

~~Sensitive. Legal~~

PDR: MC18-111467

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Mr Sterland
Ms Wilson
Ms Stagg
Ms Lowe
Ms Moran

To: Prime Minister (for decision by 21 September 2018, noting the New South Wales Premier is considering this issue concurrently)

EXTENSION OF EDEN, NORTH EAST NEW SOUTH WALES (NSW) AND SOUTHERN NEW SOUTH WALES REGIONAL FOREST AGREEMENTS (RFA)

PMO
Chief of Staff
s 22

Recommendations - that you:

1. Review the decision making requirements and advice outlined in and attached to this brief, including the Assessment Report at Attachment E which outlines how the proposed variations to the Eden, North East NSW and Southern NSW RFAs will continue to meet the definition of an RFA under section 4 of the *Regional Forest Agreements Act 2002* (the RFA Act) and maintain the 'RFA values' set out under section 4 (a) of the RFA Act (see Attachment G);
Noted
2. Agree to the proposed variations to the Eden RFA, including extending the agreement until 26 August 2039;
Agreed / Not Agreed
3. Agree to the proposed variations to the North East NSW RFA, including extending the agreement until 26 August 2039;
Agreed / Not Agreed
4. Agree to the proposed variations to the Southern NSW RFA, including extending the agreement until 26 August 2039;
Agreed / Not Agreed
5. to give effect to each decision, sign and have witnessed (page four) and date (page one) the deeds of variation to the Eden, North East NSW and Southern NSW RFAs (at Attachments B, C and D); and
Signed / Not Signed
6. Sign the draft response to the Premier of NSW, the Hon Gladys Berejiklian MP, advising her of your decisions (Attachment A) and enclosing the signed deeds of variation.
Signed / Not Signed

s22(1)b(ii)

SCOTT MORRISON

Comments:

28.11.18

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Key Points:

1. The former Assistant Minister for Agriculture and Water Resources, Senator the Hon Anne Ruston, wrote to the former Prime Minister, the Hon Malcolm Turnbull, on 22 August 2018 ([Attachment F](#)) seeking agreement to vary and extend the Eden, North East NSW and Southern NSW RFAs ([Attachments B, C and D](#)). This will:
 - a. extend each RFA until 26 August 2039 and, upon satisfactory completion of five-yearly reviews (starting in 2024) automatically extend each RFA for a further five years; and
 - b. deliver a number of improvements to the RFAs consistent with the 2013 Commonwealth Government election commitment for a *Strong and Sustainable Forestry Industry*, including: modernised clauses to reflect current legislation and issues; a more outcomes focused five-yearly review process; strengthened communication between the Commonwealth and NSW governments; and an increased emphasis on research, monitoring and reporting.
2. While a decision to vary or extend an RFA is not a statutory decision, there are a range of considerations and statutory definitions, detailed below, relevant to your consideration of whether to agree to the proposed variations.
3. Before agreeing to the variations, you must have regard to the Assessment Report at [Attachment E](#). This report finds that the extension of the three RFAs to 26 August 2039 will enable continued protection and sustainable management of 'RFA values'.
 - a. In addition, we recommend you consider the additional information referenced at paragraph 16 below.

s42

5. Having had regard to the Assessment Report ([Attachment E](#)) we recommend you agree to the variations.
6. A draft response to the NSW Premier informing her of your decision on each RFA, and enclosing the signed variations, is attached for your consideration ([Attachment A](#)).

Background

7. The proposed variations were settled by the former Assistant Minister and her NSW counterparts, and between Commonwealth and State officials. We understand the NSW Premier is currently finalising agreement to the variations, following their formal consideration by the NSW Government.
 - a. The variations to each of the RFAs may be executed in counterparts and all executed counterparts constitute one document.
8. Forestry operations conducted in accordance with an RFA are generally exempt from requiring certain approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and *Export Control Act 1982* (Export Act), removing the Commonwealth Government from the day-to-day management of forests and providing a substantial reduction in regulatory burden.

- a. The variations to the Eden, North East NSW and Southern NSW RFAs will extend these agreements until 26 August 2039 continuing exemptions under the EPBC Act and the Export Act and aligning the expiry date of all NSW RFAs.
- b. Without variation, the Eden, North East NSW and Southern NSW RFAs will expire on 26 August 2019, 31 March 2020 and 24 April 2021 respectively, potentially exposing forest industries to increased regulation.

s 42



Stakeholder Reaction

- 15. We expect the NSW forestry industry will welcome the extensions and long term certainty they provide. Some environmental non-government organisations would prefer an end to native forest logging in NSW and are expected to generate negative media.

Additional information

16. In addition to the requirement to consider the Assessment Report ([Attachment E](#)), we recommend you consider the following additional information ahead of your decisions on variations to the RFAs.

- a. A summary of the joint public consultation process ([Attachment H](#)).

s42

- c. The Overview of the NSW Forest Management Framework, a report by the NSW Department of Primary Industries ([Attachment J](#)).
- d. The independent review of the report on progress on the implementation of the NSW RFAs for the second and third five-yearly reviews 2004-2014 ([Attachment K](#)) and the joint Commonwealth and NSW response to the independent review ([Attachment L](#)).

Roland Trease
A/g Assistant Secretary
Infrastructure, Agriculture and Regional
Development
12 September 2018

Policy Officer: s22(1)b(ii)
Phone no: (02) s22(1)b(ii)
Consultation: Fiscal, GovDiv,
Comm-State; DAWR.

ATTACHMENTS

ATTACHMENT A DRAFT RESPONSE

ATTACHMENT B VARIATION TO EDEN RFA

ATTACHMENT C VARIATION TO NORTH EAST NSW RFA

ATTACHMENT D VARIATION TO SOUTHERN NSW RFA

ATTACHMENT E ASSESSMENT REPORT

ATTACHMENT F INCOMING CORRESPONDENCE

ATTACHMENT G RFA ACT – SECTION 4

ATTACHMENT H PUBLIC CONSULTATION SUMMARY REPORT

ATTACHMENT I LEGAL ADVICES

ATTACHMENT J OVERVIEW OF NSW FORESTRY MANAGEMENT FRAMEWORK

ATTACHMENT K INDEPENDENT REVIEW OF NSW RFA IMPLEMENTATION

ATTACHMENT L RESPONSE TO INDEPENDENT REVIEW

~~Sensitive: Legal~~




PRIME MINISTER

Reference: MC18-111467

28 NOV 2018

The Hon Gladys Berejiklian MP
Premier of New South Wales
GPO Box 5341
SYDNEY NSW 2001

Dear Premier


I write regarding the variation and extension of the Eden, North East New South Wales (NSW) and Southern NSW Regional Forest Agreements (RFA).

Having regard to the 'RFA values' set out in section 4 (a) of the *Regional Forest Agreements Act 2002*, the report 'Assessment of matters pertaining to renewal of Regional Forest Agreements', and related reports and advice I agree to vary and extend the Eden, North East NSW and Southern NSW RFAs until 26 August 2039. I have signed and enclosed a copy of each of the deeds of variations.

I have copied this letter to the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, the Minister for the Environment, the Hon Melissa Price MP, and the Assistant Minister for Agriculture and Water Resources, Senator the Hon Richard Colbeck.

Yours sincerely

s22(1)b(ii)


SCOTT MORRISON

~~Sensitive: Legal~~



Senator the Hon. Anne Ruston

Assistant Minister for Agriculture and Water Resources
Senator for South Australia

Ref: MS18-001282

The Hon. Malcolm Turnbull MP
Prime Minister of Australia
Parliament House
CANBERRA ACT 2600

22 AUG 2019

Malcolm
Dear Prime Minister

I write to seek your agreement to the enclosed variations to the Eden, North East and Southern NSW Regional Forest Agreements (RFAs), which will result in 20 year extensions, consistent with the 2013 election commitment. The current NSW RFAs are due to expire on 26 August 2019, 31 March 2020 and 24 April 2021 respectively.

Forestry operations conducted in accordance with an RFA are generally exempt from the requirements to obtain additional approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and *Export Control Act 1982* (Cth) (Export Control Act). If the RFAs are not extended, there will be significantly increased regulatory burden on forestry operators because they will be required to obtain these additional approvals.

The execution of these variations will mean that the NSW RFAs continue to be recognised under the EPBC Act and the Export Control Act until their new expiry date of 26 August 2039. Upon the satisfactory completion of five-yearly reviews, starting in 2024, the RFAs will also be automatically extended for a further five years, resulting in the RFAs having a life of between 15 and 20 years at any point in time, as long as the reviews are completed satisfactorily.

47B

The variation to the NSW RFAs has been drafted by Australian and New South Wales government officials to reflect contemporary policy and legislative arrangements while still meeting the requirements of the definition of an 'RFA' under the *Regional Forest Agreements Act 2002* (Cth) (RFA Act). It is important to note that the intention is that these are variations to the RFAs, and are therefore not new agreements.

In order for an RFA to meet the definition of an 'RFA' or 'Regional Forest Agreement' for the purposes of the RFA Act, the agreement must be entered into having regard to assessments of the following matters and values: environmental, Indigenous heritage, economic and social values, and the principles of ecologically sustainable management. Assessments of the above matters were undertaken through the Comprehensive Regional Assessment processes that preceded the signing of the NSW RFAs.

Officials from both governments have developed a report that provides an updated assessment of the matters prescribed under the RFA Act, based on information derived from various sources published since the governments entered into the NSW RFAs. I enclose this further assessment report, for you to have regard to when deciding on the variation of the NSW RFAs.

The assessment report shows that the variation of the NSW RFAs would enable the continued protection and sustainable management of the values and matters listed under the RFA Act.

In addition, the RFAs must continue to provide for a comprehensive, adequate and representative reserve system, and for ecologically sustainable management and use of forested areas in NSW RFA regions. I am satisfied that this will continue to be the case as the varied RFAs specifically contains clauses that provide for these – please see, in particular, recital B of the varied agreements.

Also enclosed for your information are:

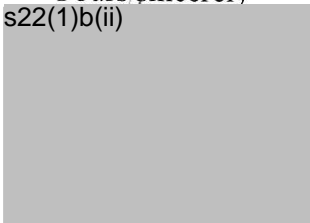
- the *Overview of New South Wales Forest Management Framework* to assist understanding of the past and future management of forest and forestry industry values
- the combined second and third five-yearly NSW RFAs Independent Reviewer's report (2018) and draft Joint Government Response, and
- a report summarising the public consultation feedback on the NSW RFA renewals, which was conducted in early 2018.

If after having had regard to the further assessment report of the matters listed under the RFA Act, you agree to the variations to extend the NSW RFAs, please sign the enclosed variations and return them to me.

I look forward to working with you and the Premier of New South Wales to secure a sustainable future for forestry in New South Wales.

Yours sincerely

s22(1)b(ii)



Anne Ruston

Enc.

DEPARTMENT OF THE PRIME MINISTER AND CABINET

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SCOTT MORRISON

Date:

Comments:

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Roland Trease
A/g Assistant Secretary
Infrastructure, Agriculture and Regional
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12 September 2018

Policy Officer: s22(1)b(ii)
Phone no: (02) s22(1)b(ii)
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Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.


Do I have to pay?

No. The Information Commissioner's review is free.

How do I apply?

You must apply in writing and you can lodge your application in one of the following ways:

online: www.oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquiries@oaic.gov.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the Information Commissioner within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

telephone: 1300 363 992

email: enquiries@oaic.gov.au

write: GPO Box 5218, Sydney NSW 2001
or visit our website at www.oaic.gov.au