

# Notes for Discussion with DELWP in week of 20 June, Part A

## The Code is part of a broken system

For the past 6 years RFBG has warned DELWP, Minister D'Ambrosio and Premier Andrews about major shortcomings of the Code (especially with respect to long term and landscape scale planning) but to little avail. At the same time, the failures of the Code arise from its place in a deeply flawed regulatory system. It would be very short sighted (or perhaps lacking in good faith) to seek to improve the Code without regard to the failures which arise from its role in the wider regulatory system.

The high-level objectives and principles articulated in the NFPS, Biodiversity 2037 and other leadership documents are admirable but the regulatory machinery, ostensibly designed to achieve those objectives is failing.

- There is a serious neglect of the fundamental purpose of regulation, namely the protection of the forest ecosystems, with a lack of focus on ecological processes and ecosystem relationships in both the monitoring and the regulation of timber harvesting.
- There is a failure to attend to landscape level assessment and protection associated with the insistence that the TRP is not a planning tool and that the Zoning Scheme is an adequate and sufficient tool for longer term and area wide planning.
- The forest zoning scheme, used as the only regulatory tool directed to long term area wide planning is not fit for purpose (as is evident in the failure to implement the 400m wildlife corridor commitment).
- The failure to apply the precautionary principle as specified in the NFPS and the FFG Act is evident in the neglect of climate change; failure to address the extremely young age profile of the Central Highlands ash forests (and the Rubicon Forest in particular); and lack of compliance standards to address broad ecological processes and complex ecosystem relationships.
- As a consequence of positioning VicForests as an independent commercial enterprise and with the OCR in a far weaker position as a Ministerial agency, the OCR has failed to act against VicForests on all but the most black and white slam dunk issues. But the problem is not just systemic: the OCR has conspicuously failed to follow its own *Statement of Regulatory Intent for Timber Harvesting* despite our repeated protests.
- Thus, the Code has been reduced to a set of minimal (defensible) criteria against which to judge VicForests' performance, instead of serving as a framework of principles to assist in managing contests between different claimants over the use of the forest.
- While the *State of the Forests 2018* report cites a range of indicators which are only 'fair' and in some cases trending downwards, these measures are not encompassed by the Code in a form which allows for 'black letter law' policing by the OCR.
- We note that the 2020 revised RFAs commit the Victorian Government to reviewing relevant provisions of the FFG Act, Sustainable Forests (Timber) Act 2004 (Vic) and the Forests Act 1958 (Vic) as well as the Code of Practice for Timber Production but there has been no mention of such legislative reviews in the information provided regarding the Comprehensive Code Review.

We are also understandably sceptical about DELWP's willingness to heed any community input given it has effectively ignored such input to both recent sets of changes to the Code. Indeed, the process now proposed by DELWP for the Comprehensive Review seems designed in such a way as to enable community consultation to be minimised and ignored.

Over the 12 years, we have seen changes to the Allocation Order, to the SF(T) Act, to the TRP and to the Code all of which have served to relax the environmental constraints as VicForests faced. Given the dire ecological crisis our native forests face the only proper course of action would be for the State Government to dramatically curtail native forest logging immediately and not wait until 2024 to do so, nor wait until 2030 before ending it.

Notwithstanding these views we offer the following critique of DELWP's proposed Code Review process and suggest an alternative approach that offers at least some prospect of recommending much needed change based on a properly informed and structured consultation process.

## Process proposed by DELWP:

April - June 2022	Targeted stakeholder consultation
By June 2022	Internal desktop review
June 22-May 2023	Commission expert advice
By May 2023	Discussion paper for public consultation:
By December	2023 Final report

### Comment

- Conducted in apparent isolation from:
  - legislative reviews due by December 2022 (CH RFA Cl. 25M)
  - various Action Statement reviews due this year (Min D'Ambrosio letter to RFPG)
  - IPA assessment reports due by end 2022 (Min D'Ambrosio media release 28 Aug 2021)
  - FMP Reviews due by December 2023 (CH RFA Cl. 65)
- No reference to VEAC conservation values report or *State of the Forests Report*
- Disregards critical areas where experts are of little use, such as scenic values, tourism values, forest drives and cultural landscape values
- Internal 'desk-top' review not published
- Has no public consultation until May 2023, leaving far too little time for proper public involvement
- Traditional Owners apparently sidelined until May 2023
- No 'terms of reference' for process overall, or for request to experts
- No Steering Committee including conservation group reps
- Relies on well-paid consultants for 'expert advice', ignoring expertise in forest conservation groups
- The suggestion in the DELWP presentation that there are areas where '*a greater evidence base is required to recommend changes*' is absurd, especially the idea that if evidence is indeed lacking it can somehow be quickly supplied.

## Process proposed by RFPG (noting that proposed timeline already slipped by a month)

April - June 2022	Targeted stakeholder consultation
By mid-June 2022	Internal desktop review published
By end-June 2022	<p>DELWP invite targeted stakeholders to nominate key areas of Code most in need of reform, including specific changes where appropriate.</p> <p>Draft Terms of Reference for Code Reform circulated to targeted stakeholders for comment, setting out matters that must be considered, including:</p> <ul style="list-style-type: none"> <li>• key reports (incl. VEAC Conservation Values Assessment, MER, State of the Forests, Parl Ecosystems Inquiry report)</li> <li>• key clauses and definitions from RFAs (Attachment 1)</li> <li>• key extracts from FFG Act (Attachment 2)</li> <li>• key extracts from NFPS (Attachment 3)</li> <li>• <i>Statement of Regulation Intent for Timber Harvesting</i></li> <li>• comments by former Agriculture Minister, Jaclyn Symes, stating: "the native timber industry isn't sustainable" and "we do not have enough native forest to meet demand."</li> <li>• VFP: logging phase down from 2024 and cessation in 2030</li> <li>• Maryvale: obligation to supply 350,000 m<sup>3</sup> pulpwood until 2030</li> <li>• tourism policy, incl <i>Recovery and Reform Roadmap 2020</i>:  <i>"The first sector priorities to be developed will be the Nature-Based Tourism Plan and the First Peoples' Tourism Plan. We will also explore better facilitating tourism opportunities, including on public land."</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Victorian Traditional Owner Cultural Landscapes Strategy</i></li> <li>• Impact of bushfires and logging on age profile of ash stands</li> </ul>
By mid-July	<p>DELWP establish a Comprehensive Code Review Steering Committee with representatives from FVTOC, forest conservation movement, VicForests, VTHC, VFPA</p> <p>DELWP Internal 'desk-top' review provided to Steering Committee</p>
By mid-August 2022	<p>DELWP publish analysis of past Code breach reports assessed or investigated by OCR, including their outcomes. Section of the report to set out chronology of changes to Code, SF(T)A and AO since 2004</p>
By end-August	<ol style="list-style-type: none"> <li>i. DELWP seek advice from all targeted consultees on their local Forest Management Plan</li> <li>ii. DELWP seek advice from TOCs and other Indigenous groups on protection of cultural landscapes</li> <li>iii. DELWP separately seek input from regional forest conservation groups and relevant Local Governments on updating tourist drives, scenic landscapes and lookouts to be identified in MSPs</li> <li>iv. DELWP prepare a list of specific questions on protection of biodiversity – broadly considered – for which expert advice is to be sought, including from Universities, from Arthur Rylah Institute and from experts within or engaged by forest conservation groups (equitably assisted by DELWP funding) to be answered by end February. Steering Committee to review questions prior to finalising.</li> <li>v. DELWP seek advice from bushfire experts on merits of prohibiting logging (apart from thinning and STS) in bushfire moderation zones</li> </ol>
By end-January	<p>DELWP publish 2023 5 yearly <i>State of the Forests Report</i></p>
By end-February	<p>Responses to invitations to provide advice on cultural landscapes, on scenic landscapes, tourist drives and lookout, on biodiversity protections and on BMZs published</p>
By end-April	<p>DELWP publish a new Draft Code for 3 month public consultation, including a rationale for each change proposed</p>
By end-July	<p>Expert 5 person Panel established to consider submissions, with public hearings, on Draft Code</p>
By December	<p>2023 Final Report from Panel to Minister</p>

### Comment

The above process has been designed to avoid the shortcomings of DELWP's proposed process, paying specific attention to the requirements and expectations of the RFAs, the NFPS, the FFG Act and Labor's 2018 election platform. Given the lack of information on the progress with DELWP's review of the CAR system, it has not yet been factored into the above process.

# Attachment 1

## Key extracts from CH RFA

### Definitions

“Forest Ecosystem” means a forest ecosystem as defined in the JANIS Report.

“Ecosystem Services” are the benefits (including goods and services) provided by ecosystems and the contributions that ecosystems make to human well-being, arising from both biotic and abiotic processes as well as their interaction. Ecosystem Services related to Forests include, but are not limited to, carbon sequestration, provision of biomass including timber, provision of recreation, provision of clean water and pollination;

“Environment and Heritage Values” means values assessed as part of the CRA pursuant to Attachment 1 of the RFA Scoping Agreement. These include Old Growth Forests, Wilderness, endangered species, National Estate Values, World Heritage Values and Indigenous heritage values;

NOTE: The values assessed as part of the CRA are:

- Tourism and Recreation
- Water
- Minerals
- ESFM
- Social
- Biodiversity
- Old-growth Forest
- Wilderness
- National Estate
- World Heritage

### Clauses

- 25M. By December 2022, Victoria will review relevant provisions of the FFG Act, Sustainable Forests (Timber) Act 2004 (Vic), Forests Act 1958 (Vic), and their subordinate instruments, including the Code of Practice for Timber Production, to identify what, if any, measures or improvements could be made to strengthen protections for Listed Species and Communities within Victoria’s Forests.
- 25Q. The Parties acknowledge the need to achieve a net improvement in the outlook for native species through an improvement in suitable habitat and the active management of threats.
- 41B. The Parties recognise that [ . . . ] (b) ESFM outcomes are enhanced by genuinely engaging with stakeholders and local communities in a transparent and accessible way, to enable meaningful participation in decision-making processes et seq
60. Parties agree that the primary function of the CAR Reserve System is to ensure the **long-term conservation and protection** of Environment and Heritage Values, Listed Species and Communities and Ecosystem Services, and that the CAR Reserve System will be maintained for this purpose. The CAR Reserve System includes the land described in Attachment 1.
- 62E. Subject to clauses 63 and 63A, the Parties agree that changes will be periodically required to the CAR Reserve System to reflect changes in information or management arrangements and the impacts of natural disturbances such as bushfires.
63. Parties agree that changes to that component of the CAR Reserve System in State Forest will only occur in accordance with this Agreement, will not lead to a net deterioration in the protection of identified CAR Values, and will be publicly available.
- 63A. The Parties note that, for the purposes of clause 63, the principles and guiding considerations that will inform changes to the CAR Reserve System in State Forests are:
- (a) providing for the **highest and best value** uses of Forests (greatest benefits);
  - (b) providing **climate Refugia** for Listed Species and Communities;
  - (c) increasing **habitat connectivity**;
  - (d) addressing **Climate Change Vulnerability**;
  - (e) considering the impacts on Forest Industries **and other uses**;
  - (f) considering the impacts on **Ecosystem Services**;
  - (g) providing for appropriate **Forest structure and age distribution** and sufficient protection and management of areas of maturing Forest to **facilitate Old Growth Forest recruitment**; and
  - (h) adapting to the **impacts of** natural disturbances such as **bushfires** on Forest values.

65. Victoria agrees to [ . . . ] review and update any Forest Management Plan that applies, either in part or wholly, to land within the RFA Region by December 2023.
- 65A. For the purposes of clause 65, in reviewing the Forest Management Plans Victoria will have regard to all relevant matters, including (but not limited to):
- (a) the needs of the Forest in order to maintain ecosystem health and vitality;
  - (b) TO Country Plans or equivalent, associated strategies and agreements or relevant documents;
  - (c) the objectives, targets and metrics in Victoria's current biodiversity strategy;
  - (d) the broad range of values and uses of the forest;
  - (e) the impacts of Climate Change;
  - (f) community aspirations and objectives;
  - (g) the need for active management to reduce bushfire risk and support the recovery of Forests and communities that depend on them after bushfire;
  - (h) threat management; and
  - (i) actions for surface and groundwater catchment management and soils.
- 66E. The Parties acknowledge:
- (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;
  - (b) Climate Change is a continuing and Threatening Process for Listed Species & Communities and other MNES;
  - (c) Climate Change will have an impact on ESFM, the CAR Reserve System and the stability of Forests and Forest Industries;
  - (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;
  - (e) the need to manage Forests to maintain or enhance the sequestration and storage of carbon;
  - (f) that maintaining Native Forests, through the CAR Reserve System, the Forest Management System and other mechanisms, plays an important role in the effective management of carbon within the carbon cycle;
  - (g) that effective management of Forests to maintain functioning Forest Ecosystems in a changing climate is required to maintain the quality and quantity of water resources.
- 66G. Victoria:
- (a) agrees to manage its Forests in accordance with the NFPS objectives and policies as they relate to Climate Change, adaptation and carbon;
  - (b) will review the comprehensiveness, adequacy and representativeness of the CAR Reserve System by December 2021, having regard to current and forecast impacts of Climate Change using the best available science, and thereafter as part of each Five-yearly Review; and
  - (c) will use reasonable endeavours to ensure that all EVCs that are Climate Change Vulnerable are afforded additional protections beyond that provided for under the JANIS Reserve Criteria.
- 75C. Victoria [ . . . ] agrees to support the development of a Traditional Owner cultural landscapes strategy, which it will actively seek to implement once developed;
- 77A. The Parties recognise the wide range of values and uses afforded to Victorian communities from Forests and acknowledge:
- (a) that Victorians and visitors to Victoria access Forests in order to benefit from a wide range of cultural, recreation and leisure uses; and
  - (b) the health benefits, including physical and mental well-being, that people gain by accessing Forests.
- 77B. The Parties recognise 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.
- 77C. The Parties recognise that the Central Highlands region is an important source of water, particularly for Melbourne.
- 77D. Victoria commits to, at a minimum, 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;

## Key provisions from the FFG Act as amended in 2019

### 4 Objectives of this Act

The objectives of this Act are—

- (a) to guarantee that all taxa of Victoria's flora and fauna, other than taxa specified in the Excluded List, can persist and improve in the wild and retain their capacity to adapt to environmental change; and
- (b) to prevent taxa and communities of flora and fauna from becoming threatened and to recover threatened taxa and communities so their conservation status improves; and
- (c) to protect, conserve, restore and enhance biodiversity, including—
  - (i) flora and fauna and their habitats; and
  - (ii) genetic diversity; and
  - (iii) ecological communities; and
  - (iv) ecological processes; and
- (d) to identify and mitigate the impacts of potentially threatening processes to address the important underlying causes of biodiversity decline; and
- (e) to ensure the use of biodiversity as a natural resource is ecologically sustainable; and
- (f) to identify and conserve areas of Victoria in respect of which critical habitat determinations are made.

### 4A Principles of this Act

It is a principle of this Act that a decision, policy, program or process gives proper consideration to the following—

- (a) the rights and interests of traditional owners [ . . . ]
- (b) the potential impacts of climate change;
- (c) the best practicably available information relevant to biodiversity;
- (d) the precautionary principle, such that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (e) enabling public participation;
- (f) supporting collaboration between government, the community and partner agencies.

### 4B Ministers and public authorities to give proper consideration of objectives

- (1) In performing any of their functions that may reasonably be expected to impact on biodiversity in Victoria, including a function under this Act or any other Act, a Minister and a public authority must give proper consideration to the objectives of this Act, so far as is consistent with the proper exercising of their functions.
- (2) In addition to subsection (1), a Minister and a public authority, so far as is consistent with the proper exercising of their functions, must give proper consideration to any instrument made under this Act, [ . . ]
- (3) Without limiting subsections (1) and (2), consideration must be given to the potential impacts on biodiversity, including—
  - (a) long and short-term impacts; and
  - (b) beneficial and detrimental impacts; and
  - (c) direct and indirect impacts; and
  - (d) cumulative impacts; and
  - (e) the impacts of potentially threatening processes.

## Key extracts from the National Forest Policy Statement

The protection of the full range of forest ecosystems and other environmental values is fundamental to ecologically sustainable forest management. It entails the maintenance of the ecological processes that sustain forest ecosystems, the conservation of the biological diversity associated with forests (particularly endangered and vulnerable species and communities), and the protection of water quality and associated aquatic habitats.

...

The Governments agree to manage public native forests for the protection of the range of other conservation values, such as wilderness and heritage values, cultural significance (including significance to Aboriginal people), and landscape and aesthetic attributes. State Governments have already made considerable progress towards meeting these objectives.

...

The State Governments will regularly review and revise the codes of practice in light of improved knowledge of ecologically sustainable management and with appropriate industry and community consultation.

...

The Governments agree that strategic land use decision making in relation to forests should be based on comprehensive evaluation of the potential uses and values of a particular area. As provided for in the Intergovernmental Agreement on the Environment, the Governments agree on the following:

- the application and evaluation of comparable, high quality data which are available to all participants in the process;
- the assessment of the regional cumulative impacts of a series of developments and not simply the consideration of individual development proposals in isolation;
- consideration of the regional implications where proposals for the use of a resource affect several jurisdictions;
- consultation with affected individuals, groups and organisations;
- consideration of all significant impacts;
- mechanisms to resolve conflict and disputes over issues which arise during the process;
- consideration of any international or national implications.

The Governments believe it is important to ensure that they have access to the same information and that as far as possible they consider issues concurrently rather than sequentially, so as to avoid duplication and fragmentation in decision making.

...

Review of the code(s) of forest practice related to wood production will be conducted at intervals permitting responses to developments in knowledge and technology. Community views should be actively sought as part of the review process.

...

The principles of environmental care with regard to planning and conducting of timber growing and harvesting operations applying particularly to public land are:

- 3.1 the floristic and faunal diversity of native forests, including their successional stages, be maintained on public land;
- 3.2 where assessed as important, forest values such as intensive recreation, high scenic quality, significant geomorphic, biological, or cultural heritage sites, be protected from the adverse effects of forest operations on public land;

...

## Key extracts from State Labor's 2018 Election Platform

### **7.4.1 PROTECTING BIODIVERSITY**

Labor understands the need to continue to protect and restore Victoria's biodiversity.

**Labor will:**

- minimise risks to biodiversity from massive bushfires;

### **7.6.2 FOREST MANAGEMENT**

Labor recognises the importance of keeping native forests in public ownership and will continue to provide leadership which ensures ongoing sustainability of the environment, forestry and forest product industry dependent communities and the broader community.

**Labor will:**

- take all possible steps to ensure ongoing secure wood and fibre supply for the timber industry whilst continuing to protect rare, old growth forests;
- identify opportunities for consensus of major stakeholders which may result in agreed changes to the protected reserve system using up to date scientific information;
- promote a range of uses that includes tourism, recreation and ancillary forest products;
- comprehensively survey, monitor and manage the forest estate for threatened species and their protection and other values to support the case for ecologically sustainable extractive management in non-reserve areas;

### **7.6.3 FOREST MANAGEMENT AND COMMUNITY VALUES**

Labor understands that forest management practices need to reflect the values of the community.

**Labor will:**

- ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible;
- ensure that forests are managed in such a way as to protect, social and economic values;
- foster community understanding and support for ecologically, socially and economically sustainable forest management, including awareness of environmental values, including old growth, wilderness, endangered species, national estate values and world heritage values;

### **7.7 NATURE-BASED TOURISM**

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.

**Labor will:**

- better promote and support tourist sites of ecological significance;