

**Regional Forest Agreement for the
South-West Forest Region of Western Australia**

**Scoping Agreement for the review of progress
with the implementation of the
Regional Forest Agreement for the
South-West Forest Region of Western Australia**

**The Commonwealth of Australia
and
The State of Western Australia**

**Third Five-Yearly Review
November 2015**

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1. Preamble

The purpose of this Scoping Agreement is to set out the arrangements agreed by the Western Australian Government and the Australian Government (the Parties) for undertaking the third five-yearly review to assess the progress of performance against the milestones, commitments and obligations of the Regional Forest Agreement for the South-West Forest Region of Western Australia (WA RFA).

The review will cover the 2009 to 2014 five-yearly period. For practicality, this WA RFA review will build on the review periods previously established in the combined first (1999 to 2004) and second (2004 to 2009) five-yearly review report (July 2013).

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

This review will occur in accordance with:

- clauses 36, 37, 38 and 39 of the WA RFA; and
- relevant actions undertaken by the Parties, in response to recommendations, from the joint government response report to the combined first and second 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 Western Australia 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 WA RFA was developed as one of a series of Regional Forest Agreements (RFA) 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 of performance.

The State of Western Australia and the Commonwealth of Australia entered into the WA RFA on 4 May 1999.

The duration of the WA RFA is 20 years, from 1999 to 2019, and it can be extended with the agreement of both Parties (clause 6).

The WA RFA establishes the framework for the management of forests within the South-West forest region as the WA RFA region. The Parties are committed to ensuring the WA RFA is durable and delivers on the milestones, commitments and obligations contained within the agreement to ensure effective forest management, forest industry and conservation outcomes.

The Parties have also committed to extend the WA RFA. The outcomes of the review will be a consideration in negotiations between the Parties to extend the WA RFA.

3. The requirement for a five-yearly review

As stated in clauses 36, 37, 38 and 39 of the WA RFA:

36. *The Parties note that under the CALM Act, Forest Management Plans are revised every ten years. Towards the end of the first and third five year periods of this Regional Forest Agreement, a joint Commonwealth/Western Australian review on performance against the milestones and commitments made in this Agreement will be undertaken at the same time as the Forest Management Plan revision process, thereby taking into account the required Environmental Protection Authority assessment of, and recommendations on, the revised Forest Management Plans due at those times and the associated statutory public consultation processes. The Commonwealth and the State will jointly report on performance before the end of the second five year period of this Agreement.*

37. *The mechanisms for these joint reviews/report will be agreed by the Parties within six months of the signing of the Agreement and the reviews/report will be completed within three months after the completion of each five-year period.*

38. *While these five year reviews/report on performance will not open up the Agreement to re-negotiation, both Parties may agree to some minor modifications to incorporate the results of the reviews or report on performance. The outcomes of the reviews and the report on performance will be made public.*

39. *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 year review on performance against milestones and commitments.*

The purpose of the third five-yearly review is to assess progress against the specified milestones, commitments and obligations and will include:

- the extent to which milestones, commitments and obligations have been met, including management of the National Estate
- the results of monitoring of sustainability indicators
- inviting public comments on the Report on Progress with Implementation of the Western Australia Regional Forest Agreement - Period 3: 2009-2014.

The review will also include an assessment of the performance by the Parties to the WA RFA against agreed actions that arose out of the Joint Government Response to the combined first and second five-yearly review conducted in 2013.

The review may make recommendations in regard to the past implementation of the WA RFA. The review may also make suggestions on the future implementation of the WA RFA, as it exists in its current format, which may be amended by the extension process to take the WA RFA beyond its current twenty year life.

4. Principles for conduct of the review

The WA RFA is a 20-year agreement that requires performance reporting every five years. The review will cover the third five-yearly period from 2009 to 2014.

In undertaking the third five-yearly review of the WA RFA, 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 36, 37, 38 and 39 of the WA RFA
- will be conducted in a manner that is open and transparent
- will invite public comment on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia with respect to the milestones, commitments and obligations and, recognising the commitment to extend the WA RFA, and invite public comment relevant to the proposed extension of the WA RFA
- will consider the agreed actions from the Joint Australian and Western Australian Government Response to the Review of the Implementation of the regional Forest Agreement for the South-West Forest Region of Western Australia for the Period 1999-2009
- will be completed in accordance with the process outlined in section 7 of this Scoping Agreement
- will be cognisant of other Western Australian state and national forest reporting processes and requirements
- does not open up the WA RFA to re-negotiation
- will provide outcomes which will be made publicly available in a report that outlines the review process used by the Independent Reviewer and the findings and recommendations of the Independent Reviewer.

The Parties note that, as per clause 6 of the WA RFA, this review will include the Parties agreeing on the process to extend the WA RFA. The Parties intend to negotiate an agreed position on extending the WA RFA through a bilateral process informed by, but separate from, this third five-yearly review.

5. Items for review

The Parties agree that:

- (a) the third five-yearly review will assess and report on progress made against the implementation of the milestones, commitments and obligations specified in Attachment 1 of this Scoping Agreement.
 - In instances where milestones, commitments and obligations have been completed and reported against in an earlier five-yearly review report, they need not be reported on again—rather, reference should be made to the previous review report.
- (b) the review will provide an update of the actions undertaken by the Parties in addressing the responses to the recommendations from the combined first and second five-yearly review.
- (c) the review fulfils the requirement in the WA RFA to report on the results of monitoring sustainability indicators.

6. Governance

(a) Joint Working Group

The development, implementation and finalisation of the third five-yearly review will be supported by the Joint Working Group. In addition, the Joint Working Group will be supported by a Joint Working Group Support Team.

The Joint Working Group will comprise two nominees of the Western Australian 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 Western Australian Department of Parks and Wildlife (which will provide supporting secretariat duties).

The Joint Working Group is responsible for:

- allocating resources to undertake the third five-yearly review, including collating submissions, supporting the Independent Reviewer and publishing the Joint Government Response to the report by the Independent Reviewer
- inviting public comment on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia with respect to the milestones, commitments and obligations of the WA RFA and, recognising the commitment to extend the WA RFA, on the scope of the proposed extension of the agreement
- publication and tabling of the Joint Government Response to the report by the Independent reviewer of the third five-yearly review.

(b) Joint Working Group Support Team

A Joint Working Group Support Team will comprise officers from both the Western Australian and Australian Governments, as tasked by each Party. Its membership will be dynamic so as to respond to the focus, priorities and workloads of the Joint Working Group.

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

- day to day implementation of this Scoping Agreement
- preparing a Report on Progress with Implementation of the WA RFA with Western Australia taking the lead role
- supporting the Independent Reviewer in their review of both the report and the public submissions on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia, in accordance with the Terms of Reference for the Independent Reviewer at Attachment 2 of this Agreement
- preparing the Joint Government Response to the report by the Independent Reviewer of the third five-yearly review.

Support to be provided to the Independent Reviewer by the Parties will include provision of the report and relevant documents, collation and supply of public submissions and facilitation of any meetings with the Parties. Support will not include secretariat services or drafting of reports.

(c) Ministerial

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

Western Australia:

The Hon. Albert Jacob MLA
Minister for Environment; Heritage

Commonwealth:

Senator the Hon. Anne Ruston
Parliamentary Secretary to the 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 third five-yearly review.

7. Process for conducting the Review

The third five-yearly review will be conducted in accordance with the following process:

(a) Preparation – By end March 2016, the:

- Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia is prepared by the Parties
- Independent Reviewer is appointed
- Parties agree the high-level process for extending the duration of the WA RFA.

(b) Public consultation – duration 6 weeks

- public comments are sought on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia with respect to the milestones, commitments and obligations of the WA RFA and in the context of the proposed extension of the WA RFA
- the Parties collate written public submissions and provide them to the Independent Reviewer.

(c) Review – anticipated duration 3 months

- the Independent Reviewer reviews the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia, the public comments and submissions, extra information provided by the Parties with respect to issues raised in the public comments, as required, or any further information provided by the Parties
- a report is prepared and delivered to the Parties by the Independent Reviewer within three months of the close of the public comment period, including a synthesis of public comments and submissions on the implementation of the WA RFA. The report, to all practicable extent, will group comments into themes, including identifying those comments that may be particularly relevant to the commitment to extend the WA RFA.

(d) Joint government response – anticipated duration 3 months

- the Independent Reviewer's report is tabled in the Australian Parliament
- the Parties jointly respond to the report prepared by the Independent Reviewer for the third five-yearly review of progress with implementation of the WA RFA and make publicly available the Joint Australian and Western Australian Government Response following tabling in the Australian Parliament

- this Joint Government Response will note the WA RFA extension process as agreed by the Parties as part of the third five-yearly review.

8. Reporting protocols

The Joint Working Group shall report to the responsible Ministers:

- on an 'as needs' basis through the co-chairs
- who shall consider the report of the Independent Reviewer and agree a formal Joint Government Response report from the Parties with the intention of making both reports publicly available.

9. Communication protocols

The Parties agree that prior to either Party making a separate public statement about this third five-yearly review that they will consult the other Party.

10. Financial issues

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

The Parties will share evenly the agreed costs of the review including:

- i. advertising public notices in relevant media for the third five-yearly review which calls for public comment and submissions on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia and the scope of the proposed extension of the WA RFA
- ii. the Independent Reviewer's agreed fee including their associated travel costs to attend meetings with the Parties (as required)
- iii. the preparation, publication and distribution of reports generated by the third five-yearly review.

11. Signing page

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

the **28** day of **January** in the year **2016**

Signed for and on behalf of the **Commonwealth of Australia** by Senator the Hon. Anne Ruston, Parliamentary Secretary to the Minister for Agriculture and Water Resources

(Sgd) Sara Bray

Signature of witness

(Sgd) Anne Ruston

Signature of representative

SARA BRAY

Name of witness (print)

ANNE RUSTON

Name of representative (print)

Signed for and on behalf of the **Western Australian Government** by the Hon. Albert Jacob MLA, Minister for Environment; Heritage

(Sgd) Jason Foster

Signature of witness

(Sgd) Albert Jacob

Signature of representative

JASON FOSTER

Name of witness (print)

ALBERT JACOB

Name of representative (print)

Items for the Review

Milestones, commitments and obligations contained in the following clauses and attachments of the WA RFA are, or have been regarded as ongoing items, to be subject to the third five-yearly review.

Only those milestones, commitments and obligations that are ongoing or not yet completed as indicated in the table below will be reported on in this third five-yearly review as well as those commitments and obligations which are considered significant by the Parties to the implementation of the WA RFA.

Where a milestone, commitment or obligation has already been achieved, the relevant review report will be referred to in the body of the Report on Progress with Implementation of the Western Australia Regional Forest Agreement – Period 3: 2009-2014 to provide for reporting integrity for all RFA clauses. Where a milestone, commitment or obligation has been overtaken by events, or is no longer relevant, will also be indicated.

Milestone/Commitments	Clause	Status
PART 1		
Duration of Agreement	6	Ongoing
PART 2		
Relationship to Statutory Obligations	19, 21, 25-30, 32-33	Ongoing
Milestones	34-35	Ongoing
Five-yearly review/report on performance	36-39	Ongoing
Ecologically Sustainable Forest Management	40, 42-45	Ongoing
Monitoring, Reporting and Consultative Mechanisms	46-47	Ongoing
Accreditation	48, 50	Ongoing
Sustainability Indicators	51-52	Ongoing
Private Land	53-55	Ongoing
Threatened flora and fauna	56-63	Ongoing
CAR reserve system	64-69	Ongoing
Action to establish and manage reserves	70	Ongoing
Industry development	71-80	Ongoing
Indigenous heritage	81	Ongoing
Other forest uses	84-86	Ongoing
Competition principles	87	Ongoing
Research	88-90	Ongoing
Data use and access	91-93	
PART 3		
Forest Management	95-96	Ongoing
Compensation	97	Ongoing
Industry assistance	98	
	Attachment	
CAR reserve system	1	Ongoing
Public reporting and consultative mechanisms	4	Ongoing
Improvements to Western Australia's forest management systems on public land	5	Ongoing
Protection and management of forests on private land	6	Ongoing
Threatened flora and fauna	8	Ongoing
Aboriginal heritage and consultation	10	Ongoing
Priority areas of research	11	Ongoing
Forest employment and industries development strategy	14	Ongoing

Terms of Reference for the Independent Reviewer

Background

The Australian and Western Australian Governments (the Parties) signed the Regional Forest Agreement for the South-West Forest Region of Western Australia (WA RFA) on 4 May 1999.

The WA RFA establishes the framework for the management of forests within the South-West forest region i.e. the WA RFA region. The duration of the WA RFA is 20 years from its date of signing.

As provided under clause 6 of the WA RFA, it is the intent of the Parties to agree to an extension process for the agreement as part of the third five-yearly review.

An important element of the WA RFA is the requirement to review the performance of the WA RFA. A Regional Forest Agreement (RFA) review is an assessment or evaluation of progress made against the implementation of milestones, commitments and obligations specified in the WA RFA.

Clause 36 of the WA RFA requires that:

The Parties note that under the CALM Act, Forest Management Plans are revised every ten years. Towards the end of the first and third five year periods of this Regional Forest Agreement, a joint Commonwealth/Western Australian review on performance against the milestones and commitments made in this Agreement will be undertaken at the same time as the Forest Management Plan revision process, thereby taking into account the required Environmental Protection Authority assessment of, and recommendations on, the revised Forest Management Plans due at those times and the associated public consultation processes. The Commonwealth the State will jointly report on performance before the end of the second five year period of this Agreement.

The review is to be conducted:

- (i) by a person or body jointly appointed by the Parties
- (ii) in accordance with agreed priorities, procedures and funding arrangements of the Parties.

The review will:

- (iii) invite and take account of public comments and submissions on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia – Period 3: 2009-2014 and the proposed framework for the extension of the WA RFA
- (iv) use and take account of the Sustainability Indicators including trends
- (vi) be completed within three months of its commencement
- (vii) 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 Regional Forest Agreement for the South-West Forest Region of Western Australia – Period 3: 2009-2014 and associated written public comments and submissions, and provide a report to the Joint Working Group. The review will cover the 2009 to 2014 five-yearly period, using data compiled from the resources of the Parties.

The Independent Reviewer is required to:

1. Receive written comments and submissions from the public on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia – Period 3: 2009-2014 with respect to milestones, commitments and obligations of the WA RFA and, recognising the commitment to extend the WA RFA,

receive public comments relevant to, and within the scope of, the proposed framework for the extension of the WA RFA.

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.
3. Provide a written report to the Australian and Western Australian ministers responsible for RFAs, which:
 - provides comment on the Report on Progress with Implementation of the Regional Forest Agreement for the South-West Forest Region of Western Australia – Period 3: 2009-2014, and any specific recommendations on implementation of the WA RFA, considering the written public submissions received
 - summarises the key issues identified in the written public submissions
 - noting the policy framework as established by the National Forest Policy Statement, identifies any additional issues that could be considered for the continued implementation of the RFA in the context of the proposed extension of the agreement, including minor improvements that strengthen the overall RFA framework
 - 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 their written report.

Timing

The Independent Reviewer must submit their report to the Australian and Western Australian ministers responsible for RFAs 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.