Submission by Rubicon Forest Protection Group to 2021 Code Review consultation

"Through the tyranny of small decisions, we can go on obliterating ancient Australia."

. . . . . Former premier of NSW, Bob Carr, quoted in article in the *Sydney Morning Herald* on 19 July about the proposed raising of the Warragamba Dam wall.

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Part 1 – Major Issues: Flawed process

1. Lack of a Regulatory Impact Statement, despite deregulatory impact

The Government's *2018 election platform* promises that it will pursue environmental justice, recognising that:

> *communities need appropriate access to the legal system to pursue environmental justice, Labor will [. . .] review relevant legislation and dispute, court and other processes with a view to strengthening environmental justice and outcomes.*

Yet despite this commitment the Government expects profound changes to occur that effectively deregulate current rules and allow logging to accelerate. There has been barely any public consultation regarding the proposed changes within the 2-year review period. Worse, the changes are proposed without an accompanying Regulatory Impact Statement (RIS). There is no provision for independent scrutiny of submissions regarding the changes, despite the two year wait before the full review of the Code is due to take place

One of the key changes proposed removes any obligation on VicForests to consider the impact of the Timber Release Plan (TRP) on core forest values. It is astonishing that such changes to the Code should be proposed ahead of the Major Events Review of the Black Summer fires. The changes to the Code fail to take into account the disastrous losses to forests and wildlife in 2019 – 2020 and the impacts of climate change already taking place. Worldwide, the loss of mature forests such as ours contributes to global warming, megafire threats, ecosystem degradation and species loss. In the light of these existential threats to all Victorians, an RIS justifying all the proposed changes must be prepared.

2. Review's terms of reference at odds with Government's 2019 announcement

The Government's announced this review in 2019 as follows:

> *A clear, accurate and enforceable Code is needed, supported by strong enforcement powers for Victoria's Conservation Regulator.*
>
> *As a result, the Government has initiated a review of the Code to:*
>
> • *minimise the risk to short-term supply obligations arising from third-party litigation*
>
> • *ensure it remains fit for purpose and facilitates the implementation of the Victorian Forestry Plan*
>
> • *strengthen the regulatory powers available to the Conservation Regulator*
>
> • *identify regulatory reforms informed by the 2019-20 bushfires.*
>
> . . . . . Minister Lily D'Ambrosio Media release, 29 July 2019.

It is obvious that the consultation draft produced earlier this month is based only on the first two dot points above, since it includes nothing that strengthens OCR's regulatory powers, or that responds to the Black Summer bushfires of 2019-20. Indeed, since the Major Events Review has only just got underway how could it do so?

The proper thing for the Government to do would be to shelve these proposed changes and commence the comprehensive review immediately. The comprehensive review should not be postponed for another two years.

The Government's 2018 election platform promises to:

> *ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible.*

However, the Government has failed to disclose details of the recommendations of the 2020 Code review. The failure to release the results of the 2020 review is utterly at odds with that commitment. The current proposals for a revised Code are defended on the grounds that they followed a 'review', but with nothing disclosed about the nature of that review. The community is left to speculate about whom the changes were discussed with, and the expertise and policy understanding of the participants.

3. Excessive delay in comprehensive revision of the Code

The 2-year delay before the 'comprehensive' review of the Code and the FMP revisions is completed is unacceptable. It is further evidence that the Government is happy to preside over the continued logging of the few remaining ecologically intact areas of tall forest outside the inadequate CAR system for as long as possible.

4. A consultation designed to obscure the full implications of the proposed changes

There are over 3000 changes in a large set of documents (350 pages and almost 115,000 words) without a full itemisation and explanation of the changes and without any tracked version to enable stakeholders to review the full set of changes and consider their implications.

It is evident that DELWP is seeking to obscure the full implications of the proposed changes to the forest regulatory framework because they are indefensible in terms of the public interest.

Because of the above barriers to a full engagement with the proposed revision plus the unreasonably short time available for the consultation we have not been able to develop a comprehensive response to the full scope of the draft revision. Rather we have focused on the main issues which have emerged from our experience of trying to protect the Rubicon State Forest over the last six years.

Part 2 – Major Issues: Code and MSPs

5. Proposed deletion of mandatory Code Cl.2.1.1.1 is a major deregulation of VicForests and completely unacceptable. It is also a breach of Government election policy.

Current long-term planning provisions must be retained as mandatory with specific application to TRP as in the 2007 Code. Otherwise, what considerations guide TRP development?

The deletion of the reference to the TRP from the Forest Planning section of the Code when the 2014 Code revision was adopted, presumably at VicForests' urging, was an initial attempt to

excuse it from any long-term planning obligations in designing the TRP. VicForests was aware that if the detailed mandatory planning requirements of the 2007 Code, which were carried through into the 2014 Code revision (in Cl. 2.1.1.1) were to continue to apply to the TRP, the number, extent and distribution of coupes selected for harvesting would be significantly constrained.

VicForests has argued that the TRP is not a long-term planning tool, with its most astonishing claim (in the report to the VicForests Board recommending the current TRP be adopted) being that forest rotation length is the relevant long-term planning horizon and that the allegedly short time span of the TRP stops it being a long-term planning instrument.

However, in 2013, the year before the 2014 TRP was adopted, the *Sustainable Forests (Timber) Act* (SFTA) was amended to remove the 5-year limit on the TRP timeframe and the 15 year limit on the Allocation Order, thereby making them both 'evergreen' so as to assist long-term forest-wide planning. In his 2nd reading speech spruiking the amendments, the then Minister, Peter Walsh, promised that TRPs would remain a key planning tool and there would be no changes to its obligations under the Code.

> *"The bill reforms the management of timber resources and harvesting by VicForests by placing responsibility for approval of timber release plans with the VicForests board. While the timber release plans will not play a role in vesting timber resources, they will remain a key planning, auditing and consultation tool for VicForests.*
> *[. . . . . .]*
> *The bill does not propose changes to Victoria's sustainable forest management framework. VicForests, and other forest managers, will continue to be subject to all current environmental standards."*
> . . . . . Former Victorian Resources Minister, Peter Walsh MLA, in speech in State Parliament on 8 May 2013 in debate on amendments to SF(T) Act 1996 transferring TRP approval role from DELWP to VicForests.

To put the matter beyond doubt, the Parliamentary Secretary for Forestry and Fisheries, Gary Blackwood, stated in the debate on the bill that

> *"Removing the time limit on the allocation order means that VicForests will be able to undertake more strategic forest planning and forest advancement works, such as thinning, across the whole forest estate area available for timber harvesting. This will increase the overall productivity of the estate and enable VicForests to plan more efficiently for the long term."*
> . . . . . Parliamentary Secretary for Forestry and Fisheries, Gary Blackwood MLA, in speech in State Parliament on 5 June 2013 in debate on amendments to SF(T) Act 1996 eliminating time limit on Allocation Order.

And despite the new Code failing to refer to cl. 2.1.1.1 applying to the TRP, Minister Ryan Smith made a formal legal declaration that the 2014 Code left the existing regulatory framework essentially unchanged:

> *The [. . .] proposed Code of Practice for Timber Production 2014 (2014 Code) does not alter the regulatory burden imposed by the Code of Practice for Timber Production 2007 (2007 Code) which will be revoked, but essentially only restates the regulation applying to timber production in a clearer format. The result is a document that makes it clear to industry and the regulator (the Department of Environment and Primary Industries) what constitute the*

rules governing timber harvesting and might constitute a breach of the Sustainable Forests (Timber) Act 2004.

. . . . . Former Victorian Minister, Ryan Smith, in statutory certificate dated 23 October 2014 exempting the changes to the 2007 Code from a Regulatory Impact Statement, and therefore from the public consultation that would be otherwise required.

As it stands, the absence of any reference to the TRP in the preamble to existing Cl. 2.1.1.1, is irrelevant to its application since (a) the preamble has no legal force, and (b) the reference to examples of things to which it applies is not exhaustive. Given Minister Smith's declaration and the fact that the TRP is self-evidently a long-term planning instrument, cl 2.1.1.1 has continued to apply to TRP development, despite OCR refusing to enforce it and VicForests not following its requirements.

The proposal now to delete it without a Regulatory Impact Statement is particularly appalling given the deregulatory changes that accompanied the introduction of the 2014 Code which stopped FFG Action Statements and Forest Management Plans (FMPs) imposing enforceable obligations on VicForests. Those instruments are now prescribed by regulation 5 of the Subordinate Legislation Act Regulations not to be legislative instruments. As VicForests submitted in the Possums' Case (as quoted by Justice Mortimer):

> *"Since the Code came into effect, FMPs have had no regulatory force insofar as the conduct of timber harvesting operations is concerned, with the Code and its incorporated documents being the sole repository of mandatory instructions to VicForests and harvesting entities and operators."*

The deletion of cl. 2.1.1.1 therefore leaves VicForests free to ignore a range of critical environmental variables in developing a TRP, including:

- water quality and quantity protection
- sensitive scenic landscapes
- the impact on biodiversity of the extent of harvesting in particular districts and coupe distribution across the landscape, and
- cultural heritage values

While the 2014 Code may have adopted most of the Action Statement and FMP prescriptions then in place, even then the basis of the FMPs were around 20 years out of date and are now over a quarter of a century out of date. Many of the Action Statements are similarly ancient. There have been four massive megafires since then, a millennium drought, a global awakening of the dangers of global warming, and a 50% increase in Victoria's population.

It is deeply regrettable that a Labor Government would agree to even contemplate a further weakening of a key provision of the Code enacted by another Labor Government under the guise *of clarification, especially given the promise in the Government's 2018 election platform* when DELWP, presumably with the Minister's imprimatur, stated that the 2019 changes were not intended to weaken protections:

> *"Through the recent consultation process on the draft changes to the Code of Practice for Timber Production 2014 (the Code), the Department of Environment, Land, Water and Planning has heard and acknowledges the concerns that were raised, in particular that some environmental protections could be removed.*

The draft changes were intended to make the Code stronger, clearer and more enforceable, not reduce or remove current environmental protections.

To ensure the community and stakeholders maintain trust in this important work we have decided to withdraw the current consultation on the first stage of the Code review and move to the comprehensive review of the Code. This will allow us to demonstrate how existing environmental protections will be maintained within the total package of regulatory reform."

. . . . . Acting Executive Director Policy and Planning, Hamish Webb, email of 26/9/2019.

6. Deleting mandatory Code Cl.2.1.1.1.vi and weakening scenic landscapes definition before updating FMPs will compromise key scenic landscapes contravening election promises.

"Labor recognises that one of the best forms of environmental protection is for people to know and understand their natural environment. Sensitive, well-resourced and well-structured nature-based tourism can achieve this while also providing benefits to regional and local economies with sustainable local jobs."

. . . . . Victorian Labor Party 2018 election platform.

Maintaining scenic landscapes by protecting views from major highways, lookouts, walking tracks and many forest roads is a critical element in supporting nature-based tourism and regional communities. If these sensitive landscape elements are not properly protected, opportunities for nature-based tourism to replace the economic contribution of logging will be greatly harmed.

This problem is particularly critical in the Central Highlands. There are many examples within the Murrindindi Shire of how the current Code and MSPs fail to safeguard scenic landscapes:

- Cathedral Range State Park – views from Cathedral Peak, Little Cathedral, Mt Sugarloaf and the Razorback are totally unprotected with planned and potential logging to greatly harm these views despite the immense popularity the Park and its walks;
- Rubicon Historic Area – this amazing area illustrates the consequences of the failure to protect surrounding landscapes with views of the Royston Range from the historic area now an utter disaster;
- Big River Road – unprotected, despite being the main access to some extremely popular summer camping areas;
- Snobs Creek valley – unprotected, with this having recently resulted in the destruction of critical roadside views along Snobs Creek Road;
- Walking track to Mt Torbreck summit – unprotected, despite its popularity since Mt Torbreck is the highest peak within 2 hours drive of Melbourne;
- Hermitage walking track – proposed to become part of the Melbourne to Marysville walk but unprotected;
- Black Range Road – unprotected, despite being the main tourist route through the Black Range; and
- Views from the Maroondah Highway – only partly protected despite Government policy dating from 1995 with the protections contained in the Central Highlands FMP already weaker than those in the MSPs and mostly ignored by VicForests.

Similar gaps exist in other Shires in the Central Highlands, with the tourist drive to the Ada tree near Powelltown and the main road to Mt Disappointment being largely unprotected.

The proposed weakening of the definition of '*landscape sensitivity areas*' (despite it being irrelevant if Cl. 2.1.1.1.vi is deleted) shows the lengths to which DELWP will go to allow VicForests free reign in where to put coupes and how logging within them may take place.

The proposed weakening of environmental regulation ahead of revising the FMPs is completely at odds with Victoria's commitments in the revised RFAs including the recognition in paragraph 77B of:

> *the importance of forest-based recreational activities to Victorians and Victorian communities. Victoria is committed to ongoing community consultation to identify opportunities to enhance the recreational experiences Victorians have in their forests.*

7. Deleting mandatory Code Cl.2.1.1.1.v contrary to the climate commitments in the RFAs

The renewed RFAs place a major emphasis on the importance of forest management in both ameliorating and adapting to climate change, for example in Paragraph 66E the State and Commonwealth acknowledge that:

> *(a) Climate Change is driving more extreme weather and disturbance events that will impact on a wide range of Forest values, including Biodiversity, Water and Timber Resources;*
>
> *(d) integrating Climate Change adaptation into Forest Management, including the management of Listed Species and Communities and other MNES, is required to build resilience and manage climate risks and meet the objectives of ESFM;*

And in paragraphs 77C and 77D:

> *The Parties recognise that the Central Highlands region is an important source of water, particularly for Melbourne.*
>
> *Victoria commits, at a minimum, to include specific references to the following when reviewing its Forest Management Plans (or future equivalents):*
>
> > *(a) the impact of Forest Management on water supply and any associated actions for supply and catchment management;*
> >
> > *(b) the need for the active management of Forests within the region in order to support a range of Forest values and uses, including Forest Industries; and*
> >
> > *(c) the impacts of Climate Change.*

8. Requiring the Precautionary Principle to be interpreted according to an outdated court judgement is at odds with the Biodiversity Strategy

The Government's *Biodiversity 2037* policy promises that it will:

> *Progressively review the legislative framework for biodiversity to ensure it is consistent with best-practice regulatory principles and gives effect to the goals and targets of the Plan.*

Yet despite this commitment the proposed changes undermine the Precautionary Principle by using an interpretation based on a 2010 judgement, itself based on a 2006 NSW interpretation of the principle in the context of a dispute about phone towers in Sydney.

While there may be an argument for requiring that the Precautionary Principle be defined consistently across legislative instruments, and it is noted that the current definition reflects the definition in the Intergovernmental Agreement, the proposed codicil must be rejected. It disregards the comprehensive discussion of that interpretation in Justice Mortimer's judgment of May 2020 (and her conclusions, supported by the Federal Court of Appeal), in particular the distinction between a provision to be 'triggered' through an arbitrary algorithm and a principle which should permeate all of VicForests' operations.

Jurisprudence in the modern world is not static. If a modern legislative instrument were to oblige decision-makers to interpret their obligations based on the *Magna Carta* it would be quickly dismissed. The proposed codicil is unlikely to be accepted by Parliament's Scrutiny of Acts and Regulations Committee and should be deleted.

9. Flawed 'stage of growth' definitions will sanction continued old growth logging

The protection of ash trees in the Central Highlands older than 1900, as required under the 2014 Code and retained in the proposed revisions, originates from the following research-based scientific advice set out in the Central Highlands FMP of 1998

Many Australian birds, bats, arboreal mammals and reptiles are dependent on tree hollows for nesting and roosting. For the majority of eucalypts in the Central Highlands, hollows are thought to form in trees from about 100 to 150 years of age. Trees of mature and senescent growth stage generally contain more hollows than regrowth trees. The loss of hollow-bearing trees from Victorian native forests is listed as a threatening process under the Flora and Fauna Guarantee Act 1988. (p.15)

This, the reference to the protection of pre-1900 trees derives from the fact that the FMP was agreed to in 1998, at which time pre- 1900 trees were ~100 years old. It is the age here that is important, not the date, so either the prescription should be changed to 'pre-1900' or else it should state that all trees older than 100 years must be retained.

An examination of Gandalf's staff (see https://www.thetreeprojects.com/tasmania), a giant old mountain ash, reveals that even it would not satisfy the definition of 'senescent' in the Code, for example because its top has not been blown off. The need to protect 'old-growth' must rest principally on tree age, not tree form. Protection for 'pre-1900' ash trees in the Central Highlands must be revised to 'pre-1920'.

10. The lack of a definition of 'retained vegetation' or 'retained forest' allows more megacoupes and coupes with gaps greater than 150m.

The failure to remedy this definitional problem has led to several instances of VicForests escaping accountability for the creation of megacoupes on the Royston Range and one near Mt Matlock. DELWP is well aware of this current shortcoming, as the following email relating to THCU Case 2017-0036 demonstrates:

> *2.4.7.1 of the Management Standards and Procedures for Timber Harvesting Operations in Victoria's State Forests 2014 (MSPs) states that 20 m is the minimum width of vegetation to be*

retained between coupe aggregates that have been harvested within the last 5 years, however it does not specify the standard of the vegetation to be retained.

. . . . . email from THCU 13 June 2018:

MSPs Cl 4.1.1.1 also relies on the concept of 'retained vegetation' for which no definition exists. In this case it clearly is meant to encompass 'retained forest' as opposed to a patch of wattle or an individual tree.

Yet as the THCU email acknowledges, the lack of a definition of 'retained vegetation' is problematic. In that case while 'vegetation' had indeed been retained it comprised an area that could no longer be considered as 'forest' by any stretch of the imagination.

In another case involving the creation of a megacoupe on the Royston Range (2018-0036), the buffer that separated two coupes that might otherwise have served as a living forest corridor – as indeed buffers are supposed to do – was killed in an escaped regeneration burn. This was how THCU saw the case at the time:

From our assessment we have formed a view that 'retained' means retained during timber harvesting. If vegetation or trees are retained but subsequently impacted by regeneration burning, they are still deemed to have been retained.

. . . . . email from THCU 10 Jan 2019:

Any Code revision must remedy these acknowledged and serious anomalies, and the fact that it has not done so is lamentable. The definition of 'retained vegetation' must be changed to 'retained forest' and make clear that if such forest has been retained during logging operations but is subsequently killed by a regeneration it is not to be regarded as being 'retained forest'.

11.Buffers of only 20m are of little ecological value and at high windthrow risk

A 20 m buffer along a stream creates a 40 m corridor, which has some ecological value, but a 20 buffer separating coupes has none, and is at extreme risk of windthrow.

The minimum buffer separating roads from coupes and separating adjacent coupes from each other must be specified as 40 m minimum.

12.No guidance as to where 'minimum' widths must be enlarged

Many Code and MSPs clause specify a minimum width for a buffer or filter strip, generally 20 m. In practice these widths may sometimes extend to 25 m or more allowing for topographic or measurement issues.

But since there is a 20 m minimum specification, there also needs to be guidance given as to when much larger buffers are needed, for example in heavily logged areas. The revised Code must issue clear guidance as to when other considerations, such as biodiversity, scenic protection, or windthrow risk would require buffers larger than the allowable minimum.

13.Coupe Plans must be published prior to logging

If the review is to abide by the Government's 2018 election platform promise to:

ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible

Coupe plans and operations maps should be published at least two weeks ahead of the commencement of logging. Such a move will allow for proper community scrutiny of VicForests' intentions for each coupe before it is too late and a critical feature is lost, or a Code clause breached. While VF recently started to do this, along with publishing monthly coupe schedules, it is understood that this is a result of legal action and it will cease doing so if and when the court decision allows.

Part 3 – Major Issues: FMZ Accountability Framework

For some of the reasons set out below, the proposed accountability framework seems little better than the current opaque system, and arguably worse, since it provides a cover for a future Government to more easily weaken the system by downgrading or removing particular zones.

14.Non enforceability.

While the introduction of increased accountability for the maintenance of the FMZ system is long overdue, the absence of statutory backing under the current proposals makes it unenforceable.

RFPG's experience is that 'commitments' made by DELWP relating to its accountability for forest protection are easily ignored. In March 2019, the Secretary, John Bradley, published DELWP's (ie the Government's) response to the *Report of the Independent Review of Timber Harvesting Regulation*, accepting almost all of its recommendations. More than two years later key commitments remain unfulfilled. For example, Recommendation 8 committed DELWP to

> *Write and implement procedures including [. . . .] a process for internal review of decisions.*

RFPG's experience is that since OCR was established, none of the flawed decisions that we have challenged have been subject to proper review.

In accepting Recommendation 13, the Secretary committed DELWP to:

> *work with other government agencies, environmental non-government organisations and VicForests to scope and create a system of shared data. This will be completed by 31 December 2019.*

There has been no consultation with ENGOs on this project nor, as far as we are aware, has there been any progress.

The Secretary's response also committed DELWP to:

> *Be more open and transparent about the decisions that it makes as a regulator – publishing information about its decisions and the reasons for those decisions. If information cannot be published because it could jeopardise an ongoing investigation or breach privacy requirements, the department will be clear about this.*

Nothing has been emerged from this commitment, despite OCR publishing its *Statement of Regulatory Intent* in June 2019 promising to '*Publish information on the outcomes of completed investigations (including regulatory actions and reasons for decisions) on its website'.*

15.Non transparency.

A fundamental requirement for an accountability regime such as is proposed, would be for DELWP to publish on its website a searchable database with an associated searchable map identifying the location, purpose, creation date, boundary revision date, detailed forest type, fire history, etc., of each individual FMZ, including an identification of any that are likely to be reviewed in the short to medium term. Such a database would be updated at least monthly, or preferable each time a zoning change is made.

The database that DELWP has implemented attached to the Forest Information Portal provides an excellent model for such a database.

The fact that no public engagement and accountability tool of this kind is contemplated for this Framework suggests a lack of good faith behind its establishment.

16.Inadequate accountability.

The idea that proper accountability can be achieved by a full 'report card' to be produced every 5 years, with annual updates of relevant information such as zoning amendments is preposterous.

Such a weak 'accountability framework' reflects the weak accountability generally in Victoria's forest protection regime. For the past two years since our report of a zoning error along Snobs Creek was lodged with DELWP (OCR Case 2019-0060), DELWP has failed to correct it. There must be at least monthly reports of progress and the opportunity for public comment on all decisions

17.Lack of a Tourism or Scenic Protection zoning category

Supporting tourism is a critical and one of the most widely understood and appreciated values that State Forests offer, and increasingly important in terms of human health and well-being in the face of global warming and forest loss worldwide.

However, as a class of protection, support for forest tourism is ignored in the zoning framework. Perhaps those responsible for preparing the framework may imagine that 'recreation' covers this value, but it seems more likely that this zoning element is expected to cover things like mountain bike areas, or larger camping areas, not the more diffuse values such as forest drives.

Perhaps it was thought that 'landscape' covered these values, but many of the elements under the 'landscape' class have little or nothing to do with scenic protections or tourism.

The proposed framework must explicitly provide for the fixed zoning system to protect forest tourism (such as adequate screening buffers along all forest roads) and scenic protections (such as the views of forest escarpments viewed from major roads and highways)

18. Silence on the fate of Immediate Protection Areas

Despite the announcement of IPAs over 2½ years ago, the Government has been silent about how these will be implemented and what prior community consultation will occur. Perhaps it intends to announce their permanent protection as part of Labor's 2022 Election Platform. One way the Government could show good faith regarding the IPAs would be to flag their interim protection as SPZs as part of the proposed new accountability framework. That would at least give a little security in the event that a change of Government were to occur in 2022.

Part 4 – Other major issues

19.Misrepresenting the status of the 2014 Code

Question 3 of the questions DELWP set out to encourage maximum public input asked:

> *The Code has not been updated since it was first created in 2014. Should the Code be updated more frequently to correct errors and respond to changing needs?*

Unfortunately, the premise of the question is entirely false as the drafter, or else those who approved it, must have known.

The Code, as Minister Smith's declaration states, was intended simply to consolidate existing provisions set out in disparate policy and planning documents into the 2007 Code:

> *The [. . .] proposed Code of Practice for Timber Production 2014 (2014 Code) does not alter the regulatory burden imposed by the Code of Practice for Timber Production 2007 (2007 Code) which will be revoked, but essentially only restates the regulation applying to timber production in a clearer format. The result is a document that makes it clear to industry and the regulator (the Department of Environment and Primary Industries) what constitute the rules governing timber harvesting and might constitute a breach of the Sustainable Forests (Timber) Act 2004.*

This is not trivial. The Subordinate Legislation Act stipulates a 10-year lifetime of regulations before they automatically expire, so since the 2014 updates (if Minister Smith's declaration is to be believed) were merely consolidating existing rules and regulations, the 2014 Code effectively 'sunsetted' in 2017 and should have had no legal force since then.

So, claiming in question 3 that the *'Code has not been updated since it was first created in 2014'* is a subtle way of retrospectively justifying the Government's failure, then and now, to properly revise and re-make the Code each ten years based on the latest science and community opinion.

20.Inadequate scenic protection for Rubicon Historic Area.

Reference to 80m upslope and 20m downslope of aqueducts (proposed new MSPs cl. 5.2.1.4) comes from the Central Highlands FMP and aims to protect the historic fabric of the RHA, ie the aqueducts (FMP) not the surrounding landscape.

This new clause appears to be a cynical ploy, probably included at VF's request, to retrospectively justify the carnage that logging has inflicted on the surround area and the reserve itself, including the shocking logging of Little Jacqui. The logging of 'Low Flow' and 'Huckelberry Finn', listed on the current TRP, which the revision will do nothing to stop, will further devastate the scenic values of this historic tourist precinct.

Proper protection of the residual scenic values of the Rubicon Historic Area would require a 100 m wide SPZ around its perimeter.