

Extinction Inquiry

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I am currently a Head of Learning in Science at Carey Baptist Grammar School. I am also employed as an educational expert by the International Baccalaureate Organisation. I have a PhD in Marine Ecology, and postgraduate qualifications in education, including international education. I am currently studying for a Masters in Educational Leadership. I have spent a lifetime caring for the future of children and the environment and witnessed first-hand the devastating impact of our activities on our natural environment, our indigenous peoples, and other species who also share entitlement to a stake in our land and natural resources. The loss of habitat, decline in species diversity and resulting disruption to ecosystems have precipitated a national crisis that is destroying our economies, our communities and our lives. In my own case, it has fuelled a sense of hopelessness and despair. In spite of all the scientific evidence and lived experience of our local communities, our governments have consistently demonstrated a lack of political fortitude and the leadership to take decisive action on environmental issues. All the indicators are telling us that we have reached an environmental tipping point, and that the decisions we make in these next few critical years will have profound and long-term consequences for ourselves and those who follow after us. I hope this inquiry will impress on them the urgency of the situation in which we find ourselves, and provide the political imperative for action. I offer this submission to give voice to those who cannot speak for themselves and to convince those with the power to open their hearts and listen.

My understanding of this inquiry is that it is directed to:

- a. an investigation of the decline of Victoria's biodiversity and its effects on people and ecosystems;
- b. assessment and evaluation of the effectiveness of legislative frameworks, government policies and programs, governance and funding initiatives currently in place for the protection and restoration of natural habitats, and populations of threatened and endangered species.
- c. The formulation of legislative, policy, program, governance and funding solutions to facilitate protection and restoration of ecosystems and species.

Natural ecosystems display a highly integrated architecture that depends on complex and dynamic interactions between living organisms, and between living organisms and their environment. They are the result of billions of years of evolution in which individual species have evolved to occupy highly specialised and nuanced niches that complement, support and depend on the presence of other species in the community. This complexity, integration and complementarity in the roles of individual species lies at the core of ecosystem resilience and the capacity of ecosystems to remain sustainable over long periods of time. However, it is also the major source of their vulnerability. The loss of a single species reverberates throughout the community in ways that are often difficult, even impossible to predict, with consequent impact on human health and well-being. While we may think of ourselves as being separate from the environment, the new rhetoric that reframes our dependence on the ecosystems in terms of ecosystem services is a dangerous euphemism. It creates the impression that ecosystem functions are a commodity over which we have ownership and control. It has led us to the position in which we now find ourselves, in the midst of a climate crisis, a global pandemic and the deterioration of the quality of the soil, air and water that constitute our basic life support system.

The rate of extinction of native species in Victoria since the time of European settlement outstrips that in all other subregions within the Australian continent - 18 mammal species, 2 birds, 1 snake, 3 freshwater fish, 6 invertebrates and 51 plant species. However, there are currently more than 700 species and ecosystems listed under the Flora and Fauna Guarantee Act (1988) which provides the principal Victorian instrument for recording species and ecosystems under threat. Many more have been identified in the Threatened Species Advisory Lists maintained by the Department of Environment Land, Water and Planning in Victoria. The State of Environment Report (2018) found that more than half (51%) of the 35 scientific indicators used to assess the threat to biodiversity in terrestrial habitats were rated poor and trending down. Risks to the viability of forest dependent species were rated fair, and also trending down. The status of populations of marine invertebrates, subtidal reef fish and macroalgae is mostly unknown or unclear except in marine parks and sanctuaries. The status of migratory shorebirds, and marine and coastal waterbirds is also largely unknown, although there is evidence of a downward trend in populations in most areas for which data are available. Measured in terms of the immediate economic impact on local and international tourism, agriculture, forestry and fisheries, the cost of a decline in biodiversity amounts to something in excess of 9 billion dollars in lost revenue, more than 3% of Victoria's Gross State Product (Victoria State Government, State of the Environment 2018 Report). In terms of the impact on our cultural, spiritual, and physical wellbeing, the costs are currently unknown, and perhaps unknowable, although it is certainly palpable in the terrible price our carelessness has exacted on the health of our indigenous peoples as a result of their profound personal connection to land and place.

My submission contains the results of my own investigation of Regional Forest Agreements and their role in the protection of forest habitats and species. It is based on information drawn from sources including scientific and legal publications, media releases and government reports which are readily available to the public on the internet (See below). It summarises my understanding of the purpose and intention of the Regional Forest Agreements, and my evaluation of their effectiveness. It also contains my recommendations for the future of Victorian Regional Forest Agreements and the forest resources currently included within their domain.

Australia's iconic eucalyptus forests are unique among forest habitats around the world, dominated by distinctive species with characteristics honed by millions of years in isolation from species elsewhere in the world and close association with those with which they interact. Victoria has about 7.6 million hectares of native forests of which about 1.82 million hectares are allocated to the Victorian Government logging business, VicForests. Management of these forests is governed by Regional Forest Agreements signed by State and Commonwealth governments and designed to balance the competing demands of conservation and industry. These agreements have their origins in the National Forestry Policy Statement (1992), an attempt by State and Federal governments to resolve the conflict created by land clearing to provide woodchip for export markets and make way for pine plantations.

Regional Forest Agreements have the appearance of contractual arrangements between State and Federal Governments, but represent the exercise of executive powers. Their legislative force is a function of the Regional Forest Agreements Act 2002 and the Environment Protection and Biodiversity Conservation Act 1999. The Regional Forest Agreement Act 2002 defines them as follows:

A Regional Forest Agreement means an agreement that is in force between the Commonwealth and State in respect of a region or regions, being an agreement that satisfies all the following conditions:

- a. *The agreement was entered into having regard to assessments of the following matters that are relevant to the region or regions;*
 - i. *Environmental values, including old growth, wilderness, endangered species, national estate values and world heritage values;*
 - ii. *Indigenous heritage values;*
 - iii. *Economic values of forested areas and forest industries;*
 - iv. *Social values (including community needs);*
 - v. *Principles of ecologically sustainable management;*
- b. *The agreement provides for a comprehensive, adequate and representative reserve system;*
- c. *The agreement provides for the ecologically sustainable management and use of forested areas in the region or regions;*
- d. *The agreement is expressed to be for the purpose of providing long-term stability of forests and forest industries;*
- e. *The agreement is expressed to be a regional Forest Agreement.*

Regional Forest Agreements include provisions for the creation of additional native forest reserves within State boundaries, prescriptions governing the management of forestry activities outside the reserves, and special exemptions to States from provisions affecting logging and forestry operations under the federal Environment Protection and Biodiversity Conservation Act 1999. They also provide for compensation by the Commonwealth to the States should the Commonwealth take additional action to restrict logging. The selection of forest reserves is governed by principles contained in The National Forest Policy Statement 1992 which provide for the selection of areas according to a set of standards by which they were judged to be Comprehensive, Adequate and Representative. The term CAR reserves is a reference to these standards which are summarised below:

- Comprehensive i.e. Including the full range of forest communities recognised by an agreed national scientific classification at appropriate hierarchical levels
- Adequate i.e. Capable of maintaining the ecological viability and integrity of populations, species and communities (Adequacy)
- Representative i.e. Biotic diversity representative of that in the community at large.

Regional Forest Agreements have been severely criticised on the grounds that they have not only failed to secure a certain future for Australian forest species in CRA reserves, but have also hastened their decline in areas subject to the immediate impact of logging. A legal review of the Regional Forest Agreement regime by Feehely *et al.* in 2013 highlighted a number of fundamental shortcomings in the level of protection afforded endangered species under the regime, as well as provisions for adaptive management and review, monitoring, compliance and enforcement of the Agreements. While conceding that a range of political, economic and cultural reasons combined to frustrate the goals of the Agreements, it also highlighted the role of the States in failing to take appropriate regulatory and legal actions to adequately protect matters of national significance. However, as the authors of the review also point out, the root of the problem lies with a fatal flaw in the premises on which the Regional Forest Agreements are based, and the devolution of Commonwealth control over matters of natural environmental significance to the States. Viewed from this perspective the shortcomings of the Regional Forest Agreements are not reconcilable either by changing the architecture of the Agreements themselves, nor by increasing the obligations and responsibilities of States under the terms of the Agreements.

The ramifications of the review by Feehely *et al.* (2013) have received compelling endorsement from the legal decision handed down by the Federal Court on 27 May this year in a case involving charges by the Friends of Leadbeater's Possum that logging by VicForests in areas of habitat critical to vulnerable and critically species was in breach of the Victorian code of Practice for Timber

Production and the Regional Forest Agreement. The court found in favour of the Friends of Leadbeater's possum concluding that VicForests had failed to comply with both State and Federal laws designed to protect threatened species and was unlikely to comply with them in the future. The final orders of the Federal Court, delivered by Justice Mortimer on 21 August 2020, granted injunctions to protect 26 areas unlawfully logged by VicForests and a further 41 in which it had planned to conduct logging in the future. The decision has been heralded as a resounding victory for conservation with national implications for species threatened by logging under Regional Forest Agreements across the country (Environmental Justice Australia 21 August 2020).

However, while the legal fraternity may continue to debate the validity or otherwise of the Regional Forest Agreements, it would appear that the data speak for themselves. In the period since Regional Forest Agreements were first put in place, there has been ongoing decline in the abundance of threatened species living in, or otherwise dependent on native forests, and vulnerable to the effects of logging. There has also been no improvement in the conservation status of any forest vertebrate and at least 12 species of forest vertebrates including a number of Victorian species (e.g. swift parrot, regent honeyeater) have been reclassified from endangered to critically endangered under the Environmental Protection and Biodiversity Conservation Act 1999.

On 6 April this year, the Victorian Government announced that existing Regional Forest Agreements which were due to expire at the end of March, had been 'modernised and extended' until 30 June 2030 to:

'bolster protection for Victoria's unique forest biodiversity and threatened species and provide continued access to streamlined regulatory processes for the timber industry for the next 10 years while Victoria phases out timber harvesting in native forests as per the Victorian Forestry Plan'.

The Victorian extensions are a welcome contrast to the extensions provided to NSW, WA and Tasmania, where existing Agreements were officially extended for 20 years with no provision to phase out the logging activities in native forests. However, they still fail to address the fundamental problems associated with the premises on which the Regional Forest Agreements operate, and the devolution of Commonwealth control to the State during the remainder of VicForest's tenure to operate within the confines of native forest. Questions have also been raised about the legal validity of the extensions on the grounds that the data used to delineate the CRA reserves is now 20 years old, and the extensions have been negotiated without appropriate assessment.

The establishment of the CAR reserves was originally predicated on the results of a Comprehensive Regional Assessment process in those regions that fell within the ambit of the Victorian Regional Forest Agreements. The process took into account a range of values including those related to the environment and indigenous heritage to delineate the terms and conditions of the Regional Forest Agreements including the extent and location of forest reserves and prescriptions intended to protect environmental values in forests where logging is permitted.

The extent to which the CAR reserves complied with the definition of comprehensive, adequate and representative have always been an issue for debate. However the new extensions have been negotiated without resort to new Comprehensive Regional Assessments suggesting that the terms and conditions of the agreements may well be open to legal challenge on the grounds that they are founded on outdated information and no longer valid. Ministerial documents obtained by the ABC under NSW freedom of information Government Information (Public Access) clearly demonstrate concerns held by the Federal Government itself about the ongoing validity of the RFAs. A meeting

brief prepared for the NSW Lands and Forestry Minister Paul Tool for a meeting of Commonwealth forestry ministers on 30 August 2017, and included in the documents obtained by the ABC states:

'the commonwealth is concerned that significantly altering existing RFAs may invite challenges to their validity in the absence of new and costly Comprehensive Regional Assessments. Its preference is to extend the existing agreements. It is in both parties' interests to avoid the need to revisit the costly CRA process.'

The reference to the costs involved in launching a new Comprehensive Regional Assessment also touches on the disincentive created by the large investment of funding required to effect a full blown evaluation of relevant criteria and perhaps some reservation about the extent to which it was likely to be successful.

Concerns about the viability of Regional Forest Agreements have been amplified by the devastating impact of the Australian bushfires on the CAR Reserve system in eastern Victoria at the start of 2020. Scientific studies show that forest fires have significantly impacted both diversity and resilience of native forests, and further that the additional disturbance created by logging in fire affected areas can severely disrupt the process of recovery. The removal of trees, both living and dead, disturbs the soil and deprives animals of habitats, refuge and food sources while the collateral damage resulting from the impacts of logging machinery in fire damaged soils and plants may severely inhibit the regeneration and reestablishment of forest vegetation. Tree heads, branches and other debris left by logging in the wake of a fire may also hinder forest revegetation and can even increase vulnerability to further fires (Lindenmayer and Robinson 2020).

At the time when the Victorian State government announced the extension to the Regional Forest Agreements on 4 April 2020, the fire footprint extended across more than 90% of the area of at least 42 Victorian National parks. 74% of the Snowy River National Park, 50% of Errinundra and 69% of Croajingolong were also affected. At least 647,000 hectares of special protection and forests protected by prescription also lie within the projected area of fire impact. The scale of the devastation and the cost in terms of the impact of the fires on wildlife was unprecedented. The implications for Regional Forest Assessments were also profound because of the decline in species numbers, changes in the conservation status of threatened and endangered species and the effects of habitat destruction on the CAR reserves. Given the ongoing threat of climate change and projected escalation of the current fire regime, it is difficult to escape the conclusion that attempts by both State and Federal governments to create the impression that it is appropriate to extend the Regional Forest Agreements without full scale revision under the terms of new Comprehensive Regional Assessments are misguided at best and, at worst, deliberately misleading.

While the concept of Regional Forest Agreements may see like a good idea in principle there seems little to commend them as instruments for the protection of forest habitats or the biodiversity of species. Their legal authority has been undermined by a lack of political will on the part of State and Federal governments to enforce them. The value of CAR reserves as both refuge and shield for the protection of species and communities has also been eroded by the failure of both governments to respond appropriately to the dramatic changes taking place in our Australian climate and landscape. Without the repeated instigation of Comprehensive Regional Assessments to allow for the review and reappraisal of the CRA reserves, it is impossible to ensure that the reserves continue to honour the intent of the agreements they are intended to serve. It is little wonder, then, that the health of our forest ecosystems continues to decline as so many of their species edge closer to extinction. The only question remaining then is how to move forward when the systems we have in place are so obviously broken. I offer the following recommendations.

1. Dismantle the remaining VicForest operations that depend on harvesting of all forms of timber in native forests and transition the timber industry to plantation timber in the shortest possible time frame, certainly much less than the projected 10 year interval anticipated by the recent extension of Victorian Regional Forest Agreements.
2. Instigate a transparent State-wide Comprehensive Regional Assessment that takes into account environmental, indigenous heritage, economic and social values to expand and extend our current system of forest reserves with full protection under State and Federal Law.
3. Foster the development of economic and social structures that honour and protect our natural environment to the benefit of all stakeholders.
4. Extend our State environmental protection laws, with higher penalties and greater powers to enforce them.

This submission has explored the nature of Regional Forest Agreement and their role in the protection of our native forests and species diversity. In doing so it has identified key issues impacting on their legal status and implementation. It has also provided some insight into the extent to which they have been effective in the realisation of their environmental objectives. My recommendation for addressing the flaws I have identified are predicated on my understanding of the laws of our State and Federal Governments and of Nature. I thank the Committee for their consideration of this submission and look forward to following the progress of your deliberations.

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