

Failed Regulation of Timber Harvesting in Victoria (including the Code of Practice for Timber Production)

RFPG¹
10 July 2022

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1 . The Rubicon Forest Protection Group (RFPG) was formed in 2015 to bring together a group of residents from the Murrindindi community appalled by the blanket logging in the Rubicon Forest, particularly after the 2009 bushfires. More at rubiconforest.org.

Introduction

This revised note (30 June) forms part of the RFBG's contribution to DELWP's 2022 Comprehensive Code Review.

In this note we examine the prevailing regulatory framework governing timber harvesting in native forests in Victoria and in particular the role of the Code of Forest Practice in that framework. We find significant gaps in the Code itself (in particular, with respect to long term and landscape scale planning). However, the wider failures of the Code arise from its place in a deeply flawed regulatory system. It would be short sighted (or lacking in good faith) to seek to improve the Code without regard to the failures which arise from its role in a flawed regulatory system.

The high level objectives and principles articulated in the National Forest Policy Statement 1995 ([NFPS](#)), the [Sustainability Charter](#) (2006), [Biodiversity 2037](#) (2017) and other leadership documents are admirable but the regulatory machinery ostensibly designed to achieve those objectives is failing. The egregious failings of forest regulation are outlined in this report, with the headline issues as follows.

There is a serious neglect of the fundamental purpose of regulation, namely the protection of the forest ecosystems, with a lack of focus on ecosystem processes and relationships in both the monitoring and the regulation of timber harvesting;

While Victoria is failing to implement its commitments under the regional forest agreements (RFAs), the Commonwealth is failing to withhold accreditation of Victoria's forests management regime, thereby allowing failure to continue;

There has been a failure to attend to landscape level assessment and protection; associated with the insistence that the Timber Release Plan ([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 FMZ schema used as the only regulatory tool directed to long term area wide planning, is not fit for purpose and with a few notable exceptions, such as exclusion zones for Leadbeaters Possum and the Spot-Tailed Quoll, has lain largely untouched by review or revision for over two decades;

The failure to apply the precautionary principle as specified in the [NFPS](#), the Flora and Fauna Guarantee Act ([FFG Act](#)) and the Code is evident in the neglect of climate change, in the failure to address the extremely young age profile of the ash forests in the Central Highlands and in the lack of rules, indicators or compliance standards regarding ecosystem processes and relationships. The *State of the Forests 2018* comments: "There is considerable scientific evidence predicting damage to the vitality and health of Australia's forests due to climate change".

The strong new provisions in Section 4B of the FFG Act are ignored by OCR and by VicForests, while VF's owner, the Treasurer, turns his back.

The fact that the regulator is only an administrative unit within DELWP, and so subject to Ministerial control, and that the Government has made it abundantly clear that the Victorian Forestry Plan takes precedence over environmental safeguards (see Media Releases of 27 July 2020 and 30 June 2021) has meant that the OCR has been prevented from acting against VF on all but the most black and white slam dunk issues. Indeed, Minister D'Ambrosio is on the record defending this unacceptable arrangement, being quoted in the latter media release stating:

When we have clear, black and white definitions, we can better ensure that threatened species and habitats are protected.

Victoria, via DELWP, permits VicForests to breach multiple clauses of the *Code of Practice for Timber Production 2014*, as confirmed by Justice Debra Mortimer in her judgement in *The Possums' Case*.

While the State of the Forests report ([2018](#)) cites a range of indicators which are only 'fair' and in some cases getting worse, the determinants of this decline are not encompassed by the Code in a form which allows for 'black letter law' policing by the OCR.

The 2020 revised regional forest agreements (see [Central Highland RFA](#)) commit the Victorian Government to reviewing relevant provisions of the FFG Act, Sustainable Forests (Timber) Act 2004 ([SFT Act](#)) 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 published information regarding the Comprehensive Code Review.

We call upon the State Government to implement urgent changes to the Code, in particular, to restore the TRP as a long-term planning tool with an obligation for the Secretary of DELWP to approve (measures originally established by the Bracks/Brumby Labor Government), as well as further measures outlined below.

Background

The regulatory framework

This report assumes familiarity with the broad regulatory framework governing timber harvesting in Victoria. For links to key documents (including a range of summaries and overviews), see [RFPG's Legislative Map](#) and [Policies page](#) on the RFPG website.

The Comprehensive Code Review

The [Central Highlands RFA was varied on 30 March 2020](#) with an extension until 30 June 2030. In new Section 25M the parties agreed that:

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.

The Victorian Government consulted on a package of amendments to the Code and the MSPs in July 2021 via [Engage Victoria](#). See RFPG critiques published at this time:

- [RFPG Submission Slams Proposed Deregulation of Logging in Victoria's Native Forests](#) (29 July 2021)
- [Proposed TRP flouts long term planning requirements of the Code](#) (30 July 2021)

The revised Code came into effect in November 2021. In early 2022 a [further set of amendments](#) were canvassed. RFPG was especially critical of the proposed changes to the bushfire hazard clauses which retrospectively validated a document that had never been referenced in the Code or the MSPs or the Bushfire Management Code and had never been subject to public consultation or publicly released (see [Legge, TWT, 16/3/22](#)). Yet in June 2022 the changes were gazetted.

Now, 3 years after it was first promised by Minister Lily D'Ambrosio, the State Government has taken the first steps to commence a full 'comprehensive' review of the Code and it is this 'Comprehensive Code Review' to which this report is directed.

This submission follows up our earlier submission ([RFPG2CCR 220620](#)) to the Comprehensive Code Review. In that submission we expressed our concern regarding the consultative process proposed by DELWP and urged a more systematic and consultative process.

Our experience

We are frustrated. We have watched while saturation logging has impacted our forests and the scientific evidence of unsustainable impact has accumulated.

We have repeatedly sought the intervention of the regulator and have been uniformly dismissed.

We have repeatedly urged VicForests to exercise discretion and care in their harvest planning and have been dismissed.

We have prepared reports and submissions to various inquiries to no effect.

We are frustrated.

We do not approach this Comprehensive Code Review with any kind of 'value-neutral objectivity'. Rather, our purpose in preparing this submission has been: first, to assemble an account of our experience of engaging with the different arms of the regulatory system, to learn from this experience and to share our sense of frustration with a system which appears to be designed to fail; second, to reflect on our own

experience (and that of other conservation organisations) and the scientific and regulatory literature to understand the roots of what we have experienced as regulatory failure.

Methodology

Data sources

This submission is based in part on document reviews including Parliamentary debates and 2nd Reading Speeches, laws, cases, reports, and commentaries. For further information on some of the laws, cases, and reports reviewed in developing this report, see [RFPG's Legislative Map](#) and our [Forest Policies page](#).

We have also followed much of the relevant scientific literature on an ongoing basis and have undertaken a more detailed review of the fundamental ecosystem processes and relationships which underly the crisis in biodiversity loss.

Data generated through our own observation, research, evaluation, and engagement

Over the last seven years (since our formation in 2015) RFPG has observed, researched, evaluated, engaged.

We have observed the life of our forests, the changing seasons, the use of the forest by campers, cyclists and tourists, the impact of government policies and programs including road building, traffic management, fuel reduction burning. However, the most dramatic changes that we have observed have occurred because of devastating unsustainable logging and megafires, nourished by global warming.

We have researched a range of issues touching on forestry, wood production, ecology and climate science as well as governance and regulation.

We have made judgements and formed opinions about how well the forest was travelling and about the performance of the timber harvesting regulator and the regulatory framework. Our evaluation of regulatory performance reflects our judgements of how the forest is and how it could be; of how logging is governed and how it could be. We are not opposed to logging in any absolute sense; we all live in houses which are in various degrees made of wood. However, we believe that the logging of the Rubicon and other forests of the CH has been grossly excessive, unsustainable and irresponsible.

We have engaged. We have engaged closely with the OCR (and the Timber Harvesting Compliance Unit (THCU) before OCR was established) over the last seven years. During this time we have submitted around 50 breach allegations to the regulator. We have also participated in the mandatory consultations required of VicForests in relation to proposed TRP amendments and have submitted around 10 submissions to VF proposing variations to their proposed TRP amendments. We have submitted around 30 contributions to various reviews and consultations.

See [RFPG Documents](#) for links to the full range of documents produced as an outcome of these engagements. Of relevance to this report are:

- [Unsustainable! \(2016\)](#)
- [2017 Submission on VicForests application for FSC certification](#) and again in [2020](#)
- [2018 submission to RFAs 3rd Review](#)
- [2020 Submission on VicForests further application for FSC certification](#)
- [Landsat movie](#) see also [100 years](#)
- [RFPG Submission](#) to Independent Review of Timber Harvesting Regulation
- [RFPG Submission](#) to RFA Modernisation Consultation
- [Age class report](#)
- [Fire and logging biodiversity threat](#)
- [2019 Submission to VicForests' draft High Conservation Value Management Framework and to VicForests' draft Silvicultural Systems Framework](#)
- [Submission to the Major Event Review \(MER\)](#)
- [Cost of water loss from logging Thomson Dam](#) (Sept 2020)

Analysis

This submission is based on an analysis of the existing regulatory framework and the current science of forest ecology. It also draws from our own research and our experience of regulatory performance (including our breach allegations and the consequent correspondence with THCU & OCR and our submissions to VicForests regarding TRP amendments and VicForests' responses).

We have used the [Principles of Better Regulatory Practice](#) formulated by the Independent Review into Timber Harvesting Regulation (2018) to guide our assessment of the regulatory machinery governing timber harvesting in the state forests of Victoria.

Findings

Our findings point to widespread regulatory failure including but not restricted to the OCR and its lack of enforcement of the Code, and VicForests and the ecosystem damage which is clearly foreshadowed in each iteration of the TRP.

High level objectives are fine but the implementation machinery is failing

The high level objectives and principles are generally good although we might have hoped for a more sophisticated recognition of the relationships and processes which constitute an ecosystem.

The [NFPS](#) states that:

Australia's governments share a vision of ecologically sustainable management of Australia's forests ...

The unique character of the Australian forested landscape and the integrity and biological diversity of its associated environment is retained. ...

There is a 'holistic' approach to managing forests for all their values and uses so as to optimise benefits to the community.

The [Sustainability Charter](#) for Victoria's State Forests states that the Department of (what is now) Environment, Lands, Water and Planning will manage Victoria's state forests "to maintain and conserve biodiversity".

[Biodiversity 2037](#) defines the values which guide its implementation:

Life forms that make up biodiversity have intrinsic value and warrant our respect.

Connections and relationships exist within and between ecological, social, cultural and economic systems.

Biodiversity delivers ecosystem services that are fundamental to the economic prosperity and the physical and mental health of all Victorians.

However, the implementation machinery, put in place to achieve these outcomes, is demonstrably failing to achieve these high level objectives and principles.

Ms D'Ambrosio, in her introduction to Biodiversity 2037 notes that "Despite understanding the importance of our natural environment, not enough has been done to protect it from harm. Victoria's biodiversity is in decline."

Biodiversity 2037 comments:

As a society, we tend to under-value the benefits of biodiversity, and fail to acknowledge the risks posed by our collective actions. As a result, material yields and other benefits provided by the environment are in decline.

Victorians have allowed the continued decline of biodiversity because:

- The immediate cost of avoiding harm to the natural environment is either hidden or considered to be too high.*
- The potential serious impacts of harming the environment are thought to be too far in the future, too uncertain and not of immediate concern.*
- The benefits of biodiversity are free, and are therefore taken for granted.*
- Biodiversity loss may be too abstract a concept for some to grasp.*
- Biodiversity loss can happen slowly and therefore be difficult to notice.*

[...]

Even today, decision makers in government, business and land management too often fail to fully consider the impacts of their actions on biodiversity – and are not routinely required to do so.

[...]

Climate change will increase the pressure on Victoria's biodiversity, by exacerbating existing threats and introducing new ones.

The [2018 State of the Forests Report](#) summary graphic, [Fig 4](#), shows very few indicators which are characterised as 'good status', 'stable or improving trend', and 'good quality indicators'.

The Victorian Auditor General reporting on progress with respect to Biodiversity 2037 [reported](#) that:

DELWP cannot demonstrate if, or how well, it is halting further decline in Victoria's threatened species populations.

DELWP aims to choose cost effective protection actions that benefit the greatest number of threatened species. To this end, it uses modelling tools to support its decisions. These tools are better practice by design.

However, much of the data used in the models is old and likely outdated, and has some critical gaps. This raises questions about the reliability of the modelled outputs and the decisions they support.

DELWP's cost-benefit approach can also miss endangered threatened species at extreme risk of extinction. DELWP has no transparent, risk-based process to prioritise these species for management.

Further, DELWP continues to make limited use of available legislative tools to protect threatened species.

Funding available to DELWP to protect species falls significantly short of what it predicts is needed. However, DELWP has not provided detailed, evidence-based advice to the government about the cost and benefits of protecting and monitoring threatened species to support further investment.

It also lacks performance indicators and reporting to demonstrate the impact of its management interventions on halting the decline of threatened species.

Ecosystem processes should be at the heart of the system but aren't

We have watched while:

- saturation logging has left the flanks of our mountain ranges shorn, as if by apprentice shearers, leaving thin unstable buffer strips outlining the areas which have been harvested;
- the age profile of our ash forests has declined perilously due to logging and megafires;
- global warming has progressed with the threat of a drier warmer climate in the Central Highlands; and
- iconic forest-dwelling species like large forest owls, leadbeater's possum, large gliders and the spot-tailed quoll are seriously threatened.

We have urged DELWP deploy the precautionary principle to stop the devastation, but we are assured that 'everything is fine'; 'there are no threats of serious or irreversible harm confronting us'; 'there is no scientific uncertainty which would 'trigger' precaution'; 'we have a world class regulatory system in place', 'so if you don't get out of the way, laws will be passed to keep you out of the forest'.

During these engagements we have observed a widening dichotomy between a species-specific understanding of biodiversity and an ecosystem-oriented understanding of the roots of biodiversity loss.

The focus on species-specific conservation has been driven by an interaction between the concern of environmentalists (including citizen scientist species seekers) and the provisions for detection-based zoning via the Forest Management Zoning Scheme. This interplay between the action statements, volunteer detections, and detection-based zoning has undoubtedly improved the outlook for the species in question and, as a consequence of the total area excluded from logging, has limited the area available for logging.

However, species-specific conservation may have distracted the attention of both the conservationists and the regulators from more fundamental threats to the resilience of the forest ecosystems which, across time and space, create and stabilise the ecosystem niches in which those species thrive (or decline).

Biodiversity includes species *and* ecosystems

The distinction between species conservation and ecosystem conservation was recognised by the International Union for the Conservation of Nature (IUCN) in the early 2000s when they recognised that they had a red list for threatened species but did not have a comparable list for threatened ecosystems.

The landmark report of [Keith et al](#)² for the IUCN in 2013 was conceptually based on four essential elements of an ecosystem:

1. a biotic complex or assemblage of species;
2. an associated abiotic environment or complex;
3. the interactions within and between those complexes; and
4. a physical space in which these operate.

Keith et al proposed a risk assessment model for analysing the impact of threatening processes on the ecosystem distribution (declining distribution or restricted distribution) and ecosystem processes (degradation of the abiotic environment or altered biotic processes and interactions). A summative element of their model was quantitative risk analysis; projecting possible scenarios building on the four earlier elements of the model.

Keith et al commented that while the endpoint of species decline was extinction, the endpoint of ecosystem decline was better understood as a transition to a new ecosystem configuration (from forest to desert in the extreme) which they termed ecosystem collapse (transition beyond a bounded threshold in one or more variables that define the identity of the ecosystem). The protocol for ecosystem assessment proposed by Keith et al required a structured consideration of time scales: past, current and future.

The fourth criterion (offered by Keith et al) for assessing the risk of ecosystem collapse, 'disruption of biotic processes and interactions', provides useful guidance for thinking about the conceptualisation and monitoring of ecosystem decline and collapse.

Their list of variables, under this criterion, points to the importance of considering ecosystem relationships and highlights the challenge of devising indicator frameworks for monitoring the risk of ecosystem collapse in particular ecosystems. These variables include:

- Species richness (number of species within a taxonomic group per unit area),
- Species composition and dominance,
- Abundance of key species (ecosystem engineers, keystone predators and herbivores, dominant competitors, structural dominants, transformer invasive species),
- Functional diversity (number and evenness of types),
- Functional redundancy (number of taxa per type; within- and cross-scale redundancy),
- Functional complementarity (dissimilarity between types or species),
- Interaction diversity (interaction frequencies and dominance, properties of network matrices),
- Trophic diversity (number of trophic levels, interactions within levels, food web structure),
- Spatial flux of organisms (rate, timing, frequency and duration of species movements between ecosystems),
- Structural complexity (complexity indices, number and cover of vertical strata in forests, reefs, remote sensing indices).

Ecosystems are complex adaptive systems which are maintained within a particular domain of stability through a range of stabilising relationships (determining nutrition, hydration, disease risk, fertilisation, etc) which return the system to stability following exogenous disruptions (including logging, fire, global

2. Keith, DA, Rodríguez, JP, Rodríguez-Clark, KM, et al. 2013, 'Scientific Foundations for an IUCN Red List of Ecosystems', *PLoS ONE*, vol. 8, no. 5, pp. e62111-e.

warming, and reduced rainfall). Ecosystem resilience reflects the strength of these stabilising relationships in the face of destabilising influences.

Burns and colleagues in 2014³ undertook a systematic ecosystem assessment of the [mountain ash forests](#) of the Central Highlands of Victoria for the IUCN and concluded that they are *critically endangered*.

These are processes which may take time. [Lindenmayer and Sato \(2018\)](#)⁴ talk about hidden ecosystem collapse; it is happening while we watch. The processes underlying tipping points may be underway while the forest still looks healthy and maintains biodiversity. *Declining biodiversity may be a late indicator of ecosystem decline*.

Fungal arboreal relationships

The role of fungi and of ferns in the ash forest ecosystem illustrate how important these 'interactions within and between those complexes' could be in preventing or precipitating ecosystem collapse in forests.

Fungi play an important role in plant nutrition and hydration including Eucalypts. This is of particular importance in the context of poor quality soils, especially soils lacking in phosphorous. Logging and fire both compromise the role of fungi in forest nutrition and hydration. Fires and logging diminish soil quality from which forests takes a long while to recover.

Fungal fruiting bodies play a role in the diet of small mammals, birds, and lizards which help to disseminate the spores. Loss of animals, consequent upon logging and/or fire, will reduce the dissemination of spores and may compromise the role of fungi in nutrition and hydration. The symbiosis between fungi and eucalypts is an important ecological relationship on which ecosystem stability depends but also appears to be the site of critical tipping points.

Logging and fire contribute to drying out of soils, with loss of ferns and loss of upper story shading plus the increasing thirst of the regenerating eucalypts. Global warming is contributing to reduced rainfall in Southern Australia. Logging, fire, and reduced rainfall all point to the significance of fungal support in accessing soil water.

The knowledge base for a full understanding of native forest ecosystems is patchy, particularly in relation to fungal/arboreal relationships. We need much better forward indicators of ecosystem decline, including indicators of the health of fungal/arboreal relationships. The absence of such indicators is a breach of the Precautionary Principle.

Monitoring ecosystem resilience would require sufficient research to identify the critical ecosystem relationships and feedback loops which currently stabilise the forest ecosystem, including fungal/arboreal relationships; the identification of measures to follow those relationships; ongoing monitoring of such indicators; and appropriate restorative practices.

This is just not happening. DELWP's [Forest Protection Survey Program](#) does not appear to survey for fungi or lichens. The State Government's [Guidelines for Criteria and Indicators](#) and the State of the Forests Report do not include fungi. The [2018 State of the Forests report](#) which, out of 52 indicators, has only one which addresses 'Scale and impact of agents and processes affecting forest health and vitality - mortality, dieback, canopy health' (status fair, trend uncertain, data quality fair) and ignores fungi. The Integrated Forest Ecosystem Research Program (cosponsored by the University of Melbourne and DELWP) makes no mention of fungi. The [Victorian Forest Monitoring Program](#) makes no mention of fungi.

The lack of attention to fungi and fungal/soil/arboreal/animal relationships and their significance for the resilience of native forest ecosystems illustrates the failure of the Victorian regulatory system to properly monitor and protect native forest ecosystems.

3. Burns, E.L., Lindenmayer, D.B., Stein, J., Blanchard, W., McBurney, L., Blair, D., Banks, S.C., 2015. Mountain Ash Ecosystem Assessment. *Austral Ecol.* 40, 386-399. <https://doi.org/10.1111/aec.12200>.

4. Lindenmayer, DB & Sato, C 2018, 'Hidden collapse is driven by fire and logging in a socioecological forest ecosystem', *PNAS*, vol. 115, no. 20, <<https://doi.org/10.1073/pnas.1721738115>>.

Treeferns

A similar story applies to treeferns, another keystone species with a critical ecological and ecosystem role. Former DELWP researchers Keely Ough and Anna Murphy have published clear evidence showing clearfell logging has a profound impact on treefern distribution, unlike megafires. The 1997 [Central Highlands Comprehensive Regional Assessment](#) (CRA) states:

The potentially threatening processes indirectly associated with harvesting operation include habitat modification, specifically the removal of one or more forest strata and the loss of opportunity to develop habitat elements characteristic of mature and senescent forests (eg tall treefern trunks, decaying logs) on the coupe. This threatening process is considered to be strongly associated with timber harvesting and of moderate overall significance.

Not only are treeferns themselves fire resistant due to their apical meristem being well shielded, by allowing a shady, moist understorey they foster speedy litter decomposition and so attenuate fire spread. They help create rich habitat for insects, worms, copepods, millipedes and other invertebrates on the forest floor that provides food for lyrebirds. Their shade nurtures germination and growth of rainforest species, and their trunks that are often rich in epiphytes can be an ecosystem in themselves. The Central Highlands CRA goes on to say (references removed):

On the coupe itself, the microclimatic changes following harvesting are radical. While these changes may be similar to the impacts of wildfire in some circumstances, the impact of wildfire may be less extreme in some cases where some vegetation remains after the fire, including burnt or scorched leaves and branches in the canopy or understorey. Furthermore, it is postulated that the dense treefern layer (which is present in most ash forests) responds rapidly (ie. within a few weeks) following wildfire to produce a new frond canopy, which has the effect of reducing wind and light, increasing humidity and attenuating temperature extremes at the soil surface and beneath the layer of fronds. These authors have demonstrated a significant increase in treefern mortality following harvesting, when compared to areas burnt by wildfire. Other groundferns and shrubs also resprout more quickly and completely following wildfire than following timber harvesting, hastening the re-establishment of more moderate microclimates.

*In addition to the microclimatic amelioration, treeferns may also play a role in the germination and establishment of other forest species, including *Pittosporum bicolor*, *Coprosma quadrifida*, *Tasmannia lanceolata* and *Olearia argophylla*. Treefern trunks are also the substrate for a suite of epiphytic ferns (eg. *Hymenophyllum* spp., *Tmesipteris* spp.) and other epiphytes (eg. *Fieldia australis*). Other understorey shrubs and trees also provide substrate for epiphytes such as *Microsorium pustulatum*, as well as a wide variety of non-vascular plants such as mosses and liverworts.*

Operational trials of “understorey islands”, areas within coupes in which machinery is excluded to minimise physical damage to long-lived understorey species, are being undertaken in the Central Highlands.

But since understorey islands impede the kind of industrial-scale logging operation VicForests conducts, nothing has been done about implementing understorey islands into routine operations, despite their adoption being a recommendation of the Victorian Silviculture Systems Project⁵, a research program established to find ways of reducing the environmental harm cause by clearfell logging.

Case 2021-0169: a case study of regulatory contortion

In December 2020 the RFPG wrote to the Timber Harvesting Compliance Unit (THCU) drawing attention to the bulldozing and death of a large number of treeferns in a 3-4 ha patch of Troop (309-505-0002) and the fact that only one treefern had been retained. The report was accompanied by photographs of dead mature treeferns in slashheaps around the coupe and one isolated treefern remaining.

5. Squire, R.O., B.D. Dexter, A.R. Eddy, et al. 1991. *Regeneration silviculture for Victoria's eucalypt forests*. Value Adding and Silvicultural Systems Program (Vic.) Technical Report #6 ISBN: 9780646060149

Our report alleged a breach of Code Cl. 2.2.2.2: the precautionary principle, Code Cl. 2.2.2.10: 'Retain and protect habitat trees or habitat patches and long-lived understorey species to provide for the continuity and replacement of ... existing vegetation types within each coupe', and MSPs Cl. 2.4.1.1(h)(vi): 'Forest Coupe Plans prepared for timber harvesting operations must ... describe measures employed to protect biodiversity such as ... retention of long-lived understorey species in appropriate numbers ...'

The THCU wrote back in Feb 2021 refusing to investigate our breach allegations.

The case points to a refusal by DELWP to recognise the cumulative impact of coupe level breaches on the ecosystem health of the forest more broadly (notwithstanding [S4B\(3\) of the FFG Act](#)). DELWP deployed quite disingenuous arguments in refusing to investigate our allegation.

THCU's reasons for refusing to investigate included word games implying that our report had asked that 'all' treeferns be retained and this was not a requirement of the Code. In fact our allegation was that only one treefern out of 'many' (which we later estimated at 50-80) in a 3-4 ha patch had been retained.

The THCU response assured us that VicForests was intending to retain appropriate numbers of treeferns in the rest of the coupe, as yet unlogged, and that would discharge its obligations with respect to the coupe as a whole.

THCU denied that the precautionary principle applied because there was no 'demonstrated threat of serious or irreversible damage' in this case and 'no identified scientific uncertainty'.

RFPG wrote back promptly, this time to Ms Kate Gavens, the Chief Conservation Regulator, asking for the case to be re-opened. In our response we highlighted:

- the reference to 'retention' and 'continuity' in the Code, in contrast to 'regeneration' in the MSPs clause, which the THCU had referred to (we emphasised that the Code has precedence over the MSPs);
- the special status applied to 'long-lived understorey species' in the Code, including in the Operational Goals: 'The natural floristic composition and representative gene pools are maintained when regenerating native forests by protecting long-lived understorey species...';
- the requirement in the Code that 'the biodiversity of the native forest is perpetuated';
- the objectives of the Flora and Fauna Guarantee Act as set out in S4;
- the fact that there were a further eight coupes in the vicinity all on the TRP and all with many treeferns, meaning that this level of destruction clearly brought the cumulative impact requirement of the FFG Act into play;
- further observations of three neighbouring coupes which had been logged between 15 and 29 years earlier and had almost no treeferns in comparison with nearby unlogged, but otherwise comparable, coupes;
- scientific uncertainty regarding spore production, dissemination and germination in the face of wide area destruction of treeferns and disruption associated with logging;
- the commitments made by Victoria, in Cl. 62C of the Central Highland RFA, to 'conserve and protect all EVCs', reduce the extent and severity of Threatening Processes'; and to increase the protection of ... treeferns in relevant EVCs to maintain ecological processes';
- the importance of treeferns in retarding the spread of bushfire; and
- the contribution of treeferns to a range of important ecosystem relationships and interactions with significance for the ecosystem health of the forest more generally.

Finally, we argued that there was a clear and present threat of serious and irreversible harm to the forest ecosystem and that there was clearly some scientific uncertainty and that accordingly the precautionary principle should have been observed.

Our letter to Ms Gavens was referred to Mr Andrew Collins, the Director of Strategic Operations for DELWP who replied on 28 Feb ignoring the arguments set out in our rebuttal and simply reiterating OCR's original arguments for refusing to proceed to an investigation.

OCR's refusal to investigate is a particularly egregious case of regulatory failure given that the risks to treefern ecosystems from logging in the Central Highlands had been the subject an extensive DNRE (now DELWP) research program in the 1990s. This research, led by Keely Ough⁶ and conducted as part of the Victorian Silviculture Systems Program, produced a variety of detailed working papers and journal articles yet in its refusal to investigate our report, OCR relied on a 'subject matter expert' in DELWP who appeared to be unaware of this research.

A vigorous treefern understorey, as in Troop and Rookery, plays a significant role in guarding forests from fire and retarding its progress. It does so in various ways. Treefern shade on the forest floor helps keep the ground litter moist and so speeds up litter decomposition, so reducing fuel accumulation. Their fibrous trunks also retain moisture, meaning that they do not burn despite their dead drooping fronds burning, so helping them survive bushfires.

With more frequent and more intense fires a certainty, it is critical that forest types that can retard a fire's progress are protected especially in such an iconic location as the Acheron Way. A drying climate will make treefern survival and regeneration more precarious making the retention and protection of those alive now even more important.

This case study illustrates the failure of the Victorian forest regulatory framework to take an ecosystem approach to biodiversity rather than rely solely on a species-specific approach. The restriction of OCR to coupe level regulation (and the claim that the Zoning Scheme fully discharges DELWP's landscape level regulatory obligations) appears to have led to an assumption that the long term cumulative impact of coupe level operations is not of concern to the OCR (notwithstanding [S4B\(3\) of FFG Act](#)).

It appears that DELWP is unimpressed by the listing by the IUCN of the ash forests of the Central Highlands on the [Red List of Threatened Ecosystems](#); and unconvinced by the science underpinning the Red List ([Keith et al 2013](#)); and the findings by [Burns et al \(2019\)](#) that the ash forests of the Central Highlands are facing 'ecosystem collapse'.

What are the gaps in the chain of authority?

It is our experience that the forest regulators in DELWP are unable to acknowledge the threats of serious and irreversible harm to the forest ecosystems of the Central Highlands, despite the documented declines in biodiversity. These threats include: saturation logging and a precipitous decline in the age profile of the forests, global warming, and recurring megafires.

It appears that the threat of ecosystem collapse, as elaborated by the IUCN scientists, is completely disregarded by the regulators including in relation to mandated assessment indicators, official monitoring systems and enforcement.

In this section we explore the chain of authority which links the high level policy objectives to the practice of regulation. Our goal is to identify where the chain is broken and how it might be restored. We ask four questions:

1. What are the legislated policy objectives for the health of our forests?
2. What are the indicators which are being measured and which should be measured to give assurance that those high level policy objectives are being achieved?
3. How well are the current monitoring systems monitoring the indicators which might give warning if we were facing ecosystem collapse?
4. How well does the regulatory system respond to the implications of monitoring data that are collected?

6. Ough, K. & A. Murphy (1999) Differences in understorey floristics between clearfell and wildfire regeneration in Victorian Wet Forest. VSP Internal Report #31, Victorian Department of Natural Resources and Environment.

Ough, K & J. Ross (1992) Floristics, fire and clearfelling in wet forests of the Central Highlands, Victoria. VSP Technical Report #11, Victorian Department of Conservation and Environment

High level objectives

We start with a review of the high level objectives articulated in the various laws and agreements. We find that these objectives would certainly encompass a recognition of ecosystem risk and would appear to authorise effective regulation to manage such risks.

FFG Act

The objectives of the [Flora Fauna Guarantee Act 1988](#) (S4) 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.

Section 4B (2019) requires that Ministers and public authorities to give proper consideration:

- (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.
- (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.

RFAs

In the [CH RFA](#) the parties confirm their commitment to the goals, objectives and implementation of the National Forest Policy Statement (NFPS) by:

- (a) implementing Ecologically Sustainable Forest Management (ESFM);
- (b) establishing and maintaining a Comprehensive, Adequate and Representative Reserve System;
- (c) supporting internationally competitive Timber and Forestry Products Industries; and
- (d) promoting the conservation and management of Native Forests.

“Ecologically Sustainable Forest Management” or “ESFM” is defined in the RFA as meaning forest management and use in accordance with the specific objectives and policies for ecologically sustainable development as detailed in the National Forest Policy Statement.

The glossary to the [NFPS](#) recognises three requirements for sustainable forest use:

- maintaining the ecological processes within forests (the formation of soil, energy flows, and the carbon, nutrient and water cycles);
- maintaining the biological diversity of forests; and
- optimising the benefits to the community from all uses of forests within ecological constraints.

The [EPBC Act](#) articulates the following principles of ecologically sustainable development:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) **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;**
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) **the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;**
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

SFT Act

S 5 of the [Sustainable Forests \(Timber\) Act](#) provides that:

- (1) In undertaking sustainable forest management in accordance with this Act, regard is to be had to the principles of ecologically sustainable development set out in this section.
- (2) **Ecologically sustainable development is development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.**
- (3) The objectives of ecologically sustainable development are—
 - (a) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations;
 - (b) to provide for equity within and between generations;
 - (c) **to protect biological diversity and maintain essential ecological processes and life-support systems.**
- (4) The following are to be considered as guiding principles of ecologically sustainable development—
 - (a) that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
 - (b) **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;**
 - (c) the need to consider the global dimension of environmental impacts of actions and policies;
 - (d) the need to develop a strong, growing and diversified economy which can enhance the capacity for environment protection;
 - (e) the need to maintain and enhance international competitiveness in an environmentally sound manner;
 - (f) the need to adopt cost effective and flexible policy instruments such as improved valuation, pricing and incentive mechanisms;
 - (g) the need to facilitate community involvement in decisions and actions on issues that affect the community.

S6 of the SFT Act provides that

- (1) The Minister **must determine criteria and indicators for sustainable forest management.**
- (2) In determining criteria and indicators under subsection (1), the Minister may take into account any nationally or internationally agreed criteria and indicators for sustainable forest management.
- (3) As part of a determination under subsection (1), the Minister must also determine—
 - (a) the reporting requirements relating to each indicator determined under subsection (1); and
 - (b) the frequency at which such reports are to be made, being a period not less than every 5 years.

S11 of the SFT Act provides that:

- (1) The Minister may develop a [Sustainability Charter](#).
- (2) A Sustainability Charter must set out objectives, consistent with the principles of ecologically sustainable development, for—
 - (a) the sustainability of forests; and
 - (b) the sustainability of the timber harvesting industry.

(3) The Minister must consult with the Treasurer and the Minister for Agriculture in developing a Sustainability Charter.

S12 of the SFT Act provides that:

(1) **If the Minister prepares a Sustainability Charter under section 11, VicForests must develop initiatives and targets for those initiatives which respond to and support the objectives set out in the Charter.**

(2) VicForests must include the initiatives and targets referred to in subsection (1) in its statement of corporate intent required under the State Owned Enterprises Act 1992 .

(3) VicForests must include in its report of operations required under the Financial Management Act 1994 a report on the status, performance or achievement of the initiatives and targets referred to in subsection (1).

Sustainability Charter

The Objectives of the Sustainability Charter, prepared under S11 of the SFT Act are:

1. **To maintain and conserve biodiversity in State forests**
2. To maintain and improve the capacity of forest ecosystems to produce wood and non- wood products
3. **To promote healthy forests by actively managing disturbance**
4. To maintain and conserve the soil and water resources of State forests
5. To maintain and better understand the role of Victoria's State forests in global carbon cycles
6. To maintain and enhance the socio-economic benefits of State forests to Victorian communities
7. To ensure Victoria's legal, institutional and economic frameworks effectively support the sustainable management of State forests

In sum, we conclude that the legislative mandate for effective regulation of ecosystem health is adequate.

Indicator frameworks

What are the indicators which are being measured and which should be measured to give assurance that those high level policy objectives are being achieved?

The IUCN model suggests that six broad categories of indicators for ecosystem status:

- Ecosystem distribution, looking for:
 - Declining distribution (reduced carrying capacity, reduced niche diversity);
 - Restricted distribution (susceptibility to spatially explicit threats and catastrophes);
- Ecosystem processes, looking for:
 - Degradation of abiotic environment (reduced carrying capacity, reduced niche diversity);
 - Altered biotic processes and interactions (reduced vital rates and mutualisms, increased interference);
- Quantitative risk analysis (that estimates the probability of ecosystem collapse); and
- Threatening processes.

The IUCN has adopted a protocol for assessing ecosystem health based on these variables with a strong temporal dimension as well, requiring assessments of past, current and future.

The two main indicator systems which guide native forest ecosystem monitoring in Victoria are:

[Criteria and Indicators](#) for Sustainable Forest Management Guidance Document, published by DSE in 2007 (and the annual [State of the Forests report](#) produced by the Commissioner for sustainability, based on the Criteria and Indicators); and

The [Bioregions and EVC benchmarks](#) upon which the CAR Reserve System is notionally based.

The Criteria and Indicators cover some of the indicators suggested by the IUCN model although structured differently. However, the DSE Guidance (which has not been updated since 2007) does not include the temporal dimension and does not require the quantitative analysis which is a key part of the IUCN model.

Criterion 1 (as adapted by the Commissioner for Sustainability) includes a number of areal indicators and trends, and a fragmentation indicator.

One important measure of logging as a human induced threat which is not included is the net increase in edge length associated with logging. [De Matos and colleagues](#) (2019) highlight the edge effects which lead to physical and biotic alterations associated with the newly created boundaries between harvested area and remaining forest. They highlight the risks associated with exotic species introduction and other serious impacts on species diversity and composition, community structure and dynamics, and ecosystem functioning. An indicator based on the net increase in edge length stratified by forest type, location, and time since harvesting would provide a very useful measure of the impact of logging. VicForests could produce such a measure, based on data which it already holds.

The Bioregions and EVC benchmarks are much less relevant to the application of the IUCN protocol for ecosystem assessment. The EVCs describe floral communities associated with particular environmental niches but do not encompass the processes and interactions which are central to ecosystem assessment. If EVCs were being mapped periodically and followed across time they might provide late evidence of ecosystem collapse as defined by the IUCN but they are not currently being followed over time.

In sum, the indicator systems which notionally guide the health of native forest ecosystems in Victoria are far from being fit for purpose, if compared with the data required to apply the IUCN protocols.

Monitoring systems

It is useful to distinguish indicator frameworks from operating monitoring systems. How well are the current monitoring systems in Victoria monitoring the indicators which might give warning if we were facing ecosystem collapse?

The Victorian Forest Monitoring Program utilises a network of ground plots across public forests and parks. Ground plots are mapped through detailed aerial photography and satellite imagery. The network provides set attributes of forest structure, species and diversity. Plus, attributes of canopy condition and soil characteristics. This derives indicators of sustainability and measure changes in the extent, state and condition of our forests.

Changes in forest structure and composition affect a wide range of resource properties and processes. This may include habitat quality, biodiversity, the hydro-logical cycle and carbon storage. The program monitors plant species distribution within overstorey and understorey layers. shifts in tree species distribution at large spatial and slow temporal scales.

The plot network design is based on systematic stratified sampling. The design comprises of the Interim Biogeographic Regionalisation for Australia (IBRA) bioregions with Crown land categories (parks, reserves and State forest).

The complete VFMP ground plot network comprises a total of 786 field plots. Ground plots are installed by trained forest measurement specialists and botanists.

[DELWP 2022](#)

The VFMP clearly provides very useful rigorously sampled time-series data on Victorian forests, supplemented with Earth observation data from remote sensing programs. However, while 786 field plots seems a lot, it amounts to only a few plots for each of the forest management areas and EVCs, ecosystems and ecoclines within them.

To provide an appropriate database for ongoing monitoring of ecosystem health in accordance with the IUCN protocol the VFMP would need some significant enhancements. The application of the IUCN protocol to the Central Highlands forests by [Burns and colleagues](#) in 2014 provides a useful pilot for further development of the VFMP.

Regulatory responsiveness

How well does the regulatory system respond to the implications of monitoring data that are collected?

As described below, and as is illustrated elsewhere in this report, the existing regulatory system is designed to fail in terms of actually responding to the monitoring data which are collected.

The original 1989 code, established under the Cain/Kirner Government, required that it be reviewed every 3 years. In 1995, six years later, the Issues Paper prepared as part of the first review recommended extending this to a 5 year review interval. CSIRO, which had been engaged to review the Code, also recommended extending the review interval to 5 years to *'take account of new research information and field experience'*. Despite the compelling logic, in 1996 the Kennett Government lifted the review interval to 10 years with the Bracks/Brumby then preserving this review period in the 2007 Code. Yet under the Andrews Government there will be no revised Code until 2024 - - 17 years later!

The OCR is largely restricted to coupe level regulation and even here, only where breaches are egregious and unchallengeable in court.

Landscape scale regulation is notionally achieved through the Zoning Scheme but the only element of this scheme which actually operates is detection based zoning and this depends heavily on citizen scientist notifications. Fixed zoning actions in accordance with the JANIS criteria are in abeyance owing largely to VicForests' and DELWP's failure to monitor the range of ecosystem variables beyond threatened species detections. No substantive zoning actions occurred in response to the three megafires of the noughties (2003, 2006/7, 2009) and while the 'modernised' RFAs did provide for a Major Event Review, it took an excessive time and now, 2½ years later, it has not even been released.

Conclusions

The high level policy objectives articulated in various laws and agreements provide all necessary authority to mandate effective ecologically sustainable forest management. However, indicator frameworks are out of date; monitoring is inadequate for ecosystem monitoring; and the regulatory framework is failing – as it has been designed to do.

The Victorian native forest regulatory framework deals with biodiversity, largely in terms of species-specific variables (sightings, habitat, etc) but ignores contemporary science in relation to the assessment of ecosystem health.

There is a very real risk that the ash forest ecosystems of the Central Highlands are currently undergoing 'hidden' ecosystem collapse but as the VAGO has pointed out DELWP would not know whether or not this is taking place⁷.

DELWP has not revised its guidance regarding criteria and indicators since 2007. The VFMP is poorly suited to provide reliable timely monitoring data on ecosystem health. The EVCs on which the CAR reserve system is based constituted floral communities in particular environmental niches. Ecosystem health within these communities and the bioregions they constitute is not being followed. The EVC distributions still being used in the FMPs are out of date.

The Conservation Regulator has been deliberately sidelined in terms of landscape scale regulation and the Zoning Scheme which is supposed to regulate at scale is ineffective and out of date (as was acknowledged by the Secretary of DELWP in 2018 in response to VAGO's 2018 findings in its review of its 2013 audit⁸).

The Code is totally inconsistent with current community expectations regarding the protection of native forests and their biodiversity in accordance with legislative requirements, strategies and guidelines.

VicForests' social licence for timber harvesting is threadbare. DELWP's social licence as a regulator has expired.

See [RFPG paper on age profile](#) and also the [VEAC report](#), in particular Section 2.3 which clearly depicts the ecologically unsustainable youthful state of the Rubicon State Forest and the Central FMA generally.

7. VAGO, 2021, [Protecting Victoria's Biodiversity](#).

8. VAGO, 2018, Follow up of selected 2012-13 and 2013-14 performance audits, [Ch 2 Managing Victoria's native forest timber resources](#)

The undertakings in the RFAs were, and still are, flouted without penalty

The Andrews Government has failed to abide by a variety of undertakings under the modernised RFAs, and all Governments have ignored various provisions of original RFAs (Table 1, below) while at the Commonwealth level successive Coalition Governments failed to take action on a plethora of weakenings of the regulatory regime which was in place when the RFAs were first established (Table 2, below). (Our focus here is the Central Highlands RFA but the matters are relevant to the four other Victorian RFAs.)

TABLE 1. PROMISES AND RFA COMMITMENTS IGNORED OR DELAYED

(RFA clauses cited are from the Central Highlands RFA but equivalent clauses are in all RFAs)

Date	Instrument	Details
March 2007	Code of Practice for Timber Production	Bracks/Brumby Government fails to adopt the findings of the Victorian Silviculture Program established by the Cain/Kirner Government (e.g. the use of understorey islands to protect long-lived understorey species, especially tree-ferns and their rich epiphytic ecosystems).
2003 onwards	Original RFAs	Despite catastrophic impacts, especially on ash forest ecosystems, of megafires of 2003, 2006-07, 2009 and 2019-20, there has been no systematic review of the CAR reserve system, so breaching the very basis of the RFAs (CI 7)
1998-2020	Original RFAs	Continuing failure by successive State Governments to follow through various RFA biodiversity commitments, for example: <i>Parties agree that the current forest management system could be enhanced by further developing appropriate mechanisms to monitor and review the sustainability of forest management practices [. . .] consistent with the Montreal Process Criteria (CI 48)</i> <i>Parties also recognise the importance of continuing research to address [inter alia]:</i> <ul style="list-style-type: none"> • <i>the effectiveness of Ecological Vegetation Classes as surrogates of biodiversity</i> • <i>ecological impacts of intensive silviculture in regrowth forests</i> <p style="text-align: right;">(Attachment 6)</p>
1998-2020	Original RFAs	Continuing failure by successive State Governments to comply with harvest level commitments: <i>Sustainable yield levels in these FMAs will be reviewed when new resource information becomes available from the Statewide Forest Resource Inventory (SFRI) which should be completed by the end of 1999. When the sustainable yield for these FMAs is confirmed following this review, Victoria agrees to supply the revised sustainable yield level from these FMAs to the industry, in accordance with the requirements of the Forests Act. (CI 71)</i>
March 2017	Code of Practice for Timber Production	Allowing (i) the State Government’s position that the 2014 Code was only a consolidation of existing rules (and so did not require an RIS), and (ii) that the two subsequent amendments to it in 2021 and 2022 were merely removing errors and ambiguities (and so did not require a RIS), then the Comprehensive Code Review should have been completed and gazette by 2017 if the provisions of S.5 of the Subordinate Legislation Act were followed
31 May 2019	Code of Practice for Timber Production	Minister D’Ambrosio promises Comprehensive Code Review will commence in 2020. It does not.
Jan 2022 onwards	Forest Zoning Accountability Framework	Final Forest Zoning Accountability Framework not released by end 2021, and no Report Card in sight by mid-2022, as outlined in Fig 5 of the Draft Framework

Date	Instrument	Details
2020 onwards	Statement of Regulatory Intent	Office of Conservation Regulator refuses to publish reasons for its decisions and actions taken despite being repeatedly reminded of this obligation
2 Dec 2020	Modernised RFAs	Major Event Review announced 9 months after Black Summer fires (Premier's Media release) and three months after deadline stipulated in Clause 38F
June 2022	Modernised RFAs	Major Event Review still not released two months after handed to Governments
Mar 2020 onward	Modernised RFAs	Neither DJPR nor VicForests have forecast and made publicly available the harvest level from State Forests in each RFA Region having regards to, inter alia, the requirements of ecologically sustainable forest management as required by CI 69F(a), which includes ensuring that harvested areas are successfully regenerated, maintaining the natural floristic composition CI 39
Mar 2020 onward	Modernised RFAs	Neither VicForests nor DELWP have taken action to increase treefern protection in line with Clause 62C(b)
Mar 2020 onward	Modernised RFAs	Neither DJPR nor VicForests have published harvest volumes in each RFA in each year, by log type contrary to CI 69K

TABLE 2. GUTTING THE REGULATORY FRAMEWORK

Date	Instrument	Details
September 1996	Code	<p>Compliance with Guidelines ceases to be mandatory, with the following critical paragraphs in the 1989 Code deleted in the 1996 Code:</p> <p><i>The Code documents itself provides guidelines and Statewide minimum standards of environmental care which must be followed in compiling regional prescriptions and setting conditions for the control of timber production operations.</i></p> <p><i>It would have been impractical for the Code to provide detailed prescriptions that could be applied to every forest situation encountered throughout the State. Variability in climate, forest type, topography, elevation, soil type, landownership, and emphasis on various management objectives, requires that practical, detailed operational prescriptions must be developed regionally and must be used in specifying conditions for each timber production site</i></p>
Sep 1996	Code	Code review period extended from 3 to 10 years
1998	Code	One FMP per RFA region, ie spanning multiple FMAs, contrary to the Code. This change then retrospectively sanctioned in 2007 Code
2003?	Administrative	Native Forest Research Branch dissolved with creation of VicForests
16 June 2004	Forests Act	Labor Government repeals Section 52A requiring sustainable yield to be calculated and set by FMA repealed. No sustainable yield provisions in 2004 Sustainable Forests (Timber) Act
5 May 2010	Allocation Order	Labor Government abandons partitioning of harvest area limits by FMA, EVC type and age class - an ecological partition – leaving VicForests free to intensively log unburnt forests in any FMA/RFA region with almost no constraint
23 Sep 2010	Allocation Order	Between 2010 and 2014, Labor Governments <u>increase</u> harvest limits for ash forests despite ecological impacts of 2006-07 and 2009 megafires
28 Jun 2013	Sustainable Forests (Timber) Act	Coalition Government repeals Section 40 requiring DELWP Secretary to approve TRP
1 Oct 2013	Allocation Order	Coalition Government abandons detailed reporting obligations required of VicForests on regeneration and long-term sustainable harvest levels

Date	Instrument	Details
28 Oct 2014	Code of Practice for Timber Production	Coalition Government attempts to remove obligation on VicForests to comply with long-term planning provisions in former 2007 Code
28 Oct 2014	Code of Practice for Timber Production	Coalition Government removes obligation on VicForests to 'minimize skyline impact' in coupe planning as required by 2007 Code
24 Apr 2019	Allocation Order	Labor Government changes harvest area limit from a gross area to a net area basis, substantially increasing the area available for logging
27 Jul 2020, 30 Jun 2021	Code of Practice for Timber Production	Government announces in two media releases that the VFP, in effect, takes precedence over the Code
3 Nov 2021	Code of Practice for Timber Production	Labor Government removes VicForests' obligation to comply with long-term planning provisions in Code

And as well as the breaches of legislated commitments outlined in Table 1, and the progressive weakening of the regulatory regime listed in Table 2, DELWP has permitted VicForests to breach the spirit and letter of the *Code of Practice for Timber Production 2014* repeatedly and egregiously as confirmed by Justice Debra Mortimer in *The Possums' Case*, thereby further breaching Victoria's commitments in the previous and current RFAs.

The Commonwealth Government has also failed to abide by its RFA undertakings, specifically by refusing to even review, much less suspend, the accreditation of Victoria's forest management system in the light of the matters outlined in Tables 1 and 2.

RFPG acknowledges that the modernised RFAs are an improvement on their predecessors, including a meaningful 5-yearly review process instead of one exclusively focussed on process, but the changes come far too late. Indeed the secrecy surrounding the Report of the Major Event Review, the inadequate process for the Comprehensive Code Review and the lack of any process for reviewing Forest Management Plans lead us to believe that whatever good elements the new RFAs contain they will continue to be ignored in outcome terms.

Independent review of the EPBC Act ('the Samuel review')

The 2020 [Samuel Review](#) of the EPBC Act found fundamental shortcomings in the interactions between RFAs and the EPBC Act.

The Review has low confidence that the environmental considerations under the RFA Act are equivalent to those imposed by the EPBC Act, but recognises that some RFAs afford environmental protections that exceed the requirements of the RFA Act. RFAs rely on the States to undertake monitoring, compliance and enforcement, with little Commonwealth oversight.

In May 2020 the Federal Court found that a forestry operator had breached the terms of an RFA and should therefore be subject to the ordinary controlling provisions of the EPBC Act. Legal ambiguities in the relationship between the EPBC Act and the RFA Act should be clarified. This should be achieved by requiring that RFAs demonstrate consistency with the National Environmental Standards to avoid the need for an EPBC Act assessment and approval. Adopting the accreditation model would support greater Commonwealth oversight of the RFAs, including the effectiveness of the State-based compliance and enforcement regimes.

Amendments to both the RFA Act and the EPBC Act will be required to implement these changes in a legally binding way. But changes to these arrangements should be pursued by the Commonwealth now to provide for equivalent protections for MNES [matters of national environmental significance] and strong Commonwealth oversight. This will provide confidence to the community and certainty for the forestry industry, with forestry activities

able to continue under well-made, well-implemented, transparent RFAs. To do this, the Commonwealth should require a State to commit to the application of the National Environmental Standards to RFAs and consequential oversight by the EAC [Environmental Assurance Commissioner], as a condition of any accreditation process.

The TRP is a planning tool

In its [overview](#) of timber harvesting regulation DELWP explains that “*The TRP is VicForests’ key planning mechanism for outlining future timber harvesting operations and associated management activities.*”

Section 37 of the [Sustainable Forests \(Timber\) Act](#) requires that VicForests prepare a plan:

- (1) VicForests must prepare a plan in respect of an area to which an allocation order applies for the purposes of—
 - (a) harvesting and selling, or harvesting or selling, timber resources; and
 - (b) undertaking associated management activities in relation to those timber resources.
- (3) VicForests must ensure that a plan prepared under this section is consistent with—
 - (c) the allocation order to which the plan relates, including any condition, limitation, matter or specification in the order; and
 - (d) any relevant Code of Practice relating to timber harvesting.

So the TRP is clearly a planning tool, both for VicForests and in relation to the Code. However, the OCR appears to have no jurisdiction over whether the TRP is consistent with the Code. In fact, VicForests is accountable to no one as to whether the TRP is consistent with the Code.

The RFPG has alleged (in several breach reports) that logging sanctioned by VicForests under the TRP had breached the Code but the OCR repeatedly denies that the TRP is a long term planning tool and asserts that the OCR has no role in determining whether the TRP is consistent with the Code.

Certainly, the TRP was considered as a long term planning tool as evidenced by the statement by former minister Peter Walsh on 8 May 2013 in his 2nd reading Speech on amendments to the SFT Act stating that

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.

And the 2014 Code – which was merely a consolidation of existing rules according to the RIS exemption certificate he signed – did not exclude it from being so. On this basis OCR’s denials ahead of the 2021 revision of the Code that the TRP was not a long term planning tool were baseless, as was the Government’s excuse for removing the clause earlier this year.

The role of the OCR has been reduced to monitoring coupe level compliance although even here it is hobbled in its ability to require compliance.

Three long term landscape level objectives, breaches of which are foreshadowed in the TRP, are those relating to biodiversity, the preservation of tourist assets and water quality and quantity.

Critical to the perpetuation of biodiversity is the preservation not just of ‘old-growth’ as narrowly defined by the State Government, but sufficient areas of mature forest to become old-growth and sufficient areas of middle aged forest to reach maturity (para 2.2.2.9 of the Code). Another critical element is the creation of proper wildlife corridors (para 2.2.2.8 of the Code), averaging 200m wide according to the Central Highlands Forest Management Plan, but desirably at least 400m wide. VicForests’ disregard for both of these requirements is announced in the TRP but no one is listening.

While high level policy statements recognise the competing claims with respect to forest uses, the progressive destruction of tourism assets is likewise announced in the TRP and likewise ignored by government. RFPG has repeatedly pointed out to VicForests how planned harvesting is impinging on scenic vistas, tourism drives and walking tracks, unless such features have been named in the FMP (and hence in the MSPs / Appendix 1) there is no structured opportunity to even consider the possibility of preserving such assets.

Likewise there is no structured opportunity to consider the claims of other forest users in relation to water including the impact of logging in the Snobs catchment on the temperature of the water in the Hatchery and the volume of flows through AGL's Rubicon Power Station. The [cost of water lost](#) as a consequence of logging in the Thomson dam catchment is significantly more than the value of the timber harvested.

VicForests' disregard for the objectives and principles of forest policy is further reflected in:

- the cessation of publication of net harvest estimates as part of the TRP which makes the mandated consultation less informed and hence less meaningful;
- the harvesting of coupes with very low sawlog yields which runs counter to the Central Highlands Forest Management Plan that timber harvesting in public forests should be sawlog driven;
- its refusal to supply the most basic data, including under FOI, such as log volume by forest and log type in each RFA area, despite the Labor Government's election platform commitment that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible
- the disregard for the immediate protection areas (IPAs) with several IPA coupes retained on the TRP; and
- the disregard of science as an input to forest planning evident in the CEO's dismissive remark about the work of one of Australia's preeminent forest scientists.

The CAR reserve system and the Zoning Scheme are not fit for purpose

The State Government's claim that landscape level management of native forest logging is properly and sufficiently addressed through the Forest Management Zoning Scheme is belied by the continuing loss of biodiversity ([Biodiversity 2037](#), [SOE2016](#)) and its lack of action on zoning changes (other than detection based zoning for Leadbeaters possums and the spot tailed quoll).

Even more absurd is the claim by the OCR that the cumulative impact obligations of the FFG Act ([Section 4B\(3\)\(d\)](#)) are fully discharged by the zoning scheme when there is no mention of cumulative impact in the design or implementation of forest zoning.

CAR reserve system

The CAR reserve system is a key input into Victoria's Forest Management Zoning Scheme (FMZS). The core principle underlying CAR reserves, and enshrined in the [NFPS](#), is that forest conservation should ensure protection from logging of a sufficient portion of forest estate which is:

- Comprehensive - inclusion of the full range of forest communities recognised by an agreed national scientific classification at appropriate hierarchical levels
- Adequate - maintenance of ecological viability and integrity of populations, species and communities
- Representative – inclusion of sample areas of forest that reasonably reflect the biotic diversity of the communities they represent.

The [JANIS criteria](#)⁹ for determining how much of the forest estate should be conserved in reserves, and where these should be, were adopted in 1997. They have not been reviewed since then, despite 2½ decades of biodiversity research, despite multiple megafires, despite accelerating climate change and despite around 120,000 ha in Victoria alone having been logged.

Interestingly, while two of the three elements of the CAR reserve system on public land can be quantified, the extent to which the third element has made a meaningful contribution – the biodiversity provisions of the Code – is largely unknown. However, given DELWP's and VicForests long-term disregard for such provisions, especially paras 2.2.2.3, 2.2.2.5, 2.2.2.8, 2.2.2.9, 2.2.2.10 and 2.2.2.14, and the very limited increases in SPZs since then, we maintain that the system had failed to achieve its objectives.

9. Joint Australian and New Zealand Environment and Conservation Council (ANZECC) / Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA) National Forest Policy Statement Implementation Sub-committee

Under the [RFAs](#) the Commonwealth and Victoria agree that ecologically sustainable forest management (ESFM) “is an objective which requires a long term commitment to continuous improvement and that the key elements for achieving it [include] the establishment and maintenance of a CAR Reserve System”. Attachment 1 to each of the RFAs sets out in detail how all of the EVCs in each region are to be protected through ‘dedicated reserves’ (national parks) and through SPZs or Code prescriptions.

Zoning Scheme not fit for purpose

Victoria’s biodiversity loss has accelerated over the last three decades; the CAR reserve scheme is clearly inadequate or insufficient to achieve ‘ecologically sustainable forest management’.

All SAP members agreed that the CAR reserve system has not adequately protected biodiversity, and under current management arrangements, will not provide adequate protection in the future. There were divergent views amongst SAP members regarding the measures required to improve the adequacy of the CAR reserve system. All SAP members agreed that there is a need for improved management of forests within the CAR reserve system. Some re-configuration of the CAR reserve system may also be required.

Regional Forest Agreements Scientific Advisory Panel (SAP)
[Scientific Advice](#) to Support Regional Forest Agreement Negotiations, 2019

The EVC based CAR reserve system has not been reviewed for over two decades. It is not clear that the theoretical criteria for identifying ‘ecological niches’ underpinning the definition of EVCs remain sound. It is not clear that the ‘ecological niches’ have not changed over the three decades since they were first formulated. It is not clear that the 15% of pre-1750 coverage standard is adequate and appropriate for all EVCs.

The criterion for areal extent in the JANIS criteria assumes that the areal coverage of the various forest ecosystems will remain static. However, impacts from increasing wildfires mean that the areal coverage of various forest ecosystems in the CAR reserve systems, and the habitat value they provide for forest-associated species, have not remained constant through time.

[SAP](#) 2019

Crucially, mountain ash and alpine ash trees are much more likely to be killed in high intensity fires than other ‘mixed species’ eucalypts (e.g. messmate). The latter may lose all their foliage in such fires but often survive and resprout the foliage from epicormic buds along the trunk and branches so that after a few years the key old tree characteristics have more or less returned. The ash forests must regenerate from seed and it will be very many decades before the old tree characteristics return, other than those provided by the dead trees (which reduce over time due to loss of dead trees).

[VEAC](#) 2017

It is not clear that the significance of the forest age profile is properly encompassed by the CAR reserves system having regard to the objective of ESFM and the large areas of extremely youthful forests because of fires and logging.

The [Rubicon State Forest] already has a highly skewed age class distribution, limited old growth forest stands but exceptionally high conservation values. Further fires over the next 20 years (which are highly likely) would kill more old growth stands and exacerbate the existing skewed age class distribution with seriously detrimental ecosystem consequences. If VicForests continues to log the remaining ‘39 regrowth ash stands in the RSF at anything approaching the extent proposed in the 2019 TRP, the precautionary principle will be breached.

[RFPG age class report 2019](#)

See also the VEAC report on [Conservation Values of State Forests \(2017\)](#) which has a useful chapter on age class analysis which confirms the youthfulness of the forests of the Central Highlands.

It is not clear that the protection of EVCs translates into protection of vulnerable and endangered fauna, particularly since the configuration of SPZs does not comprise meaningful networks with adequate wildlife corridors.

The estimated gap in additional protected areas required to meet Australia’s criteria for a comprehensive, adequate and representative reserve system is 2.1 million hectares. In some bioregions such as the VVP¹⁰, Wimmera, Dundas Tablelands and Gippsland Plain, this can only be achieved by land purchase or additional formal protection of habitat on private land.

To ensure that Victoria’s reserve system on public and private land is as effective as possible, formally protected areas need to be well managed and well connected. Improving habitat condition, habitat linkages and reducing threats are all vital actions needed to improve and restore biodiversity values and ecosystem health across protected areas, as across the wider landscape.

[Biodiversity 2037](#)

The “long term commitment to continuous improvement” referred to in the RFAs has not been evident in the management of the FMZS and the CAR reserve system.

The extent of the terrestrial National Reserve System and the NRSMPA has increased substantially during the past 5 years; however, only limited evidence is available about the overall effectiveness of the reserve systems. There is a lack of consistent monitoring that could support evaluation of the effectiveness of the reserves and their management. Although threatening processes are actively managed within many reserves, biodiversity decline has been reported within some terrestrial conservation reserves

[SOE2016](#)

In implementing this Plan, the government will give due recognition to the increased importance of the Victorian Environmental Assessment Council in regularly reviewing the extent and adequacy of the terrestrial reserve system in the context of a changing climate, habitat shifts and decisions about appropriate land uses.

[Biodiversity 2037](#) (page 49)

There is no reference to any such recognition on the [VEAC website](#).

The Forest Management Zoning Accountability Framework

In 2021 DELWP published a [consultation draft](#) outlining its proposed Zoning Accountability Framework.

After 25 years of inaction the State Government has remembered its commitment to “continuous improvement”. The current concern to demonstrate zoning accountability reflects in part the government’s determination to ensure that VicForests is not held accountable for the consistency or otherwise of the TRP with the Code of Forest Practice (notwithstanding the provisions of S37(3) of the SFT Act).

The accountability framework comprises:

- targets set for six zoning themes and 17 values;
- an accounting of zoning actions directed to achieving those targets;
- a new set of metrics to assess performance and process with respect to zoning actions; and
- annual and five yearly reports based on those metrics.

The magnitude of this program is reflected in the ‘Attachment 1’ for each of the five Victorian RFAs which set out in detail the prevailing matrix of EVCs and established fixed zones for each RFA. Just the setting of targets will require some kind of review of the thousands of existing zones including the GMZs.

10. Victoria’s volcanic plains

The fact that this program has only now been embarked upon reflects poorly on the stewardship of DELWP and of the State Government.

Problems with the Code

The Code is flawed and in need of far-reaching amendments. However, the role that the Code serves in the regulation of timber harvesting is also irretrievably flawed and amending the Code is unlikely to resolve the failures which arise from a broken regulatory framework.

Long term and landscape level planning and the TRP as a planning tool

When the Sustainable Forests (Timber) Act was adopted in 2004 [Clause 40](#) required that the Secretary be satisfied that the TRP was consistent with the Allocation Order and any Code of Practice relating to timber harvesting. In [2013](#) this requirement was removed.

The removal of this provision for the Secretary to approve the TRP left the (deeply flawed and long neglected) Zoning Scheme as the only tool with any regulatory authority. It also left a Code with an unbalanced focus on coupe level regulation and a disregard for the future of the forests at the landscape scale.

The TRP should be returned to the Code as a long term planning tool and with an obligation on the Secretary to review aggregate harvest levels planned and to ensure that the TRP as adopted is consistent with the high level objectives and principles of forest regulation.

VicForests has recently ceased publishing net harvest estimates in the TRP which makes consultation less informed and hence less meaningful. The requirement for the TRP to include net harvest estimates should be specified in the Code.

Age class profile

RFPG has complained to DELWP repeatedly regarding the continuing harvesting in the Central Highland despite the extremely [youthful age profile](#) of these forests. The need to allow sufficient areas of forest to reach maturity has been repeatedly affirmed in scientific commentary (eg [VEAC, 2017](#)). This extends beyond the 1% OGF; it applies also to the remaining area of post 1939 forest.

Adverse visual impact

The need to restrict adverse visual impact is a core issue in terms of the tensions between different uses of the forests and different stakeholders.

Until the 2021 amendments the Code provisions regarding long term planning restricted logging in a range of generic landscape sensitive locations including walking tracks, tourist roads, and scenic vistas. RFPG repeatedly urged VicForests to exercise care in relation to such locations in developing its TRP and repeatedly reported breaches of such restrictions to the OCR.

However, the OCR insisted that these restrictions only applied to vantage points or locations which were explicitly named in the Management Standards and Procedures (MSPs), notwithstanding the clear wording of the Code itself at that time. There is certainly no basis for leaving certain generic protections in place for some RFA regions and not others (e.g. MSPs para 5.2.2.5)

However, due to the failure of DELWP to open up the FMPs for consultation and renewal there was no avenue for tourism advocates to urge that hitherto unnamed (in the MSPs) vantage points and locations be protected.

As a consequence conservationists and tourism advocates have watched in frustration as critical tourism assets have been destroyed.

Fragmentation, connectivity and edging

The Code requires that FMPs include provision for wildlife corridors (of ‘appropriate width’) and the RFAs require the CAR reserve system to have regard to ‘habitat connectivity’. (This reference to habitat connectivity replaces a previous reference to an ‘inter-connected network of protected areas’.)

The Code also includes limits on coupe size and aggregation but these limits have been disregarded in several instances including where absurdly narrow buffers between coupes have been burned or blown over with megacoupes created as a consequence. The OCR has uniformly refused to investigate breach allegations brought forward by the RFPG in such instances.

Extending the length of the boundary between forest and not-forest (edging) happens every time a coupe is harvested. The risks associated with the increased length of boundary, in particular the proliferation of weeds, extend perhaps 10-20 m into the forest.

The failure to update FMPs to promote connectivity, the lack of any obligation on VicForests to have regard to connectivity in timber harvest planning, the lack of data on edging, and the refusal of the OCR to police coupe size restrictions, have contributed to severe fragmentation, and degradation of the forests of the Central Highlands as well as being in net terms grossly over logged.

Water

RFPG has repeatedly asked VicForests to exercise care in the Rubicon Forest out of concern for water quality coursing through the Snobs Hatchery and the quantity of water available for the Rubicon Power Station. Such requests have been ignored, as have our consequent reports to the regulator.

RFPG has also urged VicForests to have regard to the volume of water flowing into the Thomson dam and to restrict logging in the catchment accordingly. Our calculations suggest that the Government’s lack of action in this matter has very real implications for the cost of water in the metropolis.

TABLE 3. PRELIMINARY RFPG LIST OF CHANGES NEEDED TO CODE

Long-term planning:	
	Add new Code principle around Ecologically Sustainable Forest Management (ESFM) <u>defined as</u> <i>‘perpetuating ecosystem integrity while continuing to provide wood and non-wood values; where ecosystem integrity means the maintenance of forest structure, species composition, and the rate of ecological processes and functions within the bounds of normal disturbance regimes’</i>
	Require Code and MSPs to be updated every 5 years, as recommended a quarter of a century ago by CSIRO in its advice on the 1996 Code revision
	TRPs must comply with (expanded) long-term planning principles – restoration of Cl.2.1.1.1 with increased specificity - as established by the Bracks/Brumby Labor Government in the 2007 Code and supported by Coalition Forests Minister Peter Walsh in 2013.
	Require landscape scale biodiversity assessments and considerations (ecosystem resilience and ecosystem process) to the restored long-term planning requirements
Transparency:	
	Rolling operations plan to be published monthly, incl monthly harvesting schedules
	Coupe flora and fauna surveys to be published
	Coupe plans to be published ahead of logging to facilitate local community input
	Coupe plans to include a location context plan showing logging and post fire history background of area within 5km of coupe
	Coupe plans to include an assessment of the cumulative impact of the variety of interacting threats to biodiversity and forest ecosystem function within 5km of coupe, including habitat fragmentation, extended edging
	Coupe plans to include estimated net harvest level
	Coupe plans to include estimated length of new forest edge to be created
	Coupe regeneration reports to be published

Scenic protections:	
	New Scenic drives to be designated in Central Highlands (e.g., Marysville-Toolangi Forest Drive, Cambarville-Rubicon Forest Drive; Cambarville-Snobs Creek Forest drive, East Warburton-Noojee Forest Drive via Ada Tree, Black Range North Forest Drive, etc)
	New Scenic lookouts to be designated in Central Highlands (e.g., Mt Sugarloaf, Cathedral, Little Cathedral, Mt Torbreck incl access track, Mt Pinniger, etc)
	Ridgelines/skylines not to be logged (as in East Gippsland FMA)
	Views of forested escarpments from Maroondah, Melba and Goulburn Highways properly protected as recommended by LCC and agreed by Government
	'Background' viewshed distance to be extended from 6.5km to 10km
Bushfire protection:	
	No clearfelling or retained seed tree silviculture in Bushfire Moderation Zones (as with asset protection zones), see also RFPG submission to 2022 Code Review
Biodiversity protection:	
	No logging of ash forests, given parlous age profile
	No high intensity burning or mechanical disturbance for regeneration
	No more than 50% of gross area of clearfell and retained seed tree coupes to be logged
	Local and regional scale cumulative impacts to be considered in planning and silvicultural method as per FFG Act
	Revise 'mega-coupe' rule so that unless separated by forest at least 50 years of age and at least 100m wide, adjacent coupes will result in (illegal) mega-coupes
	Understory islands of 0.5 ha minimum (tree retrieval permitted but no machine entry) to be mandatory in all coupes with long-lived understory species and occupying a minimum of 40% of net harvest area
	Redefine old growth to include all trees suspected to be >100 years age plus surrounding trees within 30m radius
	Define a minimum extent of a patch of ' <i>retained vegetation</i> ' for the purpose of gaps (ie exclude counting isolated single trees left in seed tree harvesting systems)
	Proper wildlife corridors – really biodiversity corridors - at least 400m wide
	Increase streamside buffer widths to 40m
	Effective clauses to guarantee the pre-logging biodiversity is maintained, including treeferns (as promised in the modernised RFAs), invertebrates and fungi
	Retained trees and retained vegetation must be protected from in regenerations burns (ie remove 'where possible' qualification)
Soil and water protection:	
	Reduce maximum loggable slope to 22°
	No logging when soils are at or within 5% of saturation – delete section allowing logging to continue if 'remedial action' is taken
	Cease logging in Thomson and Yarra Tributary catchments

OCR: regulatory failure structured into system design

The section on [regulating timber harvesting](#) in the State Government's Year in Review (2020/21) focuses on the work of the Office of the Conservation Regulator (OCR) and highlights:

- Proactive coupe inspections;
- Assessment and investigation of reports;
- Assessment and investigation of reports of non-compliance (62 reports, 4 investigated);
- Assessment and investigation of reports of threatened species detections (70 reports, 28 'underwent verification'), and three letters of advice, three formal written warnings and one direction for remediation issued.

RFPG Breach report experience

Since 2016 the RFPG has made over 50 reports to the THCU alleging breaches of laws or regulations governing logging in native forests.

Several of the allegations we submitted from 2016 to 2018 were substantiated by THCU, although they were very limited in scale and led to no serious consequences for VicForests.

Since the Office of the Conservation Regulator (OCR) was established in March 2019, none of our allegations have been substantiated and only three cases have gone beyond ‘assessment’ to ‘investigation’ (2021-0027, 2020-0086, 2020-0055), two of which were listed as ‘open’ in the December 2021 THCU Investigations report.

We have experienced some very problematic determinations. For example:

Case 2018-0080 where THCU found that retained vegetation, in this instance forested buffers between coupes, that was killed in a post-logging regeneration burn was deemed to have been retained. This was particularly significant because without a buffer of ‘retained vegetation’ between coupes, a megacoupe far in excess of 120 ha would have been created in breach of MSPs cl. 2.4.1.2

Case 2019-0060 where THCU denied it was obliged to enforce Code cl. 2.1.1.1.vi, citing as a reason MSPs cl. 1.2.1.1 which the DELWP Secretary had previously indicated was invalid! When we wrote to the Secretary protesting about this, his reply ignored the issue of the invalidity of MSPs cl. 1.2.1.1 and he let the THCU decision stand.

Case 2020-0086 involving gully erosion on the access road to the coupe Gnu in the Snobs Creek headwaters. In this case THCU found that because VicForests had since repaired the damage with crushed rock it should be excused, notwithstanding that its repairs were undertaken only because of the alleged breach we reported.

Case 2019-0052 alleging that the visibility of the Torbreck Range coupes, K2 and Everest, from a variety of lookouts demanded its protection for scenic reasons in line with Code Cl. 2.1.1.1.vi. We have made numerous claims about breaches of this clause which may explain why the clause was deleted in the December 2021 revision of the Code. The very act of its deletion implies that our arguments that it had previously been repeatedly breached were in fact valid, despite THCU finding otherwise.

Case 2021-0075 which alleged that the gaps between ‘retained vegetation’ in the coupe, Point Plomer, exceeded the 150m allowed by MSPs cl. 4.1.4.4. The argument used by THCU in dismissing our allegation – that a single retained tree was sufficient to be regarded ‘retained vegetation’ – had been refuted in our initiating report. On 1 September we protested the decision to the Chief Conservation Regulator, Ms Kate Gavens, and asked that it subject to an independent review. Ms Gavens asked a colleague in her office – hardly independent - to review our protest and not surprisingly he supported the closure decision without engaging with our arguments.

Other failures to enforce

These include:

- the obligation to regenerate forests after logging (e.g. Case 2021-0046)
- the obligation to prevent the exacerbation of weed infestations (e.g. Case 2020-0001)
- the prohibition on logging oldgrowth forest (e.g. Case 2020-0063)
- gaps in retained vegetation > 150m where no trees surviving on coupe (e.g. Case 2018-0063)
- 120ha contiguous logging (e.g. Case 2018-0080, Case 2016-0068, Case 2017-0036)
- no effective wildlife corridors (e.g. Case 2019-0055)
- the need to preserve decent forest as a tourism asset (e.g. Case 2018-0052, Case 2021-0010).

Idiosyncratic interpretation of the Code

Our experience of OCR management of our breach allegations has been marked by highly problematic interpretations of Code provisions; inconsistent and idiosyncratic but uniformly favourable to VicForests.

These include:

- failure to apply precautionary principle (CFP 2.2.2.2);
- the claim that the cumulative impact obligations (FFGA Section 4B(3)) are fully discharged by the zoning scheme;

- the claim by THCU that the long term planning provisions of the code (2.1.1) are fully discharged through action statements, the zoning scheme, and the Victorian Forestry Plan and that the TRP is not a LT planning tool;
- the 'deeming argument'; that while the MSPs are subordinate to the Code the interpretation of the Code should be determined by the provisions of the MSPs (this argument was firmly rejected by Justice Mortimer in the LBP Case);
- where compliance with Code clauses hinge on the term "retained" as in retained vegetation or retained basal area, THCU refuses to consider the underlying logic of 'retained', whether it be wildlife corridor function or viable habitat retention;
- buffers have no corridor function;
- wildlife corridor provisions in the Code are not binding on VF;
- that, because the regeneration burn which escaped was carried out by FFM and not VF, the coupe aggregate that resulted is not a breach of the Code.

Interpreting the precautionary principle: a pea and thimble trick

The [FFG Act](#) defines the precautionary principle, as requiring 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. The FFG Act further requires that ministers and public authorities, in the performance of their functions, give proper consideration to 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.

[Biodiversity 2037](#) describes the precautionary principle as requiring that decisions to prevent significant impacts are not avoided because of a lack of scientific certainty.

However, notwithstanding widely recognised decline in biodiversity, the massive loss of forests from recent bushfires and the threat that global warming poses to forest ecosystems, the OCR has consistently refused to allow that the precautionary principle has been breached by VicForests' saturation logging in the Rubicon State Forest and elsewhere in the Central Highlands.

The OCR works with Justice Osborne's interpretation of the precautionary principle. This holds that in certain circumstances (a 'threat of serious and irreversible harm' and 'scientific uncertainty') the precautionary principle is triggered; otherwise there is no obligation for precaution. To find that VicForests has failed to deploy caution under this principle, OCR must prove the two 'conditions precedent'. The conditions precedent in both cases are matters of context and judgement, there are no black and white standards for determining that the conditions are met. If VicForests were to take such a finding to court, they would have a good chance of having it overturned. DELWP, which boasts of risk-based regulation would generally prefer not to take such a risk.

Lack of accountability

Since its establishment, RFPG has experienced an absolute refusal on the part of DELWP to engage with any challenges we might offer to their determinations.

OCR determinations are not independently reviewable except through the Supreme Court. Forest conservation organisations such as RFPG have no appeal mechanism to move to when facing absurd determinations such as those listed above. There is no provision for transparent independent expert review of THCU determinations.

The OCR has on several occasions refused to expedite assessments when reporters warn of impending breach where logging is scheduled to proceed soon.

On many occasions the OCR has refused to assess a breach report on the grounds that the reporter had not supplied sufficient evidence, even where the 'evidence' was already contained in DELWP files.

The [Code of Practice for Bushfire Management on Public Land](#) defines bushfire management zones (BMZs) and restricts logging in such zones. However, VicForests has chosen to apply these restrictions to 'aggregate management units' (which are not mentioned in the Code of Bushfire Management or in any other legislative instrument) in order to avoid restrictions on harvesting that would otherwise be required. The OCR endorsed this approach notwithstanding it being a clear breach of the Code of Bushfire Management.

Far from strengthening OCR accountability the recent amendments to the Code were explicitly directed to restricting access by conservation organisations to the courts, notwithstanding the lack of any other appeal mechanism. DELWP has instituted the [Forest audit program](#) to audit the work of the OCR: "Each year, we commission an independent environmental audit to measure compliance of commercial timber harvesting operations against the requirements set out in the Code." A sample of coupes is audited but there is no review of allegations of non-compliance. (The audit for 2017/18 is most recent published.)

Key commitments in [DELWP's response to the Independent Review of Timber Harvesting Regulation](#) (*DELWP IR response*) or [OCR's Statement of Regulatory Intent for Regulating Timber Harvesting](#) (*SoRI*) that would open the OCR up to greater scrutiny (and potential public criticism) have not been implemented. Those that have not been implemented include commitments to:

- engage with stakeholders to develop a common understanding of the Code of Practice for Timber Production 2014; [w]here there is any disagreement on interpretation, DELWP should engage expert and/or legal advice to develop guidance (*DELWP IR response* to recommendation 10);
- facilitate the creation of a system of shared data between government agencies, environmental non-government organisations and VicForests to improve the environmental and community outcomes for forests and better direct regulatory efforts; DELWP will work with other government agencies, environmental non-government organisation and VicForests to scope and create a system of shared data; [t]his will be completed by 31 December 2019. (*DELWP IR response* to recommendation 13);
- prioritise the development of standards and guidance on parts of the regulatory framework that are ambiguous or where there is disagreement on interpretation (*SoRI*); and
- publish information on the outcomes of completed investigations (including regulatory actions and reasons for decisions) on its website (*SoRI*).

The fact that recent changes to the Code and the MSPs were targeted at removing many of the clauses that had formed the basis of previous allegations confirms that such clauses did in fact create obligations that may have been sustained by the courts, despite past denials by both VicForests and THCU. The removal of Code Cl. 2.1.1.1 is the principal example.

Conversely, the 2021 changes failed to amend certain bits where ambiguity had been relied upon by THCU to exonerate VicForests and where 'clarification' would inevitably have exposed past errors. The failure to include a definition of 'retained vegetation', a problem to which DELWP had been alerted several times, is one example.

The Government's determination not to give the timber harvesting regulation function to an independent statutory entity, like the Tasmanian Forest Practice Authority, or to create an easy way to appealing decisions, such as a division of VCAT, suggests a determination to keeping decision-making within departmental, and hence Ministerial, oversight.

Regulatory system failure; failure by design?

OCR's failures as a regulator are evident in: (i) its reluctance to make any findings against VicForests; (ii) its often bizarre interpretations of the Code and the MSPs; and (iii) its lack of transparency and public accountability. However, the roots of these failings were embedded in the structure of the regulatory system as a whole.

Failure of long term area wide planning. The removal of DELWP's obligation to approve (or not) the TRP has had the effect of disabling any real capacity to regulate at the long term and area wide levels. This has directly contributed to grossly unsustainable timber harvesting. The suggestion (which the OCR repeatedly

falls back on) that the Zoning Scheme is an adequate and sufficient tool for long term and area wide planning, and for the discharge of its obligations regarding cumulative impact (under the FFG Act), is absurd. Consider the lack of wildlife corridors, and the failure to increase total reserve ('adequacy') notwithstanding huge losses in a sequence of fires.

Failure to draw upon the science of forest ecology. The lack of attention, in monitoring and in regulation, to the fundamental ecosystem relationships and processes which underly biodiversity renders the claim of 'outcome focused' regulation ridiculous. While the focus on individual species and their habitats is an essential part of monitoring biodiversity, the failure to address the ecosystem fundamentals is stark.

The black letter law constraint. VicForests is positioned as a commercial entity, albeit owned by the Treasurer. As such it has the right to challenge in the courts any determinations of OCR that are seen to impact it negatively. It appears that legal advice and experience have convinced OCR and DELWP that unless they can demonstrate unequivocal breaches of black letter law any injunctions brought by VicForests will be supported in Court.

'Ambiguities' are intrinsic to the Code. Part of the justification of the Code reforms of 2021 was on the need to remove 'ambiguities' in the Code. (In fact, it was only the ambiguities which gave weight to conservation advocacy which were removed; not those which provided wriggle room for VicForests.)

The binary determination of rights and wrongs is not well suited to the regulation of contested access to a public resource like forests. The whole concept that ambiguities somehow could and should be removed flies in the face of the reality that the Code is designed to mediate a compromise between the claims of different stakeholders on the use of the State forests. The Code necessarily includes provisions directed to protecting the interests of different stakeholders and hence embed contradictions in the Code, contradictions which have been dismissed as 'ambiguities'.

The assumption that the claims of different stakeholders are best resolved through reference to black letter law in the courts – which is fundamental to the prevailing regulatory framework – is absurd.

The resolution of conflicting claims to the use of a public resource calls for fairness, transparency, and inclusion, all of which are absent from the prevailing arrangements. One interest group has been allowed to run down the capital asset while continuing to exclude other claims on that resource. No wonder the forest conservation movement has been forced to turn to litigation and in some cases, direct action.

Section 5(4)(a) of the [Sustainable Forests \(Timber\) Act](#) provides that a guiding principle of ecologically sustainable development is *"that decision making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations"*.

Political pressure. It is clear that political pressure has been brought to bear on DELWP to refrain from any actions (including findings against VicForests) that might impact continued logging (and contribute to union protests and jeopardise wood pulp sales commitments). A sequence of amendments to the Code since 2013 was clearly intended to prevent effective regulation for biodiversity.

Conclusions

Neglect of ecosystem processes and relationships in policy, monitoring and regulation

The existing regulatory framework does not provide a sufficient focus on the ecosystem processes and relationships which underly 'biodiversity'. We appreciate the concern for individual species and their habitats but the neglect of the underlying ecosystem processes and relationships is an abrogation of the commitment to 'ecologically sustainable forest management'.

The frequent references to 'biodiversity' commonly default into measuring species-specific indicators and fails to give proper weight to the ecological processes and relationships which underly such biodiversity.

The problem does not appear to lie with the high level objectives articulated in the FFG Act, the SFT Act, the EPBC Act, and the RFAs. These objectives are cast at a level of generality which encompasses both species-specific biodiversity and ecosystem stability. However, the official indicator frameworks (the Ministerial guidance on criteria and indicators and the EVCs upon which the CAR reserve system is based) are not informed by the contemporary science of ecosystem vulnerability (as in the IUCN Red List) and are accordingly not suited to monitor the processes leading to ecosystem collapse. Furthermore the monitoring systems in place to monitor these indicators are not fit for purpose.

Failure to regulate at landscape level

The unsustainable scale and pace of logging (loss of biodiversity, seriously youthful age class, devastation of tourism) constitutes a failure of outcome.

In part this is a failure of long term planning: the long neglect of the FMPs and the Zoning Scheme, the refusal to apply the long term planning provisions of the Code to VicForests, and the removal of the power of the Secretary to approve the TRP.

The cumulative impact provision in the FFG Act, appears to apply to VicForest as a 'public authority' but it has not been noticed by the OCR.

Failure to apply the precautionary principle in relation to the threats arising from climate change

Notwithstanding the rising threat to the forest ecosystem arising from climate change and increasing likelihood of further devastating bushfires, the OCR has refused to adapt the threshold for investigation and for enforcement action in accordance with the precautionary principle.

There is a real risk that this failure may contribute to massive destruction of flora and fauna although there may be some scientific uncertainty about how much, where and when. The refusal to 'trigger' the precautionary principle is a breach in itself.

The ends and means disconnect

The status of VF as a commercial corporation, notwithstanding government ownership, gives it the power to threaten OCR with legal intervention if the regulator were to contemplate findings of noncompliance or the imposition of sanctions. The threat of court action (and a judge who will apply the (black) letter of the law) appears to have had the effect of hobbling the regulator and undermining all of the 'lighter touch' regulatory interventions, all of which depend on having a hard option as the ultimate back up. The consequence of this dynamic is that only the clearest and most definite of prescriptive provisions in the Code are given serious weight by the regulator.

We attribute OCR's sometimes bizarre interpretations of the Code and its refusal to engage with conservation organisations as stemming from this fundamental lack of power and OCR's refusal to acknowledge how it has been hobbled.

The regulator has proven to be unable to deal with the core challenge of forest regulation which is about managing the different claims of different stakeholders regarding the uses of the forests. The Code, which supposedly recognises and gives weight to different claims cannot be used as a framework for resolving or at least managing such conflicts. If light touch regulation means anything it means really focusing on the central challenge which is managing the contesting claims.

Not surprisingly the increasingly alienated conservation groups turn to litigation and direct action but the State Government's responses (eviscerate the Code and impose draconian penalties on protesters) only contorts the regulatory system further and increases the sense of alienation of the conservation movement. The end of logging in 2030 is appreciated but for many of our forests, there will be nothing left by 2030.

It is a widely held perception in the conservation movement that while the pulpwood commitment is important it is not determining; the Andrews Labor Government is captive of the CFMMEU and reluctant to even start to work on forest industries transition.

Regulatory failure

Finally we list our conclusions regarding the timber harvesting regulatory system against the regulatory [principles](#) taken from the Independent Review into Timber Harvesting Regulation. These principles call for a regulatory system which is authoritative, accountable, transparent, inclusive, consistent, targeted, proportionate, effective, efficient and outcomes focused.

The timber harvesting regulatory system operating in Victoria fails on virtually all of these principles.

The regulatory framework lacks scientific **authority**, manifest most clearly in its failure to address the ecosystem processes and relationships which are at the heart of the commitment to ecological sustainability. The regulatory system **lacks accountability**. The determinations of the OCR are not reviewable except through the courts and this channel is being blocked. The system is **not transparent**. The regulator's processes and outcomes and in particular its justification for decisions are not transparent to the public and the regulated community. The system is far from **inclusive**. The flood of court cases initiated by forest conservation groups testifies to the perception that they have been completely alienated from the regulatory process. Regulation lacks **consistency**. The regulator consistently refuses to entertain reports of breaches of the Code by VicForests. It is consistent in this respect but not fair to other claimants for usage of the forest. However, it draws on highly idiosyncratic interpretations of the Code to justify such refusals. The OCR boasts of being **risk based** but it is blind to the risks facing the forests from climate change. **'Targeted'** is defined as focusing on the areas of most serious harm. The failure of the OCR to attend to the grossly unsustainable logging is far from such targeting. That the regulatory regime is far from **proportionate** is also clearly evident in its refusal to address climate change. The regulator is locked into **ineffectiveness** because of political pressure and the black letter law constraint. **Efficient**. How can defending an industry which is destroying the environment and costing the taxpayer be 'efficient'? **Outcomes focused** is defined in terms of processes and decision-making driven by outcomes and clear regulatory objectives. However, ecological sustainability is ignored while the measurement of outcomes demonstrates continuing failure.

Recommendations

See [Table 3 above](#) for a preliminary list of needed changes to the Code.

RFPG answers to DELWP's eight questions

1. What do you think we should focus on in the comprehensive review?

It is a Comprehensive Review, so every clause of the Code and the MSPs and every associated table needs to be examined.

2. What aspects of the Code do you think are working well?

None

3. What amendments do you think will have the most tangible benefits?

See [Table 3 above](#).

4. What do you think the Code needs to do:

a) between now and 2030?

Stop the unsustainable and biodiversity depleting logging of native forests; refer [Table 3](#) above. Plan for another Code review in the lead up to 2030 in keeping with CSIRO recommendations on the 1996 Code review.

b) post 2030?

Monitor comprehensively, review regulatory provisions regularly

5. Is there any additional inputs/evidence you think should be considered in the review?

- All Code breach reports submitted to OCR and OCR's responses;
- All letters submitted by Conservation Groups to Minister D'Ambrosio regarding flaws in the Code and related matters;
- VEAC Report on Conservation Values of State Forests;
- All TRP submissions from conservation groups (and others) to VicForests;
- All submissions to auditors engaged by VicForests pursuant to its failed bids to get FSC accreditation;
- Transcripts of expert evidence in all court recent cases regarding threatened species;
- Victorian Silviculture Research program results, especially in relation to understorey floristics;
- Scientific review of the failure of the Code to address ecosystem processes and relationships; the significance of the IUCN Ecosystem Red List Criteria; concept of ecosystem collapse.

6. Is there another jurisdiction that you think is doing timber regulation well?

Yes, Western Australia by ending commercial logging by end 2023

7. How involved do you want to be with the review?

RFPG wishes to be fully involved in all stages, ideally on a multistakeholder steering committee or reference group.

8. Who else should we contact?

- Botany/Zoology/Ecosystem schools/departments at UTAS, ANU and all Victorian Universities drawing their attention to the review and seeking advice from all researchers in those schools/departments with relevant expertise and research interests
- Dr Camile Truong at the Royal Botanical Gardens of Victoria regarding fungal arboreal relationships
- Indigenous researchers and academics at the above institutions;
- All current and former holders of a Tour Operator licence for state forests;
- All municipalities with state forests within their boundaries.

Reform beyond the Code

Ecosystem relationships and processes

Commission an independent scientific review of the current state of knowledge regarding the fundamental ecological relationships and processes which underpin the ecological resilience of Victoria's native forests in the face of climate change, megafires, and saturation logging.

Include explicitly in the terms of reference of such a review:

- consideration of the relationships between species, communities and threats (as provided for in the FFG Act) and the relationships and processes which underpin ecosystem resilience;
- full consideration of how the cumulative impact of logging on forest ecosystems might be best theorised and measured;
- the relation between age class profile and ecosystem resilience.

VicForests

Bring the harvesting management functions currently carried by VicForests back into the public service so that the harvesting manager is no longer able to threaten the regulator with court action. Alternatively, restore, in the SF(T) Act, the obligation of the Secretary to approve a TRP, removed in 2013.

Amend the Allocation Order to require VicForests to publish estimated net harvest levels in the TRP, to identify the locations of meaningful wildlife corridors in the vicinity of all coupes, to identify how it has address the 'range of forest ages' criteria in each TRP.

Zoning

Commission an independent scientific review of the integrity and utility of the EVC based estimates of the comprehensiveness, adequacy and representativeness of the existing CAR reserve system.

Review adequacy of current SOMAs, POMAs and BOMAs

Undertake an independent, inclusive consultation directed at 'modernising' all FMPs for each RFA region.

Proceed with the Zoning Accountability Framework but escalate the relevant section of DELWP's budget to ensure that the substantial work involved is undertaken expeditiously.

Action statements

Commission an independent review of the current lists maintained under Division 1 of the FFG Act and the action statements and management plans adopted for those lists.

Reviews of OCR determinations

Create a division in VCAT which can be asked to review OCR determinations.

Include in the brief provided to the Forest Audit Program a review of OCR management of breach reports and detection reports.

Create an annual forum of forest users to review the work of the OCR and consider whether a proper balance is being achieved across the different claims regarding the balance of uses of the forests.

Forest plan

Invest urgently and adequately in transition funding for wood product industries to move away from dependence on native forest timber.

Legislative reviews

Proceed with the reviews of relevant provisions of the FFG Act, Sustainable Forests (Timber) Act 2004 ([SFT Act](#)) and the [Forests Act 1958](#) (Vic) as provided for in the 2020 revised RFAs. Ensure a transparent, consultative and inclusive review, giving full weight to the full range of forest users as well as Indigenous custodians.