

Victorian Regional Forest Agreements

Scoping Agreement for the Major Event Review to assess the impacts of the 2019-20 bushfires

**The Commonwealth of Australia
and**

The State of Victoria

September 2020

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1. Preamble

The Australian Government and Victorian Government (the Parties) have jointly agreed to undertake a Major Event Review (Review) to assess the impacts of the 2019-20 bushfires (Major Event) pursuant to each of the five RFAs in Victoria (Victorian RFAs).

In accordance with the requirements of each of the Victorian RFAs, this Scoping Agreement:

- sets out the matters which the Panel must consider and report on;
- includes the proposed approach to consultation and engagement with Traditional Owners, stakeholders and communities; and
- identifies any agreed timeframes, priorities, procedures (including the process for ending a review) and funding arrangements.

The Parties recognise that this Scoping Agreement cannot impose on a party any obligation that is inconsistent with a law of the State of Victoria 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. Interpretation

A term used in this Scoping Agreement has its ordinary meaning unless that term is defined:

- In this Scoping Agreement; or
- In one of the Victorian RFAs, in which case the term has the meaning given to it in those agreements, with any necessary modifications, unless it is defined differently for the purposes of this Scoping Agreement.

3. Background

The State of Victoria and the Commonwealth of Australia entered into the Victorian RFAs on the following dates:

- East Gippsland RFA on 3 February 1997
- Central Highlands RFA on 27 March 1998
- North East RFA on 9 August 1999
- Gippsland and West Victoria RFAs on 31 March 2000.

On 30 March 2020, five Victorian RFAs were amended and extended until 30 June 2030.

The Victorian RFAs establish the framework for the management of Forests within each of the RFA Regions in Victoria. The Parties are committed to ensuring the Victorian RFAs are durable and that the obligations and commitments that the Victorian RFAs contain are delivered to ensure effective conservation, Forest Management and Forest Industry outcomes.

4. Major Events and Major Event Reviews

As defined in the Victorian RFAs, a 'Major Event' is a substantial change in circumstances that has the potential to significantly impact upon:

- a) the objectives and operation of the RFAs;
- b) the comprehensiveness, adequacy or representativeness of the Comprehensive, Adequate and Representative (CAR) Reserve System;
- c) Ecologically Sustainable Forest Management (ESFM);

- d) one or more Matters of National Environment Significance (MNES); or
- e) the stability of Forest Industries.

within the RFA Region, and includes (but is not limited to) natural events such as bushfires, floods and disease.

Within six months of the occurrence of a Major Event, the Parties may jointly agree to conduct a review to assess the impact of the event.

The key clauses relating to Major Event Reviews are set out in:

- 32A to 32E in the East Gippsland RFA
- 38F to 38I in the Central Highlands RFA
- 38F to 38J in the North East RFA
- 39F to 39J in the Gippsland RFA
- 39F to 39J in the West Victoria RFA.

The key clauses are set out in Attachment 1.

5. Reason for conducting this Major Event Review

During the 2019-20 bushfire season, extensive fires affected south-eastern Australia, including the whole of the State of Victoria and in particular, Eastern Victoria (2019-20 bushfires), from approximately November 2019 to February 2020.

The Parties agree that the 2019-20 bushfires constitute a Major Event for the purposes of this Major Event Review conducted pursuant to each of the Victorian RFAs and in respect of each of the RFA Regions in Victoria. The Parties acknowledge the significant impacts of the fires on Forests, Biodiversity, Forest Industries and regional communities. At the time of the Victorian RFA extensions in March 2020, detailed information on the extent of the damage on Forests was not yet available.

As part of the extension process for the Victorian RFAs, on 26 March 2020, Senator the Hon. Jonathon Duniam, Assistant Minister for Forestry and Fisheries, wrote to the Hon. Lily D'Ambrosio MP, Victorian Minister for Energy, Environment and Climate Change, noting that the 2019-20 bushfire season has significantly affected forested areas across the RFA regions of Victoria. He sought agreement to conduct a Major Event Review at a suitable time following the signing of the modernised Victorian RFAs.

On 30 March 2020, Minister D'Ambrosio wrote that she agreed that, as a consequence of the 2019-20 bushfires in Victoria, there is cause for the Parties to conduct the review.

6. Principles for conduct of the review

In undertaking this Major Event Review, the Parties agree that they are jointly responsible for the terms of the Review and will ensure effective coordination within and between the Parties.

The Review:

- will be conducted in accordance with the clauses relating to Major Event Reviews under each of the five Victorian RFAs and in respect of the impacts of the Major Event on each of the five RFA Regions in Victoria in accordance with this Scoping Agreement.
- will be conducted by a Panel comprised of:
 - the Victorian Commissioner for Environmental Sustainability

- an independent reviewer selected by the Commonwealth of Australia, and agreed by Victoria
- other members, as agreed by the Parties.
- will not open the RFAs up to renegotiation.
- will be conducted in a manner that is open and transparent.
- will result in a single report detailing the Panel's findings and recommendations, with findings specific to each of the five RFA Regions, which will be made publicly available.

7. Scope of Review

The Parties agree that, as per requirements of the Victorian RFAs, the Major Event Review will assess the impacts of the 2019-20 bushfires on:

- a) operation of the RFAs
- b) ESFM;
- c) the CAR reserve system;
- d) the effective management and protection of MNES;
- e) Harvest Level; or
- f) the long term stability of Forests and Forest Industries.

The Major Event Review will include public consultation and an assessment of the impacts of the 2019-20 bushfires on Environment and Heritage Values, Listed Species and Communities, Ecosystem Services, economic and social values.

The Review will consider and make recommendations on what, if any, remedial action needs to be undertaken to address the impacts of the 2019-20 bushfires.

8. Independent Review Panel

The Major Event Review will be conducted by a Panel comprised of individuals with extensive experience in land, Forest and bushfire management, an understanding of the operation of the RFAs, or connection to Country.

The Victorian RFAs specify that the Panel will be comprised of:

- (a) *the Victorian Commissioner for Environmental Sustainability or, if there is no Victorian Commissioner for Environmental Sustainability, an independent reviewer selected by Victoria and agreed by the Commonwealth;*
- (b) *an independent reviewer selected by the Commonwealth of Australia and agreed by Victoria; and*
- (c) *other members, as agreed by the Parties.*

The Victorian RFAs also specify that:

For the purposes of clause (c), the Parties will actively consider Traditional Owner representation on the Panel.

The lead RFA Ministers, being the Ministers identified in Section 10, will agree to the membership of the Panel before the Panel is constituted.

The Panel will be responsible for:

- Developing and implementing a plan for consultation and engagement with Traditional Owners, stakeholders and communities. The plan will take into account any existing reports of relevant consultation feedback and the timing and content of other Forest Management engagement activities, and be submitted to the Parties for endorsement;
- Considering feedback from consultation and engagement with Traditional Owners, stakeholders and communities in the development of the report;
- Assessing the impacts of the 2019-20 bushfires on the matters set out in Section 6 'Scope of Review';
- Developing and submitting a report detailing the Panel's findings and recommendations.

9. Process for conducting the Review

The Review will be conducted in accordance with the following process:

(a) Preparation – [By end November 2020]

The Parties will:

- Agree to the Panel members;
- Constitute the Panel;
- Produce a Summary Report for public consultation.

The Panel will develop a plan for consultation and engagement with Traditional Owners, stakeholders and communities and submit this for endorsement by the Parties.

The Parties will compile the following information for RFA Regions, where available during the course of the Review, to be provided to the Panel:

- supporting information at the gross level about forested areas burnt, including fire extent and severity, as well as any other relevant assessments, analysis or data;
- assessments of fire impacts on the condition of species, particularly listed species and ecological communities, and other MNES including through the Australian Government Wildlife and Threatened Species Bushfire Recovery Expert Panel;
- assessment of the impacts on the CAR Reserve System;
- assessments of the impacts of bushfires on areas (native Forest and plantation) available for harvest;
- assessment of the impacts on Forest Industries and the social and economic impacts of the bushfires;
- information provided by Traditional Owners for the purposes of the Review; and
- any other relevant assessments of the direct and indirect impacts of the bushfires.

Information available within the Preparation timeframe will be summarised in the Summary Report to inform the public consultation.

The Parties agree that additional data and information may be required for the purposes of this Review.

The Panel may request additional information from the Parties as required to fulfil the requirements of the Review.

Additional data and information requests will be considered by the Parties on a case-by-case basis.

(b) Public consultation – [For a 2 month period – to be completed by early Feb 2021, subject to alignment with other Victorian engagement and the engagement plan to be developed by the Panel]

- The Parties will develop and release the Summary Report for public comment.
- The Panel will undertake engagement with Traditional Owners, stakeholders and communities consistent with the approach endorsed by the Parties.

(c) Report from Panel – [By mid May 2021]

- In preparing its report, the Panel will have regard to:
 - feedback from engagement with Traditional Owners, stakeholders and communities;
 - feedback from the Joint Working Group in relation to matters of form, accuracy or compliance with the terms of this Scoping Agreement;
 - information provided by the Parties, and
 - Forest Management actions or policy decisions made by governments in response to the 2019-20 bushfires.
- The Panel may seek additional expertise, input or information from other sources with the endorsement of the Parties.
- The Panel will produce a single report in respect of all of the five Victorian RFA Regions and deliver it to the lead RFA Ministers within three months of the close of public submissions, including a synthesis of relevant feedback from engagement with Traditional Owners, stakeholders and communities.
- The report, to the extent practicable, will group content and findings into themes, and will provide recommendations about what, if any, remedial action needs to be undertaken to address the impacts of the 2019-20 bushfires in the five Victorian RFA Regions.
- The Panel will provide feedback to consulted stakeholders and communicate how their input was reflected in the Panel's findings, within 2 weeks of the publication of the Panel's Report.

Upon receiving the Panel's report, the Parties will determine an agreed approach to responding to the recommendations in the report.

The Review will be deemed to have ended at the time of publication of a Government response to the Panel's report or at a time agreed by the Parties.

10. Governance

(a) Ministerial

Commonwealth:

Senator the Hon. Jonathon Duniam
Assistant Minister for Forestry and Fisheries

Victoria:

The Hon. Lily D'Ambrosio MP
Minister for Energy, Environment and Climate Change

The Parties to this Scoping Agreement are represented by the Lead RFA Ministers for the approval of the:

- Terms of the Scoping Agreement;
- Panel members; and
- Agreement of an approach to responding to the report by the Panel.

(b) Joint Working Group

The Joint Working Group will comprise a representative from each Australian Government and Victorian Government agency with responsibility for forest industry and/or environment policy.

The Joint Working Group is responsible for –

- implementing this Scoping Agreement.
- allocating resources to undertake work in respect of this Review.
- the development of the Summary Report (see Section 9 above).
- constitution of and communication with the Panel.
- consideration of, and recommendations with respect to the Panel's consultation and engagement plan.
- consideration of Panel requests for expertise, input or information from other sources.

Through the Joint Working Group the Parties will support the Panel by providing –

- information required for the consideration of matters set out in section 6 including provision of relevant documents and forwarding public submissions;
- information and access to resources required to undertake stakeholder and community consultation;
- access to resources required for secretariat purposes.

In addition, the Joint Working Group will be supported by a Joint Working Group Support Team.

(c) Joint Working Group Support Team

A Joint Working Group Support Team will comprise officers from both the Victorian and Australian Governments, as appointed by each Party.

The Joint Working Group Support Team will be responsible for developing material to assist the Joint Working Group, such as the drafting of a Summary Report for public consultation, and its duties will include day to day implementation of this Scoping Agreement.

11. Reporting protocols

The Joint Working Group shall report to Ministers responsible for portfolios relevant to the Victorian RFAs on an as needs basis.

12. Communication protocols

Where possible, communication about the Major Event Review will be made through joint statements by the Parties.

If either Party decides to make a separate public statement about the Major Event Review, the Parties agree that they will advise the other Party prior to making the statement.

13. Financial issues

The Parties will share equally the costs associated with the following activities that the Parties agree are required to be undertaken for this Major Event Review including the:

- constitution of the Panel, including an expression of interest process to support identification of Traditional Owner representation on the Panel;
- costs associated with public consultation, including costs of publication of the Summary Report;
- operations of the Panel and their associated costs; and
- publication of the Report from the Panel.

Parties may agree to fund other activities where it is agreed by both Parties that it is required for the review.

Each of the Parties has invested in assessments and analysis of the 2019-20 Bushfires. Where this information and data will be available in time for the Major Event Review, it will be supplied to the Panel.

Additional requests by the Panel relating to data and information, expert advice, consultation, or other matters the Panel considers are required for the Major Event Review, and related funding, will be considered by the Parties on a case-by-case basis.


The Parties are responsible for all their own costs incurred in the preparation and, where required, implementation of this Scoping Agreement. That is, each Party continues to be responsible for the costs associated with their ordinary operations as a government body, responsible for, among other things, the preparation and implementation of this Agreement. Costs associated with ordinary operations include Departmental staffing and equipment costs, travel expenditure for department staff, and costs of any third party engaged unilaterally by a party.

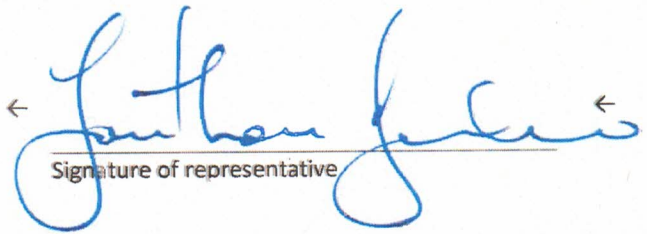
14. Signing page

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

5 day of November in the year 2020

Signed for and on behalf of the Commonwealth of Australia by the Senator the Hon. Jonathon Duniam, Assistant Minister for Forestry and Fisheries



Signature of witness

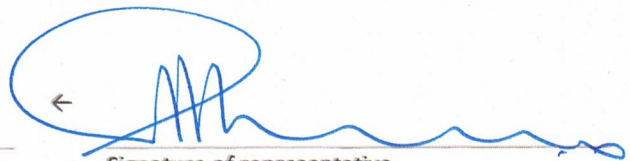

Signature of representative

REBECCA DUNHAM
Name of witness (print)

JONATHAN R. DUNIAM
Name of representative (print)

Signed for and on behalf of the Victorian Government by the Hon. Lily D'Ambrosio MP, Minister for Energy, Environment and Climate Change


Signature of witness


Signature of representative

PAUL TREVASKIS
Name of witness (print)

Lily D'Ambrosio MP
Name of representative (print)

Major Event Review clauses

(East Gippsland RFA clause number references)

32A. Subject to clause 32B, within six months of the occurrence of a Major Event, the Parties may jointly agree to conduct a review to assess the impacts of the Major Event on the:

- (a) operation of the Agreement;
- (b) ESFM;
- (c) CAR Reserve System;
- (d) effective management and protection of MNES;
- (e) Harvest Level; or
- (f) long-term stability of Forests and Forest Industries.

32B. A review pursuant to clause 32A of this Agreement:

- (a) can only be undertaken if both Parties jointly agree to undertake the review;
- (b) is to be conducted by a Panel constituted in accordance with clause 31D of this Agreement;
- (c) is to be jointly funded by the Parties in accordance with clause 32C;
- (d) must include public consultation and an assessment of the impacts of the Major Event on Environment and Heritage Values, Listed Species and Communities, Ecosystem Services, economic and social values; and
- (e) can constitute a Five-yearly Review if it:
 - (i) is agreed by both Parties;
 - (ii) is carried out for the whole of the RFA Region;
 - (iii) is conducted within one year of the date on which the Five-yearly Review is due to be commenced pursuant to clause 31B(c);
 - (iv) meets the purpose and scope of a Five-yearly Review described in clause 30; and
 - (v) is conducted in accordance with clauses 31D to 31E.

32C. For the purposes of clause 32B(c), the Parties agree that they will share equally the costs associated with activities that the Parties agree are required to be undertaken for each Major Event Review, and that such activities will be set out in a Scoping Agreement prepared in accordance with clause 32D of this Agreement.

32D. The Parties must jointly prepare and agree upon the terms of an agreement (the Scoping Agreement) which:

- (a) sets out the matters which the Panel must consider and report on;
- (b) includes the proposed approach to consultation and engagement with Traditional Owners, stakeholders and communities; and
- (c) identifies any agreed timeframes, priorities, procedures (including the process for ending a review) and funding arrangements.

32E. For the avoidance of doubt, the Parties agree that the purpose of a Major Event Review is not to open the Agreement up to renegotiation, but to assess the impacts of the Major Event on the matters identified in clause 32A for the purposes of considering what, if any, remedial action needs to be undertaken to address the impacts of the Major Event.

Clause related to the Independent Panel for the Five-yearly Review

31. The Parties agree that, in conducting each Five-yearly Review, the Panel will be engaged to:

- (a) consider the matters specified in clauses 30(a) to (k) and any other matters outlined in the Scoping Agreement developed pursuant to clause 31F, having regard to:
 - (i) the Victorian State of the Forests Report;
 - (ii) the Supplementary Report;
 - (iii) the statements prepared jointly by the Parties pursuant to clause 29B of this Agreement as part of the annual meeting procedure;
 - (iv) feedback received from consultation and engagement undertaken to inform the Five-yearly Review; and
 - (v) any other public reports which the Panel considers relevant to the matters that are to be considered by it;
- (b) set the strategic direction for, agree the approach to and take into account feedback received from consultation and engagement with Traditional Owners, stakeholders and communities to inform the Five-yearly Review; and
- (c) develop and submit a report (the Five-yearly Review Report) detailing the Panel's findings and recommendations,

in accordance with the terms of and the timeframes prescribed in the Scoping Agreement.