

Bob Brown Foundation Inc v. Commonwealth of Australia, the State of Tasmania and Sustainable
Timber Tasmania – Federal Court Proceeding

This case is about the Environment Protection and Biodiversity Conservation Act 1999 and the Regional Forest Agreements Act 2002

- 1 Section 38 (1) of the EPBC Act provides that the relevant part of that Act does not apply to an RFA forestry operation that is undertaken in accordance with an RFA.
- 2 An RFA is defined by reference to the *Regional Forest Agreements Act 2002* (RFA Act).
- 3 In the RFA Act, “*RFA or regional forest agreement*” is defined as “an agreement that is in force between the Commonwealth and a State in respect of a region or regions”, being an agreement that satisfies five specified conditions.
- 4 One condition is that the agreement “provides for a comprehensive, adequate and representative reserve system” (CAR Reserve System). Another is that the agreement “provides for the ecologically sustainable management and use of forested areas in the region or regions” (ESFM).
- 5 “RFA forestry operations” is basically defined as forestry operations conducted in relation to land in a region covered by the RFA.
- 6 The “Tasmanian Regional Forestry Agreement” is an agreement between Tasmania and the Commonwealth (Tasmanian RFA). The Tasmanian RFA was first entered into in 1997, and was varied in 2001, 2007 and 2017.
- 7 Our case is that the Tasmanian RFA is not an “RFA” within the meaning of the RFA Act or s 38 of the EPBC Act. This is because:
 - 8 (a) for an agreement to meet the definition of an RFA, it must impose legally enforceable obligations on the parties to the RFA. The Tasmanian RFA does not meet that definition, because it says it “is not intended to create legally binding relations”.
 - 9 (b), the terms of the Tasmanian RFA have not provided for the CAR System and ESFM in the manner required by the RFA Act because those terms are subject to amendment from time to time at Tasmania’s discretion. Tasmania can just change these terms as it sees fit. Thus, it is not an enforceable term of the agreement.
- 10 In relation to the CAR Reserve System, the terms of the RFA do not provide for the CAR Reserve System. The Tasmanian RFA allows Tasmania to alter that system at its discretion.
- 11 In relation to ESFM the Tasmanian RFA does not meet the RFA statutory requirement because it does not contain a mechanism or criteria that precludes Tasmania from amending Tasmania’s policies, plans and practices at its discretion.
- 12 Because the Tasmanian RFA is not an RFA within the meaning of the RFA Act, it is not in force and is basically of no effect. In consequence, the exemption given by s. 38 of the EPBC Act does not apply, and Tasmania is illegally carrying out forestry operations in breach of the EPBC Act. We will seek injunctions to halt the logging.