

QUESTIONING APPLICATION OF PROCEDURAL JUSTICE PRINCIPLES WITHIN THE NSW GOVERNMENT'S REGIONAL FOREST AGREEMENT PUBLIC SUBMISSION PROCESS

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OUTLINE

This paper discusses the nature of the State Government's procedure on seeking feedback on the Regional Forest Agreements (RFAs). It reviews the feedback process and considers whether five principles of procedural justice: voice, transparency, fairness, accessibility and impartiality are evident. It demonstrates that people who want to 'have a say' would be challenged trying to evaluate the huge amount of accompanying documentation. Feedback from friends and colleagues indicates confusion and lack of comprehension; thus disempowerment. Assumptions have been drawn regarding the public's awareness, access to technology, ability to read and comprehend the technical material and understand expressions used in the logging sector. This highlights the discriminatory nature of the process. A lack of transparency in consultation and a questionable assessment process are identified. It is clear that the whole process which drives the nature of the enquiry is not based on procedural justice which puts at risk public will and the future of publicly owned State forests.

BACKGROUND

Via the NSW Environment Protection Authority (EPA) and the Department of Primary Industry (DPI), the State Government has called for public submissions on the Regional Forest Agreement's past and future management processes for the Eden, Southern and Northern regions.

I explored the RFA feedback processes and found it is complicated, knowledge expectations are high, the possibility that the public may not want native forest logging to continue is ignored, the content is biased towards the logging sector, and background documentation is generally inaccessible to the public. My assessment is qualified by my colleagues' unsolicited statements:

- I think of my own situation and feel totally disempowered and unable to take a part in their supposedly accessible feedback process.
- The review process is a farce and the RFA review paper is both opaque and tendentious.
- Taking part in an RFA process, especially one so loaded against an environmentally responsible outcome is a mug's game.
- Let's boycott the whole process – it is corrupt, and a farce!
- Contrary to the claim by the DPI, the Review is quite inadequate as a base for determining future policy for the RFA forest regions.
- The governments are trying to ride roughshod over public opinion.

ETHICS IN HUMAN RESEARCH

In a process for engaging public participation, The National Statement on Ethical Conduct in Human Research states:

At a profound level, justice involves a regard for the human sameness that each person shares with every other. Human beings have a deep need to be treated in accordance with such justice,

which includes...procedural justice. ...it also matters that benefits of research are achieved through just means...¹

PROCEDURAL JUSTICE

Principles which apply to procedural justice relative to the Government's RFA review and call for submissions:

1. **Voice:** ways for a diversity of stakeholders to be included in decision-making processes and to be heard
2. **Transparency:** adequate and accurate information in a way that is readable for the stakeholder participants
3. **Fairness:** enough time for stakeholders to read the information, have discussions about the information and have questions answered
4. **Accessibility:** avenues for issues to be raised and responses from the decision-making authority to be received
5. **Impartiality:** a decision-maker who is neutral and does not have a bias towards the outcome.^{2 3}

This paper shows non-compliance with these principles throughout the NSW State Government's two-fold RFA survey, regarding promotion, method of data collection, evaluative and conclusive processes.⁴

OUTLINE OF PROCESS

Public participation involves a two-part process:

- **STAGE ONE** "Have your say on the second and third five-yearly implementation report of the three NSW RFAs by 23 February 2018 (Environment Protection Authority [EPA])

¹https://www.deakin.edu.au/__data/assets/pdf_file/0004/559669/e72_national_statement_may_2015_150514_a.pdf

² Adapted from Dr Catherine Gross, Visiting Fellow, Fenner School of Environment and Society, ANU College of Medicine, Biology and Environment, Australian National University

³ Adapted from Community Oriented Policing Services, US Department of Justice, <https://cops.usdoj.gov/Default.asp?Item=2866>

⁴ <https://www.nsw.gov.au/improving-nsw/have-your-say/regional-forest-agreements-rfa/>

- **STAGE TWO** Have your say on the extension of RFAs by 12 March 2018.” (Department of Primary Industries [DPI]) APPENDIX A: List of background reading materials for Stages One (EPA) and Two (DPI) and word count.

STAGE ONE: THE RFA REPORTS FROM THE EPA⁵

The EPA’s STAGE ONE asks for public feedback on the past performance of the RFAs based on their long overdue Report of Progress with Implementation of the New South Wales Regional Forest Agreements: Second and third five-yearly reviews July 2004 – June 2014. The form asks for comment on an event which transpired over more than a past decade. One would assume it began in 2004 (which it did not) and ended in 2014 (but it did not).

Breach: Fairness procedural principle as the general public is asked to reflect on forest logging activities up to 14 years ago.

Q 1: Was the Report peer-reviewed by, say, local experts, ANU scientists, The Australia Institute or CSIRO before publication?

CRITICAL DATA MISSING FROM REPORTS

Examples of serious omissions in EPA’s 2nd and 3rd Five-yearly Review relate to:

A) Threatened Species missing for Eden RFA area from lists in Table 67: Threatened species list– fauna (p. 295), include:

- Glossy black cockatoo
- Barking owl
- Olive whistler
- Yellow-bellied Glider
- Squirrel glider
- Pink robin
- White-footed Dunnart

Q 2: Why were these threatened species omitted from the Report?

B) During the 10 years of the EPA’s review (2004-2014) period, over 4,000 non-compliances with Environment Protection and Threatened Species Legislation were identified through EPA audits and investigations. However, the EPA conducted only 187 audits for approximately 5,000 to 6,000 logging operations. None of this is mentioned in the Review upon which the public has been asked to comment.

⁵ <http://www.epa.nsw.gov.au/your-environment/native-forestry/about-public-native-forestry/regional-forest-agreements-assessments/review-regional-forest-agreements>

Q 3: Why were these non-compliance incidents omitted from the Report?

C) The economics includes plantation figures which hide the losses made by native forest logging for woodchips.

Q 4: Why didn't Forest Corporation separate profit and losses from plantations and native forest logging?

Breach: Transparency procedural justice principle as the Report omits critical information

STAGE TWO: THE DPI'S RFA PROCESS⁶

- The State and Federal Governments have decided to renew the RFAs which will mean more environmental destruction within the public's State Forests.
- The assumption is that the RFAs will be extended in perpetuity.
- That public feedback opposing the RFA process won't be considered.
- The question Please select your interest/s with extending the RFA 'lures' participants into choosing honourable elements within a dishonourable practice.

Breach: Fairness procedural justice principle given governments have already made decisions.

Q 5: What precedent could be cited for a process where a government sets a decision in concrete and then asks for feedback on it?

FALSE REPRESENTATION

In the EPA's published materials, "What you see is not necessarily what you get". The beautiful image on EPA's website (Photo 1) belies the truth about the damage wrought to native forests from logging (Photo 2).

What EPA promotes

This promotion of beauty on the Report to the public is evidence of the EPA hiding the real truth about logging of native forests.



Photo 1: Picture taken from A Report of Progress with Implementation of the New South Wales Regional Forest Agreements: Second and third five-yearly reviews July 2004 – June 2014.

⁶ <https://www.dpi.nsw.gov.au/forestry/regional-framework>

What EPA supports



Photo 2: Part of an image of logged Glenbog State Forest, 2016: photo the late Carolyn Green. Full image at http://www.greatsouthernforest.org.au/media/GSF_Brief.pdf

The current RFA proposal shows that the Governments assume communities in the southeast region of NSW favour Photo 2 over Photo 1.

Breach: Transparency justice principle.

Q 6: Why doesn't the Government publish post-logging pictures?

Q 7: Upon what Government model was Stage 1 and Stage 2 feedback processes designed?

BREACHES OF PROCEDURAL JUSTICE

VOICE

This relates to the receptivity of the government to public opinion and conditions where a decision is assumed to have been agreed with, ways for a diversity of stakeholders to be included in the decision-making process and to have their voice heard.

The Government has delivered its message to renew the RFAs, and the ability to express an alternative public opinion has not been accommodated. The DPI website provides no field for the public to state that native forest logging and the RFA process should end. This omission blindsides conservationists and denies intergenerational fairness. By the DPI not giving the public an option to end the RFA process, the Government is silencing Australian citizens, by assuming support for a process which about 80% of this region's public has opposed for decades. For example, see:

<http://www.greatsouthernforest.org.au> for a list of 39 organisations which support ending native forest logging under the principles of the Great Southern Forest for southeast NSW which focuses on jobs in native forest restoration and plantations.

The Governments' 'have your say' term is ambiguous as the Governments have decided on a course of action and only permits the public to give input on the performance of this course of action. Its attempt at corralling the public into giving answers to which FCorp wants to hear is obvious. It silences the public's will by not allowing them to disagree with that pre-determined course of action.

The DPI questionnaire gives the appearance of open-mindedness at the same time encouraging answers in favour of continuation of the RFA regimes, such as: "Please select your interest/s with extending the RFA".

Q 8: To what extent will public voice on the extension of the RFAs be regarded?

TRANSPARENCY

Receiving adequate and accurate information in a way that is accessible and readable for the stakeholder participants, as related to background materials being honest, succinct, and relevant.

Evidence of organisations who received feedback announcements and evidence of organisations with whom the EPA and the DPI has already consulted would give transparency and indicate the governments perceived nature of 'stakeholders'.

The information in DPI's Road Map, upon which this whole process is based, is highly flawed and states 'guestimates'. It attempts to make a silk purse out of a sow's ear. Post logging forest inspections show 'sustainable ecological management' is highly counterintuitive to the need to protect the forests; only 70% of logged forests regenerate. The Road Map prioritises those who undertake extractive practices more than the forests.

Obviously the 1992 National Forest Policy Statement (over a quarter of a century old) is an anachronism in light of the impact of a radically changing climate, the critical need to store carbon, the growth of the profitable plantation industry in NSW, and the destruction of wildlife, canopy, water, soil, beauty and healthy forest ecosystems from decades of a practice which a government staff member told me ... treats the southeast forests like an abattoir (pers. comm. Jan 2018).

None of the documents reveal either in word, image or scientific findings, the real damage that decades of native forest logging has wrought on our public forests.

The suite of management-based questions under: "How important are the following elements to you?" seem to be beyond the capacity of the general public to answer. Were they designed to highlight the public's justifiable and anticipated lack of knowledge of the sector's workings?

Q 9: Why doesn't the Government expose the ugly truth about native forest logging?

Q 10: Will the NSW State Government provide a list of all the RFA stakeholder groups it has communicated with?

This principle relates to stakeholders having enough time to read the information, have discussions about the information, and have questions answered, and to the way consultation is implemented.

The call for submissions was made just prior to the 2017-2018 holiday season when traditionally people are focussing on family and children on school holidays. A more suitable timeframe would have been to call for submissions after schools reopened.

The way the entire feedback process is structured falls short of the ethical clearance processes for research in the national higher education system. The questionnaires lead the reader into a sense of acceptance; for example, by asking which element of the natural world is of most importance. It simulates: We will destroy threatened species' habitat; so how would you like us to do it?

Consultation has been inadequate. ABC Radio National allocated 3-4 minutes at the 8.55am timeslot for notification of the RFA Report and Review call for submissions. I have not seen advertisements in newspapers regarding the RFA submission process, or on local television. I received notification of it through the Nature Conservation Council and the National Parks Association.

The public consultation sessions were promoted on the DPI's website on 24th January 2018. Those for the southeast region of NSW are on the 13th, 14th and 15th February. That represents three weeks' notice. From 15th to 23rd February is 8 days. This is an absurdly short amount of time for the public to analyse the documents and make recommendations on them for governmental consideration. The ability to review a 20-year process within these timelines is impossible. The deadline of 23 February 2018 lessens the likelihood for people to give informed feedback.

The company responsible for facilitating the consultation sessions is Eltons Consulting – they indicated they were not responsible for promoting them and that the DPI was. The DPI's promotion strategy was to send out Media Releases which are only published depending upon the will of the media outlet's Editor. Such media releases are published gratis – but I have not seen one in any my local paper. One conservationist group contacted my local paper and asked for a notice to be published, but the next edition of the paper will only be published a few days before the consultation dates. I promoted the sessions in our community paper.

Q 11: Why hasn't the Government paid for promotion of the region's consultation sessions in the region's newspapers, on radio or on television?

Neither the EPA nor the DPI have previously sent representatives to the far south coast of NSW to discuss the future of our native forests with our leading conservation organisations: The South East Regional Conservation Alliance Inc., National Parks Association Far South Coast branch and, the National Trust Far South Coast branch, nor with people who promote the alternative management principles of The Great Southern Forest. Conservationists have initiated meetings with state and federal politicians, the EPA and the CEO of OEHL at travel and accommodation costs paid from their own funds.

Q 12: Why didn't the State Government consult with the lead conservation organisations of the Far South Coast of NSW in a timely manner before agreeing with the Commonwealth Government to extend the RFAs?

Q 13: How was the decision made to renew the RFAs when only the first of the three the legally required 5 yearly reports had been completed at that time?

ACCESSIBILITY

This relates to background documents being comprehensible within limited timeframe and to technological issues.

To gain the knowledge required to be able to make educated submissions on the two stages, one would have had to read and comprehended 429,733 words; 11,000 words more than *Gone with the Wind!*

The documents are mostly in language which is familiar to government and logging sector staff, but implicit comprehension expectations for the general public from whom it purportedly seeks feedback, are unrealistic. Thus, the language and complicated nature of the submission process is socially and intellectually discriminatory.

The Progress Report was delivered 5 – 10 years late, written by seven government departments, is 384 pages long and its 152,000 words is only 10,000 words less than the Australian Constitution. This renders it inaccessible for the general public. Hard copies of the report ran out very quickly.

A Scoping Agreement was signed between the State and Federal governments. Sixteen attachments are referred to but only two are included. The document is written in legalese and beyond the comprehension of the general public.

The whole submission process causes headaches for those who are in a position of having to clarify it knowing that the complicated nature of the process will affect their capacity to influence as many people as possible to make submissions as they are too bamboozled to take part in either submission process.

Technological dysfunctions of the EPA and DPI websites have varied since the pages were launched. One still persists regarding lack of access to the online form which is promoted on the EPA website:

You are not authorized to view this page

The Web server you are attempting to reach has a list of IP addresses that are not allowed to access the Web site, and the IP address of your browsing computer is on this list.

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⁷ <http://www.epa.nsw.gov.au/your-environment/native-forestry/about-public-native-forestry/regional-forest-agreements-assessments/review-regional-forest-agreements> ■

Q 14: Why didn't the State Government ascertain the will of the people and submit that to the Commonwealth Government prior to the signing of the Scoping Agreement?

Q 15: Why doesn't the Government recognise that people are keener to enjoy the natural beauty of the forests, and to protect them, than to evaluate bureaucratic documentation which supports their destruction?

IMPARTIALITY

A decision-maker who is neutral and does not have a bias towards the outcome.

"Consultation will enable a full appraisal of the current RFAs covering the Eden, North East and Southern regions of NSW. It will also drive optimal implementation of new agreements, including what we can learn from our experience over the past 20 years." ⁸ Unless one has a crystal ball, until a full appraisal is undertaken, then a pre-judgement cannot logically recommend a new agreement to go ahead at all because the appraisal might show that the last 20 years were a disaster and have been an abject failure. In other words, this is a cart before the horse situation. ⁸

Ewan Waller has been appointed as the independent Assessor. He was chosen from a short list of potential reviewers by the Commonwealth Government. His being the only person available seems to be the reason for his selection. The nature of his 'independence' is because he does not come from NSW. He has very strong opinions on forest management. He gave sworn testimony to the Victorian Royal Commission on the 2009 fires that at least 5% of national parks in Victoria must be burnt each and every year. Environmentally, this is now a very discredited position and incredibly destructive to both proper fire management and to the health of National Parks. Assessment is therefore, unlikely to be impartial.

Peer review of data assessment is fair and essential; excluding scientists and conservationists from being privy to the feedback and assessment process is unacceptable.

Assessment of feedback on an outcome which has already been determined is a waste of people's time and energy. As a government employee told me "the ship has already sailed". So, why the Assessor is assessing public feedback on the Regional Forest Agreements amounts to a dishonest bureaucratic exercise. Via this process, people who want the RFAs to end, have no voice.

Q 16: Why didn't the Commonwealth Government appoint a truly independent Assessor?

CONSEQUENCES OF THE LAUNCH

Due to my evaluation of the EPA's and the DPI's feedback process, and as colleagues have perceived the feedback processes to be intentionally confusing, in good faith I simplified and published instructions on the SERCA website. Two responses to these instructions are:

⁸ <https://www.nsw.gov.au/improving-nsw/have-your-say/regional-forest-agreements-rfa/>

Thanks for this Bronte. I wouldn't have had a clue on how to respond without your help.
Cheers, Lois, AND Hi Bronte, This is fantastic work and great to have it so short! Joslyn.

I have heard that one form of feedback would suit both submission processes and am now confused as to whether this is acceptable or whether it is still a requirement for two separate forms of feedback; one for the EPA and one for the DPI.

I was also advised that, if people send a 'copycat' submission, it will have less weight than original submissions as it would be perceived to be part of a campaign! (How else do volunteer unfunded retirees get information out to people?) This puts members of the general public who support native forest protection at a huge disadvantage.

- Firstly, because they may find the content of, say, the 152,000-word Review document, inaccessible in terms of their understanding of activities in the forests which happened between 2004 and 2014.
- Secondly, because there is no option on the DPI's website to check "no, I do not want the RFAs renewed".
- The 429,733 words that the EPA and the DPI have published is an unacceptable amount of pre- submission reading material. The Federal and State Governments have approached this opinion-seeking exercise with huge disregard to the public's right to entitlement of opinion as the governments have already decided for us what they want to have happen in our public native forests.

PROBLEMS WITH A SINGLE OR DOUBLE SUBMISSION

The question of whether a single submission process was permissible possibly was a flow on from the complicated nature of the double submission process. For the consequences of this change in procedure, see APPENDIX C.

FOUNDATION

The State Governments give no underlying philosophical exposition which drives the practice of altering the natural forestscape by logging native forests, destroying habitat, reducing carbon sequestration, drying out forest floors, etc. The philosophical tenets of the Traditional Owners and world renowned environmental 'deep thinkers' such as David Suzuki and Richard Attenborough, and understandings of scientists such as those from ANU's Fenner School of the Environment and The Australia Institute, etc. have not been considered in this call for feedback on this mindlessly destructive practice. Given that the Government wishes to proceed with implementing the RFAs, it is clear that the principles espoused by local and regional conservationists and wildlife experts have been ignored in this flawed plan to continue plundering native forests with consequent long term environmental damage. It is extraordinarily negligent of the Federal and State Governments that their intentions run counter to modern science.

RECOMMENDATION

I propose that this process is unethical, obfuscating, and not legally tenable within the axioms and spirit of procedural justice and of giving everyone a ‘fair go’. I suggest that, unless the State Government sees the light about the atrocity of native forest logging, that the RFA submission process be halted until the State Government can devise an accessible and ethically responsible way to gather data on the will of public, and apply it, regarding the dark future of native forest logging. It is neither right nor honourable. The whole two-fold process needs to be stopped. Native forest logging needs to cease. This would end social discontent and mental angst for the people of the southern region of NSW who value and respect our native forests in a way which the Federal and the State Governments fail to recognise.

QUESTIONS ARISING FROM THIS EXAMINATION

Q 1: Was the Report peer-reviewed by, say, local experts, ANU scientists, The Australia Institute or CSIRO before publication?	3
Q 2: Why were these threatened species omitted from the Report?	3
Q 3: Why were these non-compliance incidents omitted from the Report?.....	4
Q 4: Why didn't Forest Corporation separate profit and losses from plantations and native forest logging?	4
Q 5: What precedent could be cited for a process where a government sets a decision in concrete and then asks for feedback on it?	4
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Q 10: Will the NSW State Government provide a list of all the RFA stakeholder groups it has communicated with?.....	6
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Q 12: Why didn't the State Government consult with the lead conservation organisations of the Far South Coast of NSW in a timely manner before agreeing with the Commonwealth Government to extend the RFAs?	8
Q 13: How was the decision made to renew the RFAs when only the first of the three the legally required 5 yearly reports had been completed at that time?	8
Q 14: Why didn't the State Government ascertain the will of the people and submit that to the Commonwealth Government prior to the signing of the Scoping Agreement?	9
Q 15: Why doesn't the Government recognise that people are keener to enjoy the natural beauty of the forests, and to protect them, than to evaluate bureaucratic documentation which supports their destruction?	9
Q 16: Why didn't the Commonwealth Government appoint a truly independent Assessor?	9

APPENDICES