

**New South Wales Regional Forest Agreements –
Eden, North East and Southern**

**Scoping Agreement for the review of progress
with implementation of the
New South Wales Regional Forest Agreements**

**The Commonwealth of Australia
and
The State of New South Wales**

**Second and Third Five-Yearly Reviews
September 2016**

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1. Preamble

The purpose of this Scoping Agreement is to set out the arrangements agreed by the Australian Government and New South Wales Government (the Parties) for undertaking the combined second and third five-yearly review to assess the progress with performance against the milestones and commitments/obligations of the New South Wales Regional Forest Agreements – Eden, North East and Southern Regions (NSW RFAs).

The review will use data from the Australian and New South Wales government departments/agencies and will be reported in the *Report on Progress with Implementation of the New South Wales Regional Forest Agreements: 2004 – 09 and 2009 – 14*.

The first five-yearly review of the NSW RFAs covered the five year period from the signing of each of the RFAs i.e. 1999-2004 for Eden Region, 2000-2005 for North East Region and 2001-2006 for Southern Region.

In undertaking the combined second and third five-yearly review, the Parties have agreed to use common review periods for the three NSW RFAs. The periods covered by the review will be the two five year periods of 2004-2009 and 2009-2014. This will allow regional and state-wide information to be utilised by a common reporting period, but does bring forward the review date for the North East and Southern RFA Regions, which would not otherwise be due until 2015 and 2016 respectively.

The Parties agree that this Scoping Agreement will be consistent with the NSW RFAs, the 1992 National Forest Policy Statement (NFPS), and other relevant agreements and policies.

This review will occur in accordance with:

- clauses 40, 41, 42 and 43 of the North East New South Wales RFA region (equivalent to clauses 38, 39, 40 and 41 of the Eden and Southern RFA regions); and
- relevant actions undertaken by the Parties in response to the Independent Reviewer's recommendations which are based on the joint government response to the first five-yearly review.

The Parties recognise that this Scoping Agreement cannot impose on a Party any obligation that is inconsistent with a law of the State of New South Wales or the Commonwealth of Australia where that law is binding on that Party.

The provisions of this Scoping Agreement are not intended to give rise to legally enforceable rights or obligations between the Parties.

2. Background

The New South Wales RFAs were developed as several in a series of RFAs between the Commonwealth of Australia and the governments of New South Wales, Tasmania, Victoria and Western Australia. While all the RFAs have their own unique elements, they have all been drawn up under the NFPS and all have requirements for five-yearly reviews.

The State of New South Wales and the Commonwealth of Australia entered into the three New South Wales RFAs on varying dates - 26 August 1999 (Eden Region), 31 March 2000 (North East Region) and 27 April 2001 (Southern Region).

The duration of each of the NSW RFAs is 20 years, from 1999 to 2019 for Eden Region, 2000 to 2020 for the North East Region and 2001 to 2021 for the Southern Region (Table 1).

	Date of making	Date of expiry
Eden	26 August 1999	26 August 2019
North East New South Wales	31 March 2000	31 March 2020
Southern New South Wales	27 April 2001	27 April 2021

The NSW RFAs establish the framework for the management of forests within the three NSW RFA regions. The Parties are committed to ensuring these RFAs are durable and deliver on the milestones and commitments/obligations contained within to ensure forest management, forest industry and conservation outcomes.

Clause 6 of the NSW RFAs establishes the third five-yearly review as the point when both Parties consider the process for extension of the RFAs. The Parties hold a shared intent for an ongoing role for NSW RFAs, and will consider this within the process for conducting the third five-yearly review.

3. The requirement for a five-yearly review

Clauses 40, 41, 42 and 43 of the North East RFA (equivalent to clauses 38, 39, 40 and 41 of the Eden and Southern RFAs) state:

40. *Within each five year period, a review of the performance of the Agreement will be undertaken. The purpose of the five-yearly review is to provide an assessment of progress of the Agreement against the established milestones, and will include:*
- (a) The extent to which milestones and obligations have been met, including management of the National Estate;*
 - (b) The results of monitoring of Sustainability Indicators; and*
 - (c) Invited public comment on the performance of the Agreement.*
41. *While the review process will not open up the Agreement to re-negotiation, both Parties may agree to some minor modifications to incorporate the results of the review as per clause 8.*
42. *The outcomes of the review will be made public. The mechanism for the review will be determined by both Parties before the end of the five-year period and the review will be completed within three months.*
43. *The Commonwealth will table in the Commonwealth Parliament the signed Regional Forest Agreement and, when completed, the annual reports detailing achievement of the milestones for the first four years of the Agreement and the first five-yearly review on performance against milestones and commitments.*

4. Additional undertakings for this five-yearly review

The Parties have agreed the review will report on progress against agreed actions within the 'Joint Australian and New South Wales Government Response to the Final Report on Progress with Implementation of the NSW Regional Forest Agreements: Report of Independent Assessor, February 2014'.

5. Principles for conduct of the review

The New South Wales RFAs are 20-year agreements that require performance reporting every five years. The review will cover the combined second and third five-yearly periods from 2004 to 2014, using data reported by the Australian and New South Wales government departments/agencies.

The Parties agree that they are jointly responsible for the review and will ensure effective coordination within and between the Parties.

The review will:

- be conducted in accordance with clauses 40, 41, 42 and 43 of the North East RFA (equivalent to clauses 38, 39, 40 and 41 of the Eden and Southern RFAs) and the process outlined in clause 8 of this Scoping Agreement
- satisfy the requirement to undertake a review of the performance of the NSW RFAs for the second and third five-yearly periods
- simultaneously consider the three NSW RFAs and have a single report on progress with implementation of the New South Wales RFAs prepared
- address the results of monitoring of sustainability indicators through a specific chapter in the Progress with Implementation report
- be conducted in a manner that is open and transparent
- align with other NSW state and national forest reporting processes and requirements where possible
- not open up the NSW RFAs to re-negotiation
- invite public comment on the report on Progress with Implementation of the New South Wales RFAs with respect to the milestones and commitments/obligations and, invite public comment relevant to the shared intent for an ongoing role for RFAs in NSW
- have regard to recommendations based on the past implementation of the NSW RFAs
- consider suggestions/recommendations on the future implementation of the NSW RFAs in their current or any future format
- provide outcomes which will be made publicly available.

6. Items for review

The Parties agree that:

- (a) The combined second and third five-yearly review will assess and report on progress made against the implementation of the milestones and

commitments/obligations listed in Attachment 4 of the Eden RFA and Attachment 5 of the other RFAs, as well as specified commitments (Attachment 1):

- In instances where milestones and commitments/obligations have been completed and reported against in the first five-yearly report, they need not be reported on again—rather, reference should be made to the previous review report.
 - The review will indicate where a milestone or commitment/obligation has been overtaken by events, or is no longer relevant.
- (b) the second and third five-yearly review will assess and report on progress made by the Parties in addressing the responses to the recommendations from the first five-yearly review.

7. Governance

The Parties agree that the development, implementation and finalisation of the combined second and third five-yearly reviews will be supported by a Joint Working Group and a Joint Working Group Support Team.

(a) Joint Working Group

The Joint Working Group (JWG) will comprise two nominees of the New South Wales Government and two nominees of the Australian Government. It will be co-chaired by a representative of the Australian Government Department of Agriculture and Water Resources and a representative of the NSW Environment Protection Authority (which will provide secretariat duties).

The JWG is responsible for:

- allocating resources to undertake the combined second and third five-yearly reviews, including collating submissions, providing funding to the Independent Reviewer and the publishing of the Independent Reviewer's report;
- inviting public comment on the Report of Progress with Implementation of the NSW RFAs with respect to the milestones of the New South Wales RFAs; and
- facilitating the publication and tabling of the joint government response to the Independent Reviewer's report of the combined second and third five-yearly reviews.

(b) Joint Working Group Support Team

A Joint Working Group Support Team will comprise officers from both the New South Wales and Australian Governments, as appointed by each party. Its membership will be dynamic so as to respond to the focus, priorities and workloads of the JWG.

The Joint Working Group Support Team will be responsible to the JWG and its duties will include:

- day to day implementation of this Scoping Agreement;

- preparing and publishing a Report on Progress with Implementation of the New South Wales RFAs, with New South Wales taking the lead role;
- supporting the Independent Reviewer in their review of public submissions and the Report on Progress with Implementation of the New South Wales RFAs, in accordance with Attachment 2 of this Scoping Agreement; and
- preparing and publishing the Joint Government Response to the report by the Independent Reviewer.

Support for the Independent Reviewer includes providing relevant documents, collating and supplying public submissions and facilitating any meetings with the Parties. Support will not include secretariat services or drafting reports.

(c) Ministerial

The Parties to the Scoping Agreement are represented by the responsible Ministers:

New South Wales:

The Hon. Mark Speakman SC MP
 Minister for the Environment
 Minister for Heritage
 Assistant Minister for Planning

Commonwealth:

Senator the Hon. Anne Ruston MP,
 Assistant Minister for Agriculture and Water Resources

The Ministers shall approve the:

- appointment of the Independent Reviewer
- joint government response to the report by the Independent Reviewer of the combined second and third five-yearly review.

8. Process for conducting the Review

The combined second and third five-yearly reviews will be conducted in accordance with the following process:

(a) Preparation (completed in late 2016)

- Report on Progress with Implementation of the NSW RFAs is prepared by the JWG.
- The Independent Reviewer is appointed by the Ministers.

(b) Public consultation – March 2017 (duration - at least 8 weeks)

- Public comments are sought on the Report of Progress with Implementation of the New South Wales RFAs and the proposed extension of the NSW RFAs
- Written public submissions are collated and provided to the Independent Reviewer.

(c) Review (indicative duration - 3 months)

- The Independent Reviewer reviews the Report of Progress with Implementation of the New South Wales RFAs and considers public submissions and any additional information provided by the Parties in relation to issues raised in public submissions.
- The Independent Reviewer delivers a report which includes findings, recommendations and a synthesis of public comments. As far as practical, the Independent Reviewer's report will group public comments into themes.

(d) Joint government response (indicative duration - 3 months)

- The Independent Reviewer's report is tabled in the Australian Parliament at a timing that is agreed by the Ministers.¹
- The Parties jointly respond to the Independent Reviewer's report. The Joint Australian and New South Wales Government Response is made publicly available following tabling in the Australian Parliament at a timing that is agreed by the Ministers.

9. Reporting protocols

The JWG shall report to responsible Ministers:

- on an 'as needs' basis through the co-Chairs.
- for their information in regards to the Report on Progress with Implementation of the New South Wales RFAs and the Independent Reviewer's report, and for their agreement on a formal Joint Australian and New South Wales Government Response, before these documents are made publicly available.

10. Communication protocols

The Parties agree that, prior to either Party making a separate public statement about the combined second and third five-yearly review, they will advise the other Party.

11. Financial issues

The Parties are responsible for all their own costs incurred in the implementation of this Scoping Agreement.

The Parties will share the agreed costs of the combined second and third five-yearly review evenly, including:

- i. advertising public notices in relevant media for the combined second and third five-yearly review, to call for submissions on the Report on Progress with Implementation of the New South Wales RFAs and the proposal for an ongoing role for the NSW RFAs;

¹ The date will be within the 15 parliamentary sitting days of its delivery to the Australian Government minister which is a statutory requirement under Section 10, *Regional Forest Agreements Act 2002*

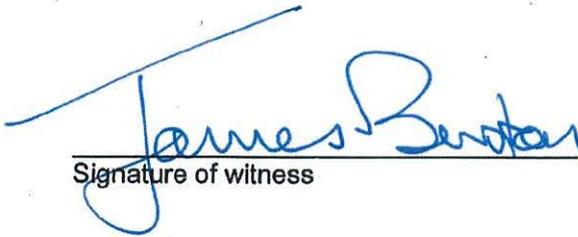
- ii. the Independent Reviewer's agreed fee, including their associated travel costs to attend any meetings with the Parties (as required); and
- iii. the preparation, publication and distribution of reports generated by the combined second and third five-yearly review.

12. Signing page

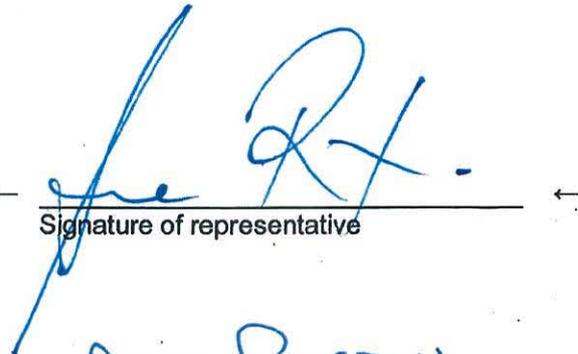
IN WITNESS WHEREOF this Agreement has been signed for and on behalf of the Parties on

the 20 day of DECEMBER in the year 2016

Signed for and on behalf of the
Commonwealth of Australia by
Senator the Hon. Anne Ruston
Assistant Minister for Agriculture and
Water Resources



Signature of witness



Signature of representative

James BURSTON

Name of witness (print)

Anne RUSTON

Name of representative (print)

Signed for and on behalf of the
New South Wales Government by
the Hon. Mark Speakman SC MP
Minister for the Environment
Minister for Heritage
Assistant Minister for Planning



Signature of witness



Signature of representative

RUBY KAW

Name of witness (print)

MARK SPEAKMAN

Name of representative (print)

Items for the Review

Milestones and obligations/commitments contained in the following clauses and attachments of the North East New South Wales RFA are, or have been regarded as ongoing items, to be subject to the combined second and third five-yearly review (Table 2). The equivalent clauses and attachments and RFA region specific clauses from the Eden and Southern RFAs will also be subject to the combined second and third five-yearly review.

Only those milestones or obligations/commitments that are ongoing or not yet completed as indicated in the table below will be reported on in this combined second and third five-yearly review as well as those obligations/commitments which are considered critical to the success of the NSW RFAs.

Where a milestone or commitment/obligation has already been achieved, the relevant review report will be referenced in the progress with implementation report to provide for reporting integrity for all RFA clauses. Where a milestone or commitment/obligation has been overtaken by events, or is no longer relevant, this is also indicated.

Table 2

Relevant part of agreement and associated attachments	Milestone, and commitment/obligation² Clause(s)
PART 1	
Duration of Agreement	6
PART 2	
(Relationship to Previous Forest Agreements)	17 (E)
Relationship to Statutory Obligations	19, 21, 26 - 37
Milestones	39
Five-yearly review	40 - 43
Ecologically Sustainable Forest Management	44, 46 - 48
Monitoring, Reporting and Consultative Mechanisms	49 - 51
Accreditation	52
Sustainability Indicators	53
Private Land (Attachment 2 ³)	54 - 59
Threatened Flora and Fauna (Attachment 3 ⁴)	60 - 64
The CAR Reserve System (Attachment 1)	65 – 72
Industry and Regional Development (Attachment 11 ⁵)	73, 74, 76 – 91 72 (E), 75 (E)
Indigenous Heritage (Attachment 10 ⁶)	92
Other Forest Uses	95, 97, 98 84 (E)
Competition Principles	99
Research (Attachment 7 ⁷)	100 – 104
Data	105, 106
PART 3	
Forest Management	108 – 109
Compensation	110

² These are the milestones under the North East RFA. Equivalent and region specific milestones from the Eden and Southern RFAs are also subject to review.

³ Attachment 12, Eden RFA

⁴ Attachment 2, Eden RFA

⁵ Attachment 10, Eden RFA– Proposed Employment and Industry Development Initiatives and Attachment 11, Southern RFA – Employment, Industry Development and Conservation Management

⁶ Attachment 9, Eden RFA

⁷ Attachment 6, Eden RFA

Relevant part of agreement and associated attachments	Milestone, and commitment/obligation ⁸ Attachments
CAR reserve system	1
Private land conservation ⁹	2
Threatened Flora and Fauna ¹⁰	3
Public reporting and consultative mechanisms ¹¹	6
Research priorities ¹²	7
Improvements to New South Wales' forest management systems ¹³	8
Managing lands of significance to Indigenous people ¹⁴	10
Employment and Industry Development Initiatives by the NSW Government for the Upper North East and Lower North East Regions ¹⁵	11
Long-term Timber Supply Strategy and Sustainable Yield Systems and Processes ¹⁶	12
Sustainable Yield Systems and Processes	11 (Eden)

⁸ These are the milestones under the North East RFA. Equivalent and region specific milestones from the Eden and Southern RFAs are also subject to review.

⁹ Attachment 12, Eden RFA

¹⁰ Attachment 2, Eden RFA

¹¹ Attachment 5, Eden RFA

¹² Attachment 6, Eden RFA

¹³ Attachment 7, Eden RFA

¹⁴ Attachment 9, Eden RFA

¹⁵ Attachment 10, Eden RFA– Proposed Employment and Industry Development Initiatives and Attachment 11, Southern RFA – Employment, Industry Development and Conservation Management

¹⁶ North East RFA only

Terms of Reference for the Independent Reviewer

Background

The Australian and New South Wales Governments (the Parties) signed the three New South Wales RFAs on 26 August 1999 (Eden), 31 March 2000 (North East) and 27 April 2001 (Southern).

The New South Wales RFAs establish the framework for the management of forests within the New South Wales RFA regions. The duration of each of the New South Wales RFAs is 20 years from its date of signing.

An important element of New South Wales RFAs is their requirement to review the performance of each of the New South Wales RFAs. An RFA review is an assessment or evaluation of progress made against the milestones and commitments/obligations specified in each of the New South Wales RFAs.

Clause 40 of the North East RFA (Clause 38 of the Eden and Southern RFAs) requires that:

'Within each five-year period, a review of the performance of the Agreement will be undertaken. The purpose of the five-yearly review is to provide an assessment of progress of the Agreement against the established milestones, and will include:

(a) The extent to which milestones and obligations have been met'

The review is to be conducted by a person or body jointly appointed by the Parties.

The review will:

- (i) invite and take account of public comments on the Report on Progress with Implementation of the New South Wales RFAs: 2004 – 09 and 2009 – 14
- (ii) use and take account of the results of monitoring of Sustainability Indicators including trends
- (iii) be completed within three months of its commencement
- (iv) develop a report detailing the review process and its findings.

The Parties may extend the review period to ensure a rigorous and robust process.

Terms of Reference

The role of the Independent Reviewer will be to review the *Report on Progress with Implementation of the New South Wales RFAs: 2004 – 09 and 2009 – 14*, associated written public comments, and additional information provided by the Parties as relevant to the review and provide a report to the Joint Working Group. The review will cover the following five-yearly periods, using data compiled from the resources of the Parties:

Second five-yearly period – 2004-2009; and

Third five-yearly period – 2009-2014.

The Independent Reviewer is required to:

1. Receive written submissions from the public on the *Report on Progress with Implementation of the New South Wales RFAs: 2004 – 09 and 2009 – 14* with respect to the milestones and commitments/obligations of each of the RFAs and, receive public comments relevant to, and within the scope of, the shared intent for an ongoing role for the NSW RFAs
2. Review written public submissions and undertake further targeted consultation with organisations or individuals as required, to clarify any issues raised in the written submissions, and

3. Provide a written report to the Joint Working Group, which:
 - provides comment on the *Report on Progress with Implementation of the New South Wales RFAs: 2004 – 09 and 2009 – 14*, and any specific recommendations on implementation of the New South Wales RFAs, considering the written public submissions received
 - describes the key issues identified in the written public submissions
 - notes the policy framework as established by the National Forest Policy Statement,
 - lists the names of the individuals and organisations who made written public submissions.
4. Deliver all written submissions and information used by the Independent Reviewer to the Joint Working Group with the report.

Timing

The Independent Reviewer must submit their report to the Joint Working Group within three months of the closure of the public comment period.

General

The Terms of Reference for the Independent Reviewer should be read in conjunction with the Scoping Agreement.

