation Group, Canberra, August 1998.

<sup>10</sup> McDonald, J (1999) Regional Forest (DIS) Agreements: The RFA Process and Sustainable Forest Management. BondLRev 20; 11(2) Bond Law Review 295 <http://www.austlii.edu.au/au/journals/BondLRev/1999/20.html>

<sup>11</sup> Bartlett, T (1999) Regional Forest Agreements – a Policy, Legislative and Planning Framework to Achieve Sustainable Forest Management in Australia *Environmental Planning and Law Journal* 16(4) 328-38.

<sup>12</sup> Mobbs, C (2003) National forest policy and regional forest agreements. In *Managing Australia's Environment* (ed S Dovers and S Wild River) pp.90-114. Federation Press, Canberra

<sup>13</sup> JANIS (1997) Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative Reserve System for Forests in Australia. A Joint ANZECC/MCFFA National Forest Policy Statement Implementation Subcommittee (JANIS) report, Commonwealth of Australia, Canberra.

<sup>14</sup> Pitman, M, Boardman, K, Kirkpatrick, J, Noble, I and Slatyer, R (1995) Report of the Scientific Advisory Group. In *National Forest Conservation Reserves Commonwealth Proposed Criteria - A Position Paper*, pp. 30-40. Australian Government Publishing Service, Canberra. July 1995.

<sup>15</sup> Commonwealth of Australia (2000b) Ecosystem Approach to Sustainable Forest Management Practices – Regional Forest Agreements. Convention on Biological Diversity - Case Study for Australia. <https://www.cbd.int/doc/case-studies/for/cs-ecofor-au-management.pdf>

agreements, sustainable forest management and the ecosystem approach can be found in Rumba et al (2001)<sup>16</sup> and Davey et al 2003<sup>17</sup>.

Strategic forest assessments were undertaken to effectively and efficiently reach an Agreement between the Commonwealth and a State in the conservation, management and sustainable use of forest resources found in a “landscape” or region. An “ecosystem or landscape approach”<sup>18</sup> was applied. Environmental values (biodiversity, endangered species and communities, old growth, national estate and world heritage values), resource values (eg. water, timber, apiary, grazing, recreation and minerals), Indigenous heritage values, economic values of forested areas and forest industries (eg. apiary, timber, mining), social values and community needs and principles of ecologically sustainable forest management were assessed during the comprehensive regional assessment (CRA) phase of the process to reach agreement. A phase that cost in excess of \$115 million and resulted in a significant increase in our knowledge of forest values and uses (Commonwealth of Australia 2000a<sup>19</sup>). The agreement had to be expressed to be a Regional Forest Agreement and (i) provide for a comprehensive, adequate and representative reserve system, (ii) provide for the ecologically sustainable management and use of forested areas in the region or regions, and (iii) be expressed for the purpose of providing long-term stability of forests and forest industries. These conditions have to be met for an agreement to be a Regional Forest Agreement and not subject to the EPBC Act.

Reference is made in the Interim Report that greenhouse and climate change were not considered in the RFAs. While not specifically mentioned in RFAs these issues were considered in the CAR reserve design, assessment of ESFM management systems and processes, and assessments associated with timber yield and/or future research requirements. As an example, the Ferguson et al (2003)<sup>20</sup> study, which is a commitment in the Western Australian RFA, undertook a preliminary analysis of climate change impacts on sustained yield and recommends further work.

## RFA Reviews

Significant criticism can be leveled at Government implementation and reviews of RFAs. A number of RFAs have not been reviewed or reported on at their 5 and 10 year interval. The lack of reviews is a significant concern to IFA and other forest stakeholders. A federal RFA Monitoring Unit was in existence in 2000 to monitor, audit and report compliance on commitments and outcomes of RFAs and collaboratively develop sustainability and performance indicators (based on the Montreal Process Indicators referred to above) to monitor RFA outcomes for each RFA (Commonwealth of Australia 2000; p. 20). These indicators were to be developed by the Commonwealth and States in collaboration with the community. Such indicators were developed for Tasmania; however it is unclear the status of these indicators for the other RFAs.

Five yearly RFA reviews were to commence in 2002 based on the Table presented in Commonwealth of Australia (2000; p. 20). Reviews of the Tasmanian RFA have occurred on schedule but none of the other RFAs have been reviewed. An expectation was that the reviews, by their nature, would confirm that the agreements are indeed delivering certainty and sustainability in Australia’s native forests (Commonwealth of Australia 2000; p. 1). Such reviews are important to determine that obligations and commitments are being met and implemented, that forest operations are being undertaken in accordance with the RFA, that the CAR reserve system is

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<sup>16</sup> Rumba, K.E, Hoare, JRL, Davey, SM, Ryan, MW and Stephens, M (2001) The Achievement Cycle – Integrating Management Systems, Criteria and Indicators and Forest Certification Standards for Achieving Sustainable Outcomes. In *Forests in a Changing Landscape*, pp. 365-73, 16<sup>th</sup> Commonwealth Forestry Conference and 19<sup>th</sup> Biennial Conference of the Institute of Foresters of Australia. Fremantle, Western Australia, 18-25 April 2001.

<sup>17</sup> Davey, SM, Hoare, JRL and Rumba, KE (2003) Sustainable forest management and the ecosystem approach - an Australian perspective. *Unasylva* 214/215, 3-13.

<sup>18</sup> Discussed in the last section of the Submission.

<sup>19</sup> Commonwealth of Australia (2000a) *Regional Forest Agreement Forest News*. Commonwealth Forests Taskforce, August 2000. [http://www.daff.gov.au/data/assets/pdf\\_file/0004/49594/nat\\_cra\\_news9.pdf](http://www.daff.gov.au/data/assets/pdf_file/0004/49594/nat_cra_news9.pdf).

<sup>20</sup> Ferguson, I, Adams, M, Bradshaw, J, Davey, S, McCormack, R and Young, J (2003) Calculating Sustained Yield for the Forest Management Plan 2004-2013. Stage 3 Report. Western Australian Conservation Commission, June 2003.

performing to expectations, sustainable forest management is being practiced and that sustainability is being realised to the benefit of both industry and communities found in the regions of RFAs. It is therefore critical that the five year reviews of RFAs are undertaken on time, that indicators are monitored and reported, and that the commitments and obligations (legally binding and non-legally binding) in RFAs are complied with.

Given the fundamental importance of reviews for the integrity of RFAs it is unclear why State governments (other than Tasmania) have not progressed RFA reviews in a timely manner. Such reviews need to be comprehensive and processes need to be in place that allows indicators to be used to adequately report on environmental performance and sustainability in the RFAs. Information on sustainability indicators needs to be informative and be available for the full suite of issues across tenures within an RFA. The purpose of the reviews was to highlight to the public and stakeholders that RFAs were progressing and performing well (Commonwealth of Australia 2000a). The fact that the majority have not been completed has potentially compromised the money spent in the development of these RFAs and certainly opened them up for justifiable criticism and public unease/concern. Outcomes of the reviews and indicators were to inform processes of continuous improvement or adaptive management; a principle that is the basis of ecological sustainable forest management and ecological sustainability. Equally, governments' response to RFA review and indicator outcomes needs to be timely.

There appears to be an apparent lack of commitment to RFA reviews by governments other than Tasmania. The question is how to address these situations as, apart from the Tasmanian RFA, all are overdue for their five year review and several are overdue for their 10 year review. It is IFA's view that appropriate action mechanisms to ensure government compliance already exist in the Heads of Agreement, RFAs, the EPBC Act and Regional Forest Agreement Act. As a consequence the Prime Minister, Environment Minister and/or Minister for Agriculture, Fisheries and Forestry have ample powers to instruct five-yearly RFA reviews to be implemented in a timely manner. It only requires commitment of government and their Departments and agencies. The Commonwealth (DAFF and DEWHA) should be accountable for five year reviews and that they are done in collaboration with the States, with public input and on time. Information and documentation collected for review purposes should be publicly available. IFA proposes that overdue RFA reviews should be undertaken in a timely manner.

It is important for the outstanding RFA reviews to be given the opportunity to be undertaken and implemented by governments. These reviews should be progressed and resolved by no later than the end of 2011. If such a situation transpires that an EPBC Act assessment process has to apply to forests where RFA reviews are outstanding then NES matters need consideration. More importantly consideration has to be given to the conservation and sustainable use of forest resources, to ensure long term and viable sustainable use, management and development of forest resources. This is the apparent obligation under the Convention for forest biodiversity.

Given the laxity of RFA reviews, IFA is also concerned about an apparent lack of monitoring, management and reporting information available for the Comprehensive, Adequate and Representative (CAR) reserve systems and their CAR values found in areas covered by RFAs. Management, monitoring and reporting of CAR values and CAR management are commitments embodied in the RFAs. These commitments are largely a State's environmental agency responsibility and many of these reserves contribute to the National Reserve System (NRS).

IFA advocates that the NRS, in particular the management of reserves in the NRS (including CAR reserves in RFAs) should be more fully accountable in terms of monitoring, management and reporting. These matters should be further explored and reviewed as part of the EPBC review when looking at the subject of "Protected Area" found in Chapter 14 of the Interim report. The NRS Program is assisting with the establishment and maintenance of the CAR system of terrestrial reserves in Australia (paragraph 14.16) however what is the Program doing about ensuring that these reserves are being managed well, best-practice is being applied and that monitoring and research systems are in place to enable appropriate information collection on important biodiversity conservation or heritage attributes for the purpose of reporting and adaptive management. For Parties to the CBD monitoring, management and reporting are features of the obligatory requirements under the Convention (Article 7 together with Article 8a-c) and its Protected Area work program.

## Identifying and monitoring biodiversity

Part 12 Division 1 of the Act covers identifying and monitoring biodiversity. However the Interim Report appears not to adequately cover this very important matter. Inventory, monitoring and reporting of biodiversity is very important for the conservation, management and sustainable use of biodiversity. This subject is an international obligation in the CBD through Article 7 that is tied particularly to Articles 8 - Conservation and 10 - Sustainable Use (Box 2). Related to the Article 7 commitment and EPBC Act in the case of forests is Section 10A (1) of the Regional Forest Agreements Act 2002 that states “The Minister (Agriculture, Fisheries and Forestry Minister) must cause to be established a comprehensive and publicly available source of information: (a) for national and regional monitoring and reporting in relation to all of Australia's forests; and (b) to support decision-making in relation to all of Australia's forests.” This Section is not being fully implemented given the known data gaps reported in the State of Forests Report 2008.<sup>21</sup>

### Box 2 ARTICLE 7 - Identification and monitoring

Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.

(Source CBD Handbook; Secretariat of the Convention on Biological Diversity (2005).)

EPBC Act Section 171 (1) “*The Minister may, on behalf of the Commonwealth, co-operate with, and give financial or other assistance to, any person for the purpose of identifying and monitoring components of biodiversity*” does not provide IFA with confidence that the Convention obligation as articulated in Box 2 will be met as there is little commitment through the use of “may” in the legislation. To ensure that the obligation is met the legislative intent has to be stronger. IFA advocates that the legislation should be amended to ensure that national systems of inventory and monitoring of biodiversity conservation and sustainable use are implemented within the next few years. The disbanded National Land and Water Audit<sup>22</sup> went part way towards helping to achieve the Convention Article 7 obligation. The Audit process was a valuable natural resource management information asset administered by Land and Water Australia. IFA suggests that the Audit should be reinstated, adequately resourced to collect management relevant information on biodiversity and environment (land and water) attributes. It should be administered by those Commonwealth Ministers responsible for agriculture, biodiversity conservation, environment, forestry, land resource management and water.

Equally requirements associated with Section 10A of the RFA Act should be implemented quickly to support strategic national inventory and monitoring of forests and the biodiversity, resources and uses associated with

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<sup>21</sup> Montreal Process Implementation Group for Australia (2008) Australia's State of the Forest Report 2008. Bureau of Rural Sciences, Canberra.

<sup>22</sup> The National Land and Water Resources Audit (the Audit) commenced in 1997 to improve land, water and vegetation management by providing better information to resource managers. The Audit ended on 30 June 2008 [National Land and Water Resources Audit Web Site](#).

them. Gerrand and Clancy (2007)<sup>23</sup> discuss the requirements for an Australian Continental Forest Monitoring Framework that would support sound policy decision-making and sustainable management of forest resources. Such a Framework is required to meet the growing requirements for forest information to be communicated to the Australian community and forest stakeholders as well as addressing the increase in domestic and international reporting commitments. The Framework would also help provide information in monitoring trends in forest values in RFA areas and generally the effects of climate change impacts on forests. There is both a domestic and international requirement and obligation to monitor, manage and report on our forest's biodiversity and forest resources; particularly through the CBD obligation Article 7 and related Forest Biodiversity decision (COP6, Decision VI/22) and Section 10A of the RFA Act. Gerrand and Clancy report that the Continental Forest Monitoring Framework has been trialed and estimated the cost over 5 years in 2005 to be \$14-15 million for implementation and data capture.

The EPBC Review should investigate how well Australia is meeting the Article 7 obligation and consider how best the obligation should be incorporated into the EPBC Act. Equally the Review should recommend that the Continental Forest Monitoring Framework should be implemented nationally to inventory and monitor forest values, particularly attributes of biodiversity important for ecosystem services (an integral component of biodiversity), biodiversity conservation and sustainable use of biodiversity. This would satisfy forest-related inventory and monitoring requirements and obligations associated with the CBD, the RFA Act Section 10A requirements as well as identification and monitoring requirements for the EPBC Act.

### **Environmental Impact Assessment and Strategic Environmental Assessment**

Regional Forest Agreements went through an extensive process of comprehensive regional assessment (CRA) as discussed earlier in our submission. The CRA process satisfies the international understandings and obligations associated with Article 14 of the Convention on Biological Diversity. RFAs and CRAs are a very good model and example of strategic environmental assessment.

Environmental assessment provisions of the EPBC Act apply to actions likely to have a significant impact on either the whole environment or a defined protected matter, particularly matters of National Environmental Significance (Interim review Chapter 3 and 4). Strategic assessments are discussed in Chapter 10 of the Interim Report and describe the potential conduct of strategic assessments. Part 10 of the EPBC Act covers strategic assessments.

Section 146 of the Act indicates that the Minister “may” agree to a strategic assessment and that the assessment may be agreed “in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3”. Economic and social matters and the principles of ecologically sustainable development are matters to be considered in the formulation and approval of strategic assessments (Section 146F).

Section 28 states the “Commonwealth or a Commonwealth agency must not take inside or outside the Australian jurisdiction an action that has, will have or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction” and the environment is a protected matter for the purpose of Part 3 (Section 34).

For the purpose of Article 14, the Biodiversity Convention's Conference of Parties (COP) at its sixth meeting agreed guidelines for environmental impact assessment and strategic environmental assessment for incorporating biodiversity-related issues into environmental impact assessment legislation (Decision VI/7 and Annex). Coverage of environmental impact assessment and strategic environmental assessment would include matters

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<sup>23</sup> Gerrand A and Clancy T (2007) Why Australia needs a national forest monitoring system: Combining the Continental Forest Monitoring Framework and Long Term Ecological Research network into a broader Terrestrial Ecosystem Research Network. Paper presented at Australia and New Zealand Institute of Foresters conference, Coffs Harbour, 3-7 June 2007. Digital version 2008 [http://www.forestry.org.au/pdf/pdf-public/conference2007/papers/Gerrand\\_sept\\_08.pdf](http://www.forestry.org.au/pdf/pdf-public/conference2007/papers/Gerrand_sept_08.pdf)

associated with the conservation, sustainable use and equitable sharing of benefits derived from biological diversity. In the Decision *strategic environmental assessment* is described as “the formalised, systematic and comprehensive process of identifying and evaluating the environmental consequences of proposed policies, plans or programmes to ensure that they are fully included and appropriately addressed at the earliest possible stage of decision making on a par with economic and social considerations”. Strategic environmental assessments should particularly apply to national government decision making that affect or impact on the environment (as defined in the Act).

To meet these guidelines the interpretation of actions associated with Section 28 in the EPBC Act should include decisions, and proposed legislation/regulation, policies, plans and/or programs and that these should be covered by strategic environmental assessments where they effect (i) international obligations, (ii) the conservation, sustainable use and/or equitable sharing of benefits derived from biological diversity, (iii) will have or is likely to have a significant impact on the environment and/or (iv) ESD principles and the balance of all relevant social, economic and environment considerations (refer Interim Report paragraphs 2.100 and 2.101).

The review should investigate how best to incorporate strategic environmental assessments into the Act to meet the guidelines agreed to at COP6. In particular the review should look to how Commonwealth decision-making, proposed legislation/regulation, policies, plans and programmes should include strategic environmental assessments as it applies to Section 28. Strategic assessment should be strongly linked to Section 28 of the EPBC Act where future decisions are made by the Australian Government in the form of Commonwealth decision-making, proposed legislation/regulation, policies, plans and programmes that have important environmental implications in the short, medium and long term on forests, scientific research<sup>24</sup>, land use management and other natural resource environments, ecological sustainable development issues and/or Australia’s implementation of international obligations associated with the environment.

### **EPBC Preamble**

Chapter two of the Interim report refers to a Preamble being included in the EPBC Act. IFA supports a Preamble as long as it reflected and referred to CBD obligations, ESD principles, balancing conservation, sustainable use and/or equitable sharing of benefits derived from biological diversity and supported ecological sustainable development and sustainability in natural resource management. This would help reflect and support the principles applied in RFAs.

### **The EPBC Act, the CBD, ecologically sustainable use and the Ecosystem or Landscape Approach**

The EPBC Act is the primary Australian piece of environmental legislation and implements and codifies international environmental obligations, particularly the legally binding obligations of the international instruments identified in the legislation of which the Convention on Biological Diversity is one. The Convention on Biological Diversity is the primary international legally binding instrument on biodiversity that imposes significant obligation and commitments on member country parties. This was articulated in a Statement from the Conference of Parties (COP) in 1994.

“The planet’s essential goods, ecological functions and services depend on the variety and variability of genes, species, populations and ecosystems. If humanity is to have a future on this earth, biological diversity must be conserved so that these functions and services are maintained. The current decline in biodiversity is largely the result of human activity and represents a serious threat to human development. Despite efforts to conserve the world’s biological diversity, its depletion has continued. The entry into force of the Convention provides an international framework through which to address this depletion which causes threats to ecosystems that are vital for the sustenance of human societies in all countries. By becoming Parties to the Convention, Governments have committed themselves to the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

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<sup>24</sup> Article 12 (research and training) of the CBD requires Contracting Parties to the Convention in 12(c) to “In keeping with the provisions of Articles 16, 18 and 20, promote and cooperate in the use of scientific advances in biological diversity research in developing methods for conservation and sustainable use of biological resources.”

The Convention on Biological Diversity is the primary international legal instrument for advancing the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of the use of genetic resources while recognizing the important role of other conventions to the objectives of the Convention.” <sup>25</sup>

The Interim Report in chapter 2 describes the relationship between the COAG Heads of Agreement and Commonwealth constitutional power to “ensure that international obligations relating to the environment are met by Australia”. IFA supports this and provides the following comment in relation to the Convention, ecologically sustainable use and the Ecosystem Approach. This subject matter should be considered further in your review.

The Convention on Biological Diversity’s three objectives of conservation, sustainable use and equitable sharing of benefits of biodiversity are translated into binding commitments contained in Articles 6 to 20 of the Convention.<sup>26</sup> Further intent, guidance and translation of these commitments are expressed in COP decisions. Transference of the CBD objectives of conservation and sustainable use and the legally-binding commitments are encompassed in and applied through the EPBC Act or its Regulations through references to meeting international obligations. It is unclear where the international obligations of the Convention finish. Does it include the articulation of decisions and guidance agreed to in COP decisions relating to Articles 6 to 20 and how these translate into the six thematic areas ((i) Inland Waters Biodiversity, (ii) Marine and Coastal Biodiversity, (iii) Agricultural Biodiversity, (iv) Forest Biodiversity, (v) Dry and Subhumid Lands Biodiversity, and (vi) Mountains Biodiversity) and cross cutting issues (e.g. Invasive Alien Species, Scientific Assessments, Ecosystem Approach, Indicators, Protected Areas, Strategic Environmental Assessment & Environmental Impact Assessment, Sustainable Use)? For example it is unclear how the decisions associated with the Ecosystem Approach (see Box 1, Appendix 1 and the CBD information associated with the Ecosystem Approach) should be considered in decision making associated with the Act. Similarly the Convention’s COP agreed the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (COP7 Decision VII/12. Sustainable Use (Article 10) Annex II); hence how do these Principles and Guidelines inform consideration and decision making under the EPBC Act? What is the standing of these Decisions in terms of “co-operative implementation of Australia’s international environmental responsibilities” Section 3(1e)? It is the IFA view that both the elaboration of the Ecosystem Approach and Sustainable Use as expressed in Decisions VII/11 and VII/12 should be a significant consideration and implementation reference in the operation of the Act.

The Ecosystem Approach and its elaboration as agreed to in Decision VII/11, is seen as fundamental to the Convention. At COP2 in 1995 in Decision II/8 the COP “Reaffirms that the conservation and sustainable use of biological diversity and its components should be addressed in a holistic manner, taking into account the three levels of biological diversity and fully considering socio-economic and cultural factors. However, the ecosystem approach should be the primary framework of action to be taken under the Convention”. It is very clear that conservation and sustainable use should be considered holistically and in a balanced way and that the ecosystem approach is a primary framework for progressing and considering obligations under the Convention and this was confirmed in the COP7 Decision VII/11 and its annexes and implemented in accordance with national legislation; hence the EPBC Act (see Box 1). Sustainable forest management is an important expression of the ecosystem approach as it is a means of applying the ecosystem approach to forests (refer Decision VII/11; Annex II)

**Box 1 Extract of COP7 Decision VII/11 - Ecosystem approach (from UNEP/CBD/COP/7/21 Page 11)**

2. *Agrees* that the priority at this time should be on facilitating the implementation of the ecosystem approach as the primary framework for addressing the three objectives of the Convention in a balanced way, and that a potential revision of

<sup>25</sup> Statement from the Conference of the Parties to the Convention on Biological Diversity to the Commission on Sustainable Development at its Third Session (Decision I/8, Annex, paragraphs 1-2 - COP1, 1994).

<sup>26</sup> Secretariat of the Convention on Biological Diversity (2005). Handbook of the Convention on Biological Diversity Including its Cartagena Protocol on Biosafety, 3rd edition, (Montreal, Canada. p. xxiii. Available at <http://www.cbd.int/convention/refrhandbook.shtml>

the principles of the ecosystem approach should take place only at a later stage, when the application of the ecosystem approach has been more fully tested;

3. Welcomes the implementation guidelines and annotations to rationale as outlined in annex I to the present decision and calls on parties and other governments to implement the ecosystem approach, keeping in mind that in applying the ecosystem approach, all principles need to be considered, with appropriate weight given to each, in accordance with local conditions, and keeping in mind also that the implementation of the ecosystem approach and all principles need to be considered as voluntary instruments and should be adapted to local conditions and implemented in accordance with national legislation;

5. Welcomes the progress in developing the practical principles, operational guidance and associated instruments for sustainable use (the Addis Ababa Principles and Guidelines), which are based on the ecosystem approach as their overarching conceptual framework;

7. Notes that sustainable forest management, as developed within the framework established by the Rio Forest Principles, can be considered as a means of applying the ecosystem approach to forests (see annex II to the present decision). Further, there is potential for the tools developed under sustainable forest management to be used to help implement the ecosystem approach. These tools include *inter alia* the criteria and indicators developed under various regional and international processes, national forest programmes, “model forests” and certification schemes (as relating to decision VI/22 on forest biodiversity). There is substantial potential for mutual learning among those implementing both the ecosystem approach and sustainable forest management;

8. Notes that, in addition to sustainable forest management, some existing approaches, which are also relevant to other environmental conventions, including “ecosystem based management”, “integrated river-basin management”, “integrated marine and coastal area management”, and “responsible fisheries approaches”, may be consistent with the application of the Convention’s ecosystem approach, and support its implementation in various sectors or biomes. Implementation of the ecosystem approach in various sectors can be promoted by building upon the approaches and tools developed specifically for such sectors;.....

To meet Australia’s obligations under the Convention concerning sustainable use of biodiversity the Australian Government has definite interests and obligations and these need to be addressed in the Review. The Review needs to specifically look at how the Act considers and treats sustainable use and “ecologically sustainable use” to meet the objects of the Act, the intent of the Convention and hence the international obligations under the Convention as it is not currently apparent in the Interim Report. For example the Review needs to consider how does the Act consider and apply the “Addis Ababa Principles and Guidelines obligation and frameworks for sustainable use of components of biodiversity, including the concept of sustainable forest management,” as outlined in the COP7 Decision VII/ 12 paragraph 1 and 2

“1. *Adopts* the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, as contained in annex II to the present decision;

2. *Invites* Parties, other Governments and relevant organizations to initiate a process for the implementation of the Addis Ababa Principles and Guidelines, in accordance with Article 10 of the Convention which provides that Contracting Parties undertake specified actions as far as possible, and as appropriate, at the national and local levels, and in line with Article 6 of the Convention on Biological Diversity, taking into account obligations under other international agreements and conventions and existing frameworks for sustainable use of components of biodiversity, including the concept of sustainable forest management, e.g., by developing pilot projects, with a view to:

(a) Integrating and mainstreaming the Addis Ababa Principles and Guidelines into a range of measures including policies, programmes, national legislation and other regulations, sectoral and cross-sectoral plans and programmes addressing consumptive and non consumptive use of components of biological diversity, including plans and programmes addressing the removal or mitigation of perverse incentives that undermine the conservation and sustainable use of biodiversity, as deemed necessary by individual Parties; ...”

Sustainable use of biodiversity is an obligatory matter in the CBD (Articles 6, 7, 8 and 10). Parties shall “ ... Integrate consideration of the conservation and sustainable use of biological resources into national decision-making” is an obligation arising from Article 10(a). While this obligation is captured in the objects of the Act, how this obligation is being implemented through the Act and its mechanisms and regulations needs to be better

demonstrated and articulated. For example Section 28 of the Act “protects” the environment from Commonwealth action through “Requirement for approval of activities of Commonwealth agencies significantly affecting the environment”, however does it meet the Article 10 obligation in integrating considerations of the conservation and sustainable use of biological resources into national decision-making. This seems to be an implementation gap in the EPBC Act that needs to be rectified. Hence, the Review should critically look at how sustainable use (ecologically sustainable use and management) is considered and implemented within the context of the EPBC Act.

IFA is firmly of the view that the intention of RFAs has been implemented widely and that this has more than adequately catered for provisions of the EPBC Act. The problem is the lack of reporting which can lead to scepticism and doubt in the Australian community. Sustainable use of resources is also an obligation for a wealthy nation such as Australia to avoid transference of resource use to other nations with less stringent environmental controls.

Dr Peter Volker FIFA RPF MAICD  
President

**ANNEX**

### **Extracts from IFA policies.**

#### **Policy 1.4 Timber Production & Biodiversity**

The IFA considers that the maintenance of biological diversity is an essential component of sustainable native forest management. Biodiversity can be maintained and enhanced in native forests and plantations managed for timber production through the application of science based Codes of Practice, forest management plans and forest certification standards.

#### **Policy 2.2 Management of Private Native Forests**

The potential environmental and economic contribution from private native forests is often under-valued by landholders and the community. As forest production from public forests is reduced there will be increasing demands and opportunities for private forests. In most Australian States and Territories there are inappropriate government policies and inadequate institutional and commercial support for the management of private native forests. The IFA considers that private native forests provide important multiple benefits to the community and that improved institutional support, appropriate incentives and payments for environmental services are opportunities to facilitate sustainable management of these forests.

#### **Policy 2.3. Plantations in Rural Landscapes**

The IFA recognizes that well planned and managed plantations can generate substantial economic, environmental and social benefits but may also have negative impacts. The IFA advocates the continued development of plantations in rural landscapes providing that this development balances environmental, social and economic impacts. Native forests should not be cleared for plantation establishment where this would compromise regional conservation and catchment management objectives. Plantation development on private land should be assessed against criteria, which also apply to alternative land-uses.

#### **Policy 2.4. Clearing of Native Forests for Plantations**

The IFA supports and encourages:

- Protection of regionally significant areas of native vegetation;
- Scientifically based identification and assessment of the conservation value of remnant native vegetation;
- Conservation of appropriate areas of native vegetation within plantation developments, including riparian zones, steep slopes and conservation corridors;
- Adherence to appropriate legislative processes governing the clearance of native vegetation.

#### **Policy 2.6. Forest Management Planning**

Forests have multiple and diverse values that need to be integrated into plans incorporating the principles of ecologically sustainable forest management (expressed in the Montreal criteria). Strategic forest management plans guide forest management activities and takes into account the range of forest uses and values. The IFA advocates the development and implementation of strategic and operational management plans on all forest land tenures to guide sustainable forest management and provide for the diverse range of uses and values.

Management plans for public owned forests should incorporate community values in the planning process. Private forest management planning should, as a minimum standard, incorporate public values expressed in government policy and regulations.

**Policy 2.7. Timber Production in Native Forests**

The harvesting of native forests outside nature reserves is an appropriate long term forest use where management embodies the principles of ecologically sustainable forest management. The IFA advocates that areas of public and private native forests beyond the National Reserve System be managed to integrate timber production with other forest services while maintaining ecological sustainability and other forest values.

**Policy 2.8. Forest Regulation and Codes of Practice**

Codes of Forest Practice are an effective tool for the regulation of forest management, to meet the expectations of the community and to ensure that forest management activities, such as timber harvesting and roading, contribute to the maintenance of forest values. The IFA considers that all significant forest activities should be subject to codes of forest practice, irrespective of land tenure, that are effectively implemented, regularly reviewed and independently audited. The IFA advocates the ongoing development, implementation, auditing and review of Codes of Forest Practice and associated forest regulations.

**Policy 6.1 Environmental services**

Forests produce a wide range of non-wood products and services that have been traditionally treated as public goods with no explicit financial value. These include production of clean air, carbon sequestration, ground and surface water management, land rehabilitation, erosion control and biodiversity enhancement. The IFA advocates development of mechanisms to value and integrate of the range of environmental services into forest management plans and proper consideration of these values when land use decisions are made.

**Policy 8.1. Wood for bioenergy**

Wood and other biomass are potentially renewable energy sources that can reduce greenhouse gas emissions when used to replace fossil fuel energy. The IFA supports the use of wood from both native forests and plantations, from all land tenures, for biomass energy when sourced from sustainably managed forests.