



Rubicon Forest Protection Group  
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15 September 2020

Mr John Bradley  
Secretary,  
Department of Environment Land Water and Planning

By email

Dear Mr Bradley

***VicForests failure to comply with the 2014 Code of Practice for Timber Production***

In recent months we have written several times to the Minister for Energy Environment and Climate Change seeking a meeting with her to outline our deep concerns that the review of the Code led by DPC that is underway will lead to either legislative or regulatory changes that will have the effect of weakening the already weak protections in the Code.

In part, these weaknesses are the reason many of the breaches that we have reported to the Timber Harvesting Compliance Unit, now in the Office of the Conservation Regulator, have been rejected despite VicForests' actions being clearly at odds with the principles of the Code.

But there are also serious problems with the decisions and processes of the OCR which we have raised on multiple occasions. Disappointingly, THCU incorporation into the OCR our complaints have been unanswered. We have written on several occasions to the Chief Conservation Regulator, Ms Kate Gavens, about these failings but have yet to receive an acknowledgement, certainly no substantive reply.

***MSPs Clause 5.8.1.5(a)***

On 23 August we reported a looming breach of the Code, in this case MSPS clause 5.8.1.5(a) which is designed to help safeguard life and property from bushfires, to OCR. On 8 September, noting that one of the subject coupes in Taggerty (Glendale East, 284-504-0004) had been placed on VicForests September harvesting schedule, we again contacted OCR asking that investigation of this case be expedited and copied this to VicForests. Last week logging of this coupe commenced and as at 5pm last night was still underway.

It is completely outrageous that despite advance notice to OCR and warning VicForests that this should be occurring. We now request you, as the formal authority for enforcing the Code, to immediately step in and demand that VicForests halt operations in this coupe forthwith.

### *Code Clause 2.1.1.1*

A number of OCR's failings are of a legal nature and so egregious that with the review underway we are obliged to bring these to your attention in the hope they might be addressed before the forests of the Rubicon and other parts of the Central Highlands are totally ruined.

Many of these relate to Code Clause 2.1.1.1 which sets out a range of matters that must be considered in long-term planning, such as in the development of a timber release plan. We note that the 2014 Code review tried to free VicForests from its obligation to comply with this clause by deleting the citation in the preamble of a TRP as an example of a long-term planning tool, however this change made no difference to the statutory operation of the clause. It remains a provision that VicForests must comply with, just as with some other long-term planning clauses (esp. 2.2.2.2, 2.2.2.3, 2.2.2.8, 2.2.2.9).

VicForests' explicit denial of its obligation to comply with this clause is perhaps not surprising since to comply would limit its coupe options and, as we know, the Government is putting extreme pressure on it to continue to meet its unsustainable supply contracts. Indeed, we are aware of your request last December to VicForests to remove coupes falling within the IPAs from the TRP and its refusal, with the backing, as we understand it, of DJPR.

However, the OCR's failure to uphold the laws for which it was established is a more serious matter. To illustrate this we have annotated two case closure decisions (attached) showing how THCU has failed to properly understand and enforce the Code. There are more failings that we can illustrate in a similar manner and in due course may do so.

And despite its apparent commitment to being an '*effective, trusted, best practice regulator*' OCR's periodic summary of progress with its investigations reveals nothing about the actual outcomes of finalised investigations, much less reasons for these. For closed cases, the withholding of reasons from public view runs entirely counter to OCR's mission and is also a brazen affront to Government policy '*ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible*'.

Finally, I want to draw your attention to an addendum to our submission to VicForests' latest TRP proposals wherein we analyse its reasons for ignoring CI 2.1.1.1 and other long-term planning provisions. Here is what we said:

*I am not sure that we responded to your letter of 18 May 2018 in which you argued that Code clause 2.1.1.1 was not relevant to our TRP concerns. Although we disagreed with this view at the time, we have now had a chance to consider the arguments that VicForests has advanced for taking this position in the recent case VicForests Vs Friends of Leadbeaters Possum. Paras. 100-112 of the submission lodged by VicForests on 7 August 2019 address this matter, however the arguments are so shot with holes as to be transparent nonsense. Fortunately for VicForests case Her Honour did not consider these arguments since it was not pleaded and so the only purpose the submission served was to expose how totally lacking merit the arguments in fact are.*

*Para 106 pretends that because the TRP is specifically dealt with in a different part of the SF(T) Act, other parts of the Act don't apply to it. That's a joke surely!*

*Para. 109 cites the definition of 'timber harvesting operations' in the Code (which admittedly doesn't mention planning) but conveniently ignores VicForests obligation in the Act (s. 46) to comply with 'with any relevant Code of Practice relating to timber harvesting'. S. 46 makes no mention of 'timber harvesting operations', as defined in the Code and the Act so is obviously intended to be far broader and certainly encompass all planning stages. And if that wasn't clear enough, s. 37(3)(b) of the Act says the same thing. Another joke!*

*And notwithstanding the huge sums VicForests doubtless paid to its lawyers to have these matters set before the Court, they still can't get their facts straight. Para. 110 pretends that the reference to 'planning' in Cl 1.2.2 refers only to coupe plans, but ignores Table 1 of the Code which cites five examples where the Code expects VicForests to comply with the provisions of Cl. 2.1.1.1.*

*Finally, while I realise that 2nd reading Speeches do not make the law, it is generally instructive to consider what they do say. On 8 May 2013 in his 2nd reading speech on the amendments that gave VicForests sole responsibility for TRP development, then Minister, Peter Walsh, stated that TRPs 'will remain a key planning, auditing and consultation tool for VicForests'.*

I regret that we are obliged to be so critical of the operation of your Department's law enforcement, but if the Government will not uphold the law, what options do ordinary folk like us have, especially given that Victoria's biodiversity and future prosperity is at stake.

We look forward to a prompt reply to our request for you to ask VicForests to halt logging in Glendale East and a further reply to our concerns regarding the long-term planning clauses in due course.

Yours sincerely,

Rubicon Forest Protection Group

Att:

Annotated response to Case Closure decision 2019-0055

Annotated response to Case Closure decision 2019-0060