SOUTH EAST FOREST RESCUE

stoppin the choppin

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Submission on terms of reference of the assessment of Riverina Red Gum Forests.

"The RFAs are widely perceived in the scientific community to have failed to deliver the intended protection for environmental, wilderness and heritage values that state and federal governments committed to when they signed the National Forest Policy in 1992".

SEFR takes a firm stand on environmental protection of the native forest estate and expresses deep alarm at the welfare of forest-dependent threatened species and the ongoing cumulative impacts of industrial degradation of native forests that are exacerbating extinction rates and destroying soil, water, and carbon capacity.

With the Red Gum assessment turning into another *Regional Forest Agreement*, we have little faith in its validity. Initially we question, why has this move taken so long since the initial round of RFA implementations?

Historic RFA outcomes are widely discredited by the scientific and conservation community. The RFA model has proven to be an emphatic failure. If the Red Gums Region RFA proceeds along the lines of previous agreements the assessment of Comprehensiveness will be based on a classification of forest ecosystems that fails to recognise ecologically significant gradients and differences and there will be a failure to apply the criteria of Adequacy and Representativeness which will result in the distinctive environmental characteristics of the remnant Red Gum forests, that make it a high productivity refugia, being ignored.

We question the rapidity of this assessment, if solely in the public interest, the haste is to lock in a landmark 460,000 hectare conservation outcome. Given that the area has the highest level of clearing of all NSW bioregions with only 16% of the total study area containing native vegetation, it is essential that all remnant native forest remain standing and protected as refugia habitat across the landscape.

Evidence given to a Senate Committee revealed that the Federal Government believes that controversial patch-clearfelling, or Australian Group Selection silviculture in the River Red Gum forests is damaging the ecological character of the Central Murray Ramsar wetland site.

The Ramsar site is composed of three geographically discrete but interrelated units: the Millewa Forests, the Werai Forests, and the

Koondrook Forests and covers 83,966 hectares on the floodplain of the Murray River. It is dominated by Red Gum (*Eucalyptus camaldulensis*) forest and woodland, wet grasslands and marshes.

Timber harvesting and active forest management in various forms has been a feature of the River Red Gum Forests for up to 150 years and has [also] profoundly affected the structure and composition of the forests. (EIS vol3 p26.) These management systems have not delivered the ecologically sustainable forest management criteria relating to the maintenance of natural community patterns and ecological processes, the maintenance of productive and healthy forests, the restoration of degraded ecosystems, and ecologically sustainable harvests.

Riparian vegetation makes a significant contribution to productivity and carbon accumulation in aquatic ecosystems. Floods mobilise leaf litter in the form of particulate and dissolved organic carbon into the riverine food web. Many native fish species, including the threatened Trout Cod and Murray Cod, rely on aquatic woody debris for habitat. Hollows and spouts in River Red Gum provide important breeding habitat for wetland and forest birds. Fifty-six hollow using species breed extensively in the Central Murray group of River Red Gum forests, including four listed threatened species (Superb Parrot, Barking Owl, Squirrel Glider and Southern Myotis). Hollow-bearing River Red Gums are important breeding habitat for the threatened Superb Parrot (*Polytelis swainsonii*) in the Central Murray and the Regent Parrot (*Polytelis monarchoides*) farther west along the Murray River. Colonial and solitary nesting waterbirds also build stick nests in River Red Gum. During suitable flood events colonial nesting waterbirds may form breeding aggregations of many thousands of individuals. (EIS vol3 pp26-27.)

The site supports at least 11 threatened species listed by the World Conservation Union or afforded protection under the EPBC Act. The NSW Central Murray State forests provide a large expanse of habitat for these species, linked through an unbroken riparian corridor along the Murray and Edward Rivers. They contribute to the viability of local populations by increasing the overall extent of intact habitat in the region. Thus the site provides an important habitat network in conjunction with the riparian corridors and the Victorian Barmah and Gunbower Ramsar wetlands and comprises a significant resource for local and regional populations of native threatened species. With regard to the Trout Cod (*Maccullochella macquariensis*) in particular, the population supported by the site is a significant proportion of the global population. The local population of the Trout Cod is one of only three self-sustaining populations remaining in Australia. A further 51 species are of conservation significance at a State level or are Federally listed migratory species. The site is adjacent to Ramsar listed wetlands in Victoria (Barmah Forest and Gunbower Forest) and thus enhances the

viability of at least 28 flora and fauna species that are listed under Victorian but not NSW threatened species legislation. It provides a habitat network for at least 27 fauna species listed under NSW threatened species legislation, and 38 fauna species listed under Victorian threatened species legislation. The site has been recorded as containing or as likely to contain at least 18 of the 35 species of native freshwater fish species predicted to occur in the Murray-Darling Basin and more than 4000 aquatic invertebrate species. Three of the native species are listed as Endangered on the schedules of the EPBC Act, six are classified as either Endangered or Vulnerable on the IUCN Red List and the site includes part of the aquatic community in the natural drainage system of the lower Murray River catchment, listed as an endangered ecological community under the *NSW Fisheries Management Act 1994*. (EIS vol3 p31.)

A spokesman for the Federal Department of the Environment, Water, Heritage and the Arts told the Senate Committee hearing, 'the concern is that clear felling in patches destroys the continuity of the tree canopy and that has a very significant impact on the ecological character of the Ramsar wetland, obviously where it is occurring within the Ramsar wetland, and elsewhere. By disrupting the continuity of the tree canopy it is having a significant impact on the habitat of nationally listed threatened species.' Despite this finding, no formal action has been taken by the Federal Government, and patch-clearfelling in the Ramsar site, and in habitat of the nationally threatened Superb Parrot and Regent Parrot, continues.

The EIS is plainly identified as an inadequate assessment by noting that: "In assessing the significance of impacts on affected entities it has been assumed that the proposed activity would be conducted in the context of Forests NSW's adaptive forest management regime, involving existing and proposed ongoing targeted research and monitoring to identify impacts on threatened biota or their habitats and the subsequent modification of management practices in order to avoid these impacts as far as is practicable. An assessment of the suitability of this monitoring and ongoing research has not been undertaken here in terms of its ability to detect the appropriate level of change within any given location or whether the results are robust and reflective of what is occurring on the ground." (EIS, vol 3, page 32)
Ever since the RFAs began the word "practicable" has been thoroughly abused and perverted. As a real world example of adaptive management, in the two weeks the Red Gum Forest Action group spent on the ground in Millewa SF compartment 8 there were no sightings or otherwise of arboreal mammals - no possum raided the kitchen. This is a true indication of the effects of logging that forest.

SEFR believes that current State management has gone beyond its scope

as a public duty, has broken it's pact with the community and is needing immediate reform. We recommend indigenous ownership of all public native forest, complete stop on private land deforestation, complete transfer of wood products reliance to plantation timber industry and salvage recycled hardwood timber industry output, single authority for national native forest conservation modelled on the New Zealand example, immediate nation-wide program of catchment remediation and native habitat reforestation. We assert urgency is needed in the forest reform outlined.

As an indication of what can be 'overlooked' on the ground of forestry operations, in Barmah State forest on the other side of the river logging devastated more than half of the endangered Superb Parrot's protected nesting colony, because of a bureaucratic bungle by the Department of Sustainability and Environment.

Staff forgot to check maps before approving the logging coupe. The logging operation intruded into the protection zone for superb parrots, because that (protection zone) hadn't been recorded in the Coupe Information System, and the forestry officer who would normally have known to check the maps was away ill.

The approval for the logging operation was granted in 2003.

As a result, from February to June in 2005 loggers felled almost 6000 tonnes of river red gums in about 60 per cent of one of the largest superb parrot nesting colonies in the forest. In mid-June botanical consultant Doug Frood visited the forest who then made a formal complaint. When a department staff member investigated Mr Frood's complaint on June 29, he realised that the loggers had been allowed deep into a 35-hectare protected zone.

Terms of Reference 1 a)

To set as terms of reference the possibility of a regional forest agreement under s15 of the FNPE Act shows how out of touch the NSW government is with the rest of the world.

Regional Forest Agreements were endorsed by the Commonwealth on the basis that the States had conducted a thorough environmental assessment of their forests, which they had not. The data was either flawed or non-existent, as is the *Harvesting and associated road work operations in south western NSW EIS for the Riverina.* The information available comprised of 24 published reports and other 'grey' literature (unpublished Forests NSW research and internal reports).

Areas that fell under these RFAs were made exempt from the EPBC Act on the basis that environmental assessments had already been undertaken and that environmental considerations were contained in the RFAs, which they are not.

Scientists became deeply concerned when the political decision was

made to further modify the RFA criteria so that the scientifically-based criteria were no longer independently applied as a first step in establishing an 'Ecological Bottom Line.'
This was a crucial decision as it was very unlikely that any RFA would deliver ESD, as the modified criteria allowed ecological values to be traded off against economic and social values.

The content, adaptability and enforceability of RFAs is questionable. There is no public participation in the ongoing implementation of RFAs, there is no oversight by the Commonwealth, there is no assessment where the operations of a forestry action result in net greenhouse gas emissions of greater than 25,000 tonnes per year, and there are no requirements to consider environmental impacts.

The *Forestry and National Park Estate Act 1998* (NSW) has not delivered effective outcomes. If an area is covered by an RFA then the FNPE Act states at s36 that if logging or roading is in an area covered under the IFOAs, Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply, an environmental planning instrument under the EPA Act cannot 'prohibit, require development consent for or otherwise restrict forestry operations' and in (5): this applies to an environmental planning instrument made before or after the commencement of this section. Forestry operations cannot be declared to be a project under Part 3A of the EPA Act, an order under Division 2A of Part 6 of the EPA Act does not have effect, any approval of forestry operations that is in force under Division 4 of Part 5 of the EPA Act has no effect during any period that Part 5 of that Act does not apply to the forestry operations, and any development consent for forestry operations that is in force under Part 4 of the EPA Act has no effect during any period that development consent under Part 4 of that Act is not required for the forestry operations.

Stop work orders and interim protection orders of the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995* do not apply. An order under section 124 of the *Local Government Act 1993* does not have effect. At s39 an area in which forestry operations authorised by an IFOA may be carried out cannot be proposed or identified as, or declared to be, a wilderness area under the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974.*
At s 40 proceedings may not be brought if the breach is: a breach of the FNPE Act (including a breach of any forest agreement), a breach of an IFOA (including a breach of the terms of any licence provided by the approval), a breach of an Act or law that arises because any defence provided by any such licence is not available as a result of a breach of the licence, the Act that includes the statutory provision (including a breach of an instrument made under that Act) if the breach relates to forestry operations to which an IFOA applies. Section 40 also exempts the Act from: a provision of an Act that gives any person a right to institute proceedings in a court to remedy or restrain

a breach (or a threatened or apprehended breach) of the Act or an instrument made under the Act, whether or not any right of the person has been or may be infringed by or as a consequence of that breach.

When the legislation was introduced by the government the community was given assurances that:

The agencies which currently have enforcement and compliance powers will continue to have those powers and continue to use them to ensure that the licences are adhered to.

Despite numerous legitimate breaches referred to the Department of Environment and Climate Change by various communities, there has not been a prosecution for breaches of any regulation on the South Coast since the FNPE Act was introduced contrary to Section 2 of the *Interpretation Act 1987 (NSW)* which states: In any Act or Instrument, the word 'shall', if used to impose a duty, indicates that the duty must be performed."

A contravention of the terms of a relevant licence makes the person carrying out the forestry operations liable for offences for which the licence provides a defence (eg. damage to critical habitat of threatened species under the NP&W Act 1974; offence of polluting waters under the POEO Act 1997, but not if the work is 'authorised'.

A much oft favoured quote by Forests NSW and DECC EPRG is found in the EPA *Prosecution Guidelines*:

It has never been the rule in this country … that suspected criminal offences must automatically be the subject of prosecution.

In fact the full quote from Sir Hartley Shawcross goes on to say:

Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should … prosecute "wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required *in the public interest*."

Sheahan J held in *EPA v Forestry Commission (1997)* that:

The Forestry Commission, although gaining a profit from its activities, carries out a function in the public interest, and the public looks to the public body involved in the industry to set some standard.

Mr Justice Sheahan also held that:

The forestry industry must be persuaded to adopt preventative measures because the potential for harm to the environment is great, and is a public concern reflected in the relevant legislation.

Section 25b of the FNPE Act states the purpose of the IFOAs are:

…for the protection of the environment and for threatened species conservation.

IFOAs override the licensing requirements of the *Protection of the Environment Operations Act* and the *Threatened Species Conservation Act.*

The number of threatened and endangered species has risen dramatically since the FNPE Act was signed and many threatened and endangered flora and fauna species are at extreme risk from current

logging operations. The Scientific Committee's figure for NSW species, populations or ecological communities threatened with extinction in 2009 is 1035. This figure, when compared to the 1998 figure of 833 is the most indicative of the FNPE Act s 36, 37, 38, 39 and 40s effect on our environment.

DECC's Environment Protection and Regulation unit is severely understaffed, having only two people to police the whole of NSW state forests. It was a condition under the FNPE Act that DECC 'continue to enforce the conditions' of the Act. Recent responses to forest auditing breaches have resulted in an apparent unenforceability and lack of compliance with the FNPE Act. SEFR was informed:

"there is some difficulty in making a determination on the suitability of trees selected for retention after a harvesting event."

This situation is wholly due to the IFOA being riddled with grey-wording, myriad loopholes and allowances the forestry industry has white-anted into the prescriptions; making conservation bottom priority and Department of Primary Industries output high priority. The promised maintenance of the enforcement of the FNPE Act has not materialised and has been budgeted to redundancy status.

The output to date of regulatory enforcement actions in no way reflects the rate of non-compliance. On ground assessment evidence suggests that non-compliance rates are now running at *four per hectare* of forest logged, that is, over ten percent of all areas logged are in breach.

In Mogo State Forest DECC took no further enforcement action against Forests NSW for a breach when told by Forests NSW that:

Forests NSW did acknowledge that whilst some of the trees marked for retention did not strictly meet the requirements of hollow-bearing, an adequate number were retained across the landscape when unmarked trees were included in the count.

There is no prescription in the Southern Region IFOA allowing unmarked trees to be used in habitat tree retention counts. DECC EPRG are currently resorting to sending Forests NSW officers to investigate breaches. Therefore it should come as no surprise that when the perpetrator of the crime is sent to report on the crime the result is no evidence of the crime.

The NSW Scientific Committee made a determination in 2007 that the loss of hollow-bearing trees is a key threatening process. During forestry operations thousands of hollow-bearing trees per week are routinely destroyed. Representations have been made to the Minister recommending changes to forestry operation's prescriptions to ameliorate this environmental impact but no change has been made to on-ground forestry activities to prevent this on-going loss.

Even though the RFAs are not law, they are merely agreements, Forests

NSW still must comply with it's obligations under the RFAs in order to get an exemption from the EPA Act and TSC Act's requirements. In *Brown v Forestry Tasmania* Marshall J ruled that as Forestry Tasmania had not complied with the RFA it was not exempt from the EPBC Act and even though the case was overturned on appeal, the judgment still stands. If the Federal Court decision was brought down in NSW at this time, then all NSW forestry operations would have to cease. Forests NSW does not adhere to the current prescriptions, which are inadequate, and on the ground there is little or no adherence to these prescriptions by logging contractors.
The FNPE Act is currently under review. It seems pre-emptive and certainly premature to have, as terms of reference, an Act whose regulations are in question.

Terms of Reference 1 b)

We believe the RFA process constitutes an abandonment by the Commonwealth of its responsibilities for forests. Under section 38 of the *Environment Protection Conservation and Biodiversity Act 1999* (Cth) the Commonwealth undertakes to refrain from exercising its environmental legislative powers for the duration of the Agreement (2023). DAFF believes there are no requirements within the RFAs imposing a legally enforceable obligation upon the States to ensure the protection of species or ecological communities listed under the EPBC Act. DAFF further commented that there would be no legal consequences if an RFA operation caused a species to become extinct, provided the actions were taken in accordance with the RFAs.
For comprehensive review of the EPBCA see the submission by the Australian National Environmental Defenders Office.
Again we state that legislation that is currently under review is an unstable instrument to hang terms of reference on.
If the aim is to impose an RFA regime on the Red Gum area so as to halt forest conflict and protest then, like the rest of the RFA areas-NSW, Vic and Tasmania, the aim will fail and it is erroneous to suggest otherwise. There have been sixty eight blockades and protests in Southern NSW since the introduction of the RFAs and the cost to the State has been extraordinary in both policing and court system terms. The protests in East Gippsland and Tasmania are continuous. The only saving to the State is in court costs and EIS preparation costs which are minimal when compared to $12,757 for one day in Bega, and $288,000 total ($46,971 in overtime) for a seventeen week blockade. The last Supreme Court action resulted in Forests NSW having to pay over $30,000 in costs. The conflict has not disappeared and the fact that the police force are used to enforce the breaches of the Act and it's subordinate 'regulations' is a democratic anomaly.

Terms of Reference 2

Conservation, protection, economic and ecological sustainable use of public land in the bioregion.

In the latest research Professor Richard Kingsford, Professor Brendan Mackey and a think tank of twelve other scientists state:

Loss and degradation of habitat is the largest single threat to land species, including 80 percent of threatened species.

The greatest threats to Australia's biodiversity are caused by broad-scale land clearing and forestry operations including establishment of plantations and fire management practices, yet these industrial forestry practices continue to remain exempt from legislation.

Ecologically sustainable development

Before proceeding erroneous and mistaken definitions of ESD must be clarified. The definition of ecologically sustainable development had its origins in the report of the World Commission on Environment and Development, *Our Common Future.* Development was defined as sustainable if:

"It meets the needs of the present without compromising the ability of future generations to meet their own needs."

In the international community the term is 'sustainable development.' In Australia Bob Hawke had need to place the word 'ecological' in front of the phrase as voracious pillagers of the natural environment believed they now had carte blanche to demolish the environment.

The definition currently in place is contained within the *Protection of the Environment Administration Act* at s 6(2):

Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration

There is no genuine attempt to implement and enforce the Ecologically Sustainable Forest Management principles in any diligent manner.

Foresters have eagerly endorsed part of Principle 1 of the UN *Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* which states:

1. (a) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies…

But the Principle goes on to state:

And have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

The five(5) principles of ESFM are:

1. Maintain or increase the full suite of forest values for present and future generations across the NSW native forest estate;

Clear felling, under whatever guise put forward by FNSW spin doctors, the demise of species and the water shortage are all a breach of the principles of intergenerational equity. Australia's ratification of various international human rights instruments like the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights* places an obligation under international law to ensure that human rights are protected, and Australia has agreed to 'respect, protect and fulfil' these rights. Principle human rights which are subject to effects as a result of climate change are; the right to life, the highest standard of physical and mental health and the right to water.

2. Ensure public participation, access to information, accountability and transparency in the delivery of ESFM;

For FNSW record of adhering to principle 2 see *Watt v Forestry Commission* and *Digwood v Forestry Commission.*

There is no environmental democracy and no consultation in areas covered by the RFAs. Individuals or communities call a meeting, the community objects, Forests NSW log regardless. The rights of public participation is limited to making submissions to the state and federal governments if the various pieces of legislation come up for review.

3. Ensure legislation, policies, institutional framework, codes, standards and practices related to forest management require and provide incentives for ecologically sustainable management of the native forest estate;

The FNPE Act and subordinate legislation provides incentives for unlawfulness without fear of capture. When penalties are low, and the possibilities of being found out are light, people take risks. Regulatory systems rely upon the enforcement of statutory requirements. When there is no enforcement contraventions go unpunished and the incentive for compliance is nil. "Sustainable use" means the use of components of biological diversity 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 and aspirations of present and future generations. Despite the rhetoric on 'sustainable forestry', FNSW has not been effective in protecting forest species and habitats and they do not comply with the principles of ecologically sustainable development and the conservation of biodiversity. SEFR prefers Professor David Lindenmayer's definition:

Sustainability is a weasel word. [the word usage should be to] perpetuate ecological integrity.

4. Apply precautionary principles for prevention of environmental degradation;

The Precautionary Principle is based on German and Swedish environmental laws and policies. The relationship between economic development and environmental degradation was first placed on the international agenda in 1972, at the UN Conference on the Human Environment, held in Stockholm. After the Conference, Governments set up the United Nations Environment Programme (UNEP), which today continues to act as a global catalyst for action to protect the environment.

By 1983, when the UN set up the World Commission on Environment and Development, environmental degradation, which had been seen as a side effect of industrial wealth with only a limited impact, was understood to be a matter of survival for developing nations. Led by Gro Harlem Brundtland of Norway, the Commission put forward the concept of sustainable development as an alternative approach to one simply based on economic growth. This gave rise to the *Ministerial Declaration of the Second International Conference on the Protection of the North Sea 1987*.

After considering the 1987 Brundtland report, the UN General Assembly called for the UN Conference on Environment and Development (UNCED). The primary goals of the Summit were to come to an understanding of "development" that would support socio-economic development and prevent the continued deterioration of the environment, and to lay a foundation for a global partnership between the developing and the more industrialized countries, based on mutual needs and common interests, that would ensure a healthy future for the planet.

The Precautionary Principle:

Principle 15. Where there are threats of serious or irreversible environmental damage full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment.

As McClellan CJ stated in *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC 399 citing Trenorden J et al in *Conservation Council of South Australia v Development Assessment Committee and Tuna Boat Owners Association* (No 2)/ [1999] SAERDC 86

"Thus, the inherent uncertainty or bias in the scientific method combined with (generally speaking) a perennial lack of resources and a consequential lack of

data to assist scientists, leads inevitably to the conclusion that there is likely to be an incomplete understanding of the full extent of the environmental impacts of any particular act or activity proposed. That prospect, supported by empirical observations gathered world-wide, led to the development of the precautionary principle as a commonsense approach to avoid or minimise serious or irreversible harm to the Environment."

In other words if you are unsure of the consequences or effects your actions will have in respect to environmental damage do not act.

5. Apply best available knowledge and adaptive management processes.

It is absurd to allege that these principles are at the helm of native forest management, given what we have seen of day-to-day forestry operations. One of the biggest myths is that FNSW replant after logging native forests. This is very far from the truth. Once logged and burned the forests may take decades to regenerate or they might not regrow at all, and at any rate replanting is not sufficient to offset the biodiversity losses created by clearing because of lags in species becoming established and sustained differences in species composition. They are altered inexorably.

The government has not ensured the adoption of Ecologically Sustainable Forest Management practices, environmental safeguards have not improved and DECC has not ensured the maintenance of existing regulatory controls.

Nationally agreed criteria for a comprehensive, adequate and representative reserve system;

The Reserve system gazetted to date, along with the off-reserve protection measures of the IFOAs, are neither comprehensive, representative, or adequate to meet the needs of threatened species survival.

The RFAs do not provide adequate protection of threatened species. On the contrary, the court commented, in the Wielangta case, in relation to clause 68 of the RFA:

The question is whether cl 68 does require the State to [in fact] protect the species... In our view it does not. Clause 68 does not involve an enquiry into whether CAR effectively protects the species. Rather it is the establishment and maintenance of the CAR reserves that constitute the protection.

The verbiage of cl 68 supports this view. The State does not agree "to protect the priority species listed in Attachment 2 (Part A)". It agrees to protect them "through the CAR Reserve System".

Millions upon millions of taxpayer dollars were funnelled into consultants and workshops to produce a plethora of reports aiming to provide an up-to-date snapshot of the whole issue of native forest conservation and timber production. The timeframe for the CRA's meant that comprehensiveness became a misnomer - the quality of the reports produced left much to be desired from a scientific and social point of view. Besides the fact that ALL reports begin with a disclaimer that the information therein cannot be relied upon as factual, the key

conclusion from the bulk of the reports was that there was not enough scientific knowledge available about forests. For example:

The modelling project has highlighted some significant areas or species where there still exist gaps in quality data. As discussed throughout the report, a large number of the priority fauna species were lacking enough valid systematic records to enable presence-absence modelling. Although there were generally more presence-only records for each, some species still had insufficient records for valid modelling of any type.

Such species tended to be those that are cryptic or difficult to survey. The lack of flora records was even more evident, which resulted in limited modelling. In the future, it is recommend that further effort is put into systematic targeted surveying of these priority species to enable better presence-absence modelling.

The previous report concluded that the methodology for estimating the effects of logging management on catchment water yield provided a reasonable "best guess" that was unlikely to be much improved, even with the expenditure of considerable effort. This statement applies equally well to this study. Within the limitations of current data availability the methodology represents the current best understanding of the different factors that influence water quantity and quality from forested catchments. However, the absolute magnitude of the estimates are subject to considerable uncertainty.

These statements apply to the Red Gum assessment, which should, without doubt, trigger the Precautionary Principle.

It is notable that this latter report makes no mention of climate change, even though nine years earlier the Intergovernmental Panel on Climate Change completed its report on the greenhouse effect.

The impacts of drought and climate change on the forests and communities;

The preamble to the Intergovernmental Agreement on Murray-Darling Basin Reform (IGA) states:

The parties recognise that the extreme drought has exacerbated the Basin's environmental stress. Continued low flows and lack of natural flooding to Ramsar and other important environmental sites, including the Lower Lakes, Coorong, the Murray Mouth and the Murray Red Gum Forests, are resulting in serious environmental degradation.

Scientists advocate an approach based on maintaining ecosystem structure and function, and therefore ultimately protecting more species. Protecting key functional species and diversity within functional groups is a key way to do this thereby enhancing ecosystem resilience, so that they are able to maintain their
functions and processes.

There is much uncertainty on the effects of climate change but one of the certainties is that deforestation is one of the biggest causes of climate change.

The loss of natural forests around the world contributes more to global

emissions each year than the transport sector. Curbing deforestation is a highly cost-effective way to reduce emissions; large scale international pilot programmes to explore the best ways to do this could get underway very quickly.

The Stern Review goes on to state in Annex 7f:

Deforestation is the single largest source of land-use change emissions, responsible for over 8 GtCO2/yr in 2000. Deforestation leads to emissions through the following processes:

The carbon stored within the trees or vegetation is released into the atmosphere as

carbon dioxide, either directly if vegetation is burnt (i.e. slash and burn3) or more slowly as the unburned organic matter decays. Between 1850 and 1990, live vegetation is estimated to have seen a net loss of 400 GtCO2 (almost 20% of the total stored in vegetation in 1850). Around 20% of this remains stored in forest products (for example, wood) and slash, but 80% was released into the atmosphere.

The removal of vegetation and subsequent change in land-use also disturbs the soil,

causing it to release some of its stored carbon into the atmosphere. Between 1850

and 1990, there was a net release of around 130 GtCO2 from soils.

Professor Brendan Mackey states:

The remaining intact natural forests constitute a significant standing stock of carbon that should be protected from carbon emitting land-use activities. There is substantial potential for carbon sequestration in forest areas that have been

logged if they are allowed to re-grow undisturbed by further intensive human land-use activities.

Our analysis shows that in the 14.5 million ha of eucalypt forests in south-eastern Australia, the effect of retaining the current carbon stock (equivalent to 25.5 Gt CO2 (carbon dioxide)) is equivalent to avoided emissions of 460 Mt CO2 yr-for the next 100 years. Allowing logged

forests to realize their sequestration potential to store 7.5 Gt CO2 is equivalent to avoiding emissions of 136 Mt CO2 yr-1 for the next 100 years. This is equal to 24 per cent of the 2005 Australian net greenhouse gas emissions across all sectors; which were 559 Mt CO2 in that year.

The report goes on to state:

We can no longer afford to ignore emissions caused by deforestation and forest degradation from every biome (that is, we need to consider boreal, tropical and temperate forests) and in every nation (whether economically developing or developed). We need to take a fresh look at forests through a carbon and climate change lens, and reconsider how they are valued and what we are doing to them.

For every hectare of natural forest that is logged or degraded, there is a net loss of carbon from the terrestrial carbon reservoir and a net increase of carbon in the atmospheric carbon

reservoir. The resulting increase in atmospheric carbon dioxide exacerbates climate change.

The Senate Rural and Regional Affairs and Transport Committee states:

The evidence that the committee has received demonstrates that mismanagement and a lack of co-operation and coordination at all levels of government, in addition to a lack of water, has resulted in a number of Ramsar wetlands in the MDB being under considerable ecological stress.

International or intergovernmental obligations, agreements or arrangements;

Australia has an obligation under international law to ensure that human rights are protected. These obligations arise through Australia's ratification of various international human rights instruments. Human rights are subject to degradation as a result of climate change. The Australian Human Rights commission in its submission to the EPBCA review stated that the Act: requires formal and direct linkages to the *Water Act 2007* as a matter of urgency .

Deforestation and degradation is one of the biggest causes of climate change. Water quality and availability has been dramatically reduced by logging of most catchment areas. The right to water is a principle human right.

The right to litigate, to 'have your day in court' has also been ratified by Australia.

Article 2 of the *International Covenant on Civil and Political Rights* (1976) states at (3):

Each State Party to the present Covenant undertakes:

1. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
2. To ensure that the competent authorities shall enforce such remedies when granted.

And at (5): Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

This is at direct odds with the FNPEA.

The Inuit peoples of the Arctic region filed a petition against the United States for human rights violations because of the US's failure to limit its green house gas emissions and reduce the impact of climate change.

Australia has obligations for forestry operations under international environment law. Section 1.4 (c) of the *Southern Region Forest Agreement 2002* states:

Note the obligations on the Commonwealth of Australia arising from the *Intergovernmental Working Group in Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (Montreal Process),* the *Convention on Biological Diversity, Agenda 21* and the *Kyoto*

Protocol on Climate Change.

Conversely *Agenda 21* states:

11.1. There are major weaknesses in the policies, methods and mechanisms adopted to support and develop the multiple ecological, economic, social and cultural roles of trees, forests and forest lands…More effective measures and approaches are often required at the national level to improve and harmonize ..legislative measures and instruments…participation of the general public, especially women and indigenous people.

23.2. One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making…This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work.

In the *Vienna Convention on the Law of Treaties 1969* Article 18 states: A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

(a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

A material breach of a treaty is:

(a) a repudiation of the treaty not sanctioned by the present Convention; or
(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

In a case in the Philippines an action was brought to order the government to stop forest destruction that had licence approval on the grounds that the licences contravened people's environmental rights contained in their constitution. The applicants were *minors*. The court granted them standing to represent themselves and "future unborn citizens." Feliciano J stated:

I vote to grant the Petition for Certiorari because the protection of the environment, including the forest cover of our territory, is of extreme importance for the country.

Chapter 29 of the 1297 version of the Magna Carta 68 provides:

No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or in any other wise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

Chapter 29 of the 1297 version has been adopted as a 'received Imperial statute' into the law of New South Wales. Mason CJ, Brennan, Gaudron and McHugh JJ held that:

The insistence on express authorisation of an abrogation or curtailment of a fundamental right, freedom or immunity must be understood as a requirement for some manifestation or indication that the legislature has not only directed its attention to the question of the abrogation or curtailment of such basic rights, freedoms or immunities but has also determined upon abrogation or curtailment of them. The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be

clearly manifested by unmistakable and unambiguous language.

There are several international agreements and domestic policy documents that are legally and morally binding on the Commonwealth.

The Rio Declaration, *Convention on Biological Diversity*, 1992 at Article 8(c) states:

Each Contracting Party shall, as far as possible and as appropriate:

Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas with a view to ensuring their conservation and sustainable use;

and (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;

Commonwealth, State and Local governments are governed by the obligations of the *Intergovernmental Agreement on the Environment 1992* which states:

The parties consider that the adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development, will benefit both the Australian people and environment, and the international community and environment. This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations.

The Montreal Process at Criteria 7 states:

Legal, institutional and policy framework for forest conservation and sustainable management

7.1 Extent to which the legal framework (laws, regulations, guidelines) supports the conservation and sustainable management of forests, including the extent to which it: Clarifies property rights, provides for appropriate land tenure arrangements, recognizes customary and traditional rights of indigenous people, and provides means of resolving property disputes by due process; Provides opportunities for public participation in public policy and decision-making related to forests and public access to information; Provides for the management of forests to conserve special environmental, cultural, social and/or scientific values.

7.2 Extent to which the institutional framework supports the conservation and sustainable management of forests, including the capacity to: Enforce laws, regulations and guidelines.

And at 7.5.e: Ability to predict impacts on forests of possible climate change.

The UN Global Statement of Forest Principles states at 3(c):

3(c) All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive.

The Senate Rural and Regional Affairs and Transport Committee states:

The committee is concerned at the declining ecological condition of a number of Ramsar wetlands across the MDB. The committee is particularly concerned that Australia has not taken seriously its obligations under the Ramsar Convention to inform the Ramsar Secretariat if the ecological character of a Ramsar wetland has changed.

By exempting civil litigation from preventing the large scale destruction of NSW state forests, for not enforcing the legislative requirements for

compliance, for wilfully contributing to climate change and for the actual destruction of forests Australia is not only in breach of it's domestic obligations, it's currently in breach of it's international obligations.

Article 19 of *The Declaration of the Rights of Indigenous Peoples* now requires a State to go beyond merely consulting with the relevant Indigenous groups, to instead require "free prior and informed consent before adopting and implementing legislative or administrative measures that may affect them." What is needed is a process of substantive collaboration and empowerment of Aboriginal communities with appropriate resources and autonomy to carry out the objectives identified in a cooperatively developed management plan. One example where this has been successful is the Indigenous Protected Area (IPA) element of the Caring for our Country. This is a program which aims to support "Indigenous communities to manage their land for conservation – in line with international guidelines – so its plants, animals and cultural sites are protected for the benefit of all Australians." The initiative has proven highly successful in recent years with twenty five IPA's being established since 1990 and a further ten new IPA's expected to be created in the coming years as a result of a $7 million contribution by the Indigenous Land Corporation in 2007.

Recommended Actions

The Victorian State Government set a precedent in 2008 on the Murray. On 30th December 2008 Victorian Premier John Brumby committed to protecting Victoria's Red Gum forests and wetlands along the Murray and its tributaries in 95,000 hectares of new and expanded national parks. This meant an end to cattle grazing in these forests, a significant reduction in logging, and the historic first for Victoria of Indigenous co-management of national parks.

While the internationally recognised Red Gum forests in Victoria have been given the protection they deserve it is ludicrous that across the Murray a mere fifty to one hundred metres away, Premier Nathan Rees continues to allow New South Wales River Red Gums to be logged for low value products such as fence posts, railway sleepers and firewood.

Given what is now known of the effects of climate change and what constitutes significant impacts on the Ramsar wetlands and what is unknown, triggering the Precautionary Principle, the Commissions only recommendation can be the conversion of these forests into national parks.

We recommend that NSW follows Victorias lead and that the State Forests of the NSW Murray Riverina region be handed back to the Traditional Indigenous Owners.

Conservation of the remnant native forest of the Riverina is the only

economical, ecological, social and morally viable outcome.