

Protect the Rubicon: Policy principles for Forest Governance Reform

RFPG Discussion Paper
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The Rubicon Forest Protection Group (RFPG) seeks feedback from members and friends regarding the following draft policy principles for the ‘modernisation’ of the Victorian regional forest agreements (RFAs). Please write to info@rubiconforest.org.

In March 2018 the State and Commonwealth Governments [announced](#) that Victoria’s existing Regional Forest Agreements (RFAs) are to continue until March 2020 when they will be replaced by new ‘modernised’ RFAs.

RFPG was sceptical at the time (see [RFPG comment](#) at the time) but the promised consultation¹ around the new ‘modernised’ RFAs provides an opportunity to progress the reform of the regulatory framework governing Victoria’s ash forests.

Background

Since its inception in 2015, the Rubicon Forest Protection Group has been striving on various fronts to protect the unique environment of the Rubicon State Forest from the onslaught of widespread clearfell logging that risk destroying the multitude of natural and social values of this extraordinarily diverse forest atop the ancient Cerberean plateau.

The inadequacies of Victoria’s forest management and planning system was highlighted in a [2013 report](#) by the Victorian Auditor-General whose conclusions were that:

“the environmental, social and economic sustainability of timber resource management could be enhanced by improving the way DEPI [DELWP] protects forest values, documents decisions affecting where harvesting can occur, and manages its backlog of forest regeneration from before 2004. VicForests can also improve its process for estimating sustainable harvest levels.

DEPI [DELWP] has not had the measures, monitoring and data to show what its activities are achieving, or how forest health and the condition of other forest values are faring over time.”

In June 2018, the Auditor-General issued a [follow-up report](#) which amplifies these concerns and points to inaction by State Government departments in addressing the issues previously raised. In the interim VicForests sought – and failed – to gain basic accreditation under the Forest Stewardship Council (FSC) for its forest management practices. The FSC is the world’s leading independent accreditor of sustainable forest management. The reasons why VicForests’ accreditation bid failed are yet to be revealed, but many forest conservation groups, including [RFPG](#), highlighted multiple failings by VicForests across almost all assessment criteria.

1. DELWP has invited people wishing to become involved to register their interest at future.rfa@delwp.vic.gov.au

The following draft proposals for regulatory reform could go some way to tempering the ecological and social damage being wrought by current logging practices in eastern Victoria. Input welcome.

Proposals

1. The Victorian Environmental Assessment Council ([VEAC](#)) should be commissioned to undertake an immediate review of representativeness and adequacy of the existing system of conservation reserves as devices for protecting the full range of forest values across all forested land in the Central Highlands. This should be undertaken before proceeding to negotiate 'modernised' RFAs.
 - *Rationale: Scientific and general understanding of forest values has expanded dramatically since the RFAs were agreed to in 1990, as have the competing pressures on the remaining forests. In addition the forests of Eastern Victoria have experienced three massive fire events that have changed the overall ecological context. It is over 20 years since the last comprehensive review was conducted of the Central Highlands (LCC Melbourne Area 2 review) which contains the forests under the greatest logging pressure.*
2. A public review of the [2014 Code of Practice for Timber Harvesting](#) (including the [Management Standards and Procedures, MSP](#)) should be commissioned as an input to the 'modernisation' of the RFAs. Such a review is envisaged in the Code itself (Section 1.1 last para) and the Management Standards and Procedures (see para 1.5.1.1(b)). The review should be carried out by a specially constituted tripartite panel from outside Government, perhaps comprising a forest ecologist, a lawyer and a forester. (See attachment for possible areas for revision).
 - *Rationale: The RFPG has uncovered numerous gaps and inconsistencies in the Code of Practice for Timber Harvesting that must be remedied before anyone can have confidence that its proper application can protect the ecological and social values of public native forests from logging.*
3. An official Commonwealth statutory position – RFA accreditation inspector – should be established in the 'modernised' RFAs. This position would be located in the Department of Environment with the mandate to conduct annual reviews of compliance with the Code and other RFA provisions and produce annual reports to be tabled in both State and Federal Parliaments.
 - *Rationale: At present there is no routine process for Commonwealth accreditation of Victoria's compliance with fundamental RFA requirements to be assessed, much less challenged. RFAs are intended to prevent the application of Commonwealth law on the grounds that state law, such as the Code and the Flora and Fauna Guarantee Act, if properly applied, allow the objectives of the Commonwealth Environment Protection and Biodiversity Act to be met. However the lack of any provision allowing the Commonwealth to satisfy itself that the state is adhering to its legal obligations (the current 5-yearly review provisions in the RFAs are wholly inadequate in this regard) is a serious oversight and must be remedied.*

4. The enforcement provisions² of the Code should be strengthened through amendments including the following:
 - the transfer of the compliance monitoring function, currently in DELWP, to an independent and appropriately-resourced statutory body, such as the EPA
 - the establishment of a new forest management planning division of the Victorian Civil and Administrative Tribunal (VCAT) with powers to modify, or order a halt to forest operations found to be non-compliant with the Code, and
 - the establishment of an effective system of financial penalties and effective sanctions on individuals responsible where breaches are found.
 - *Rationale: The lack of independent accountability in the way the Code is implemented and the opaque way DELWP conducts its investigations is a major shortcoming. It stands in contrast to all equivalent areas of environmental regulation enforcement, such as through the EPA or the NSW Land and Environment Court. These proposals seek to establish due process that is open and accountable.*
5. VicForests should be required to revise the 2017 Resource Outlook – with the modelling underpinning such a review to be published - so that:
 - ecologically sustainable sawlog and pullog availability projections are made at an FMA or RFA level, by forest type
 - an allowance is made – on a probabilistic basis such as was used by VEAC– to account for future bushfire losses, and
 - allowance is made for the outcome of the proposed Code of Practice review.
 - *Rationale: VicForests' 'Resource Outlook' is a key input to Government planning and regulation of timber harvesting. The Victorian Auditor-General was also critical of the way the resource outlook was conducted and, although there have been some improvements, it is still far from adequate. The latest Outlook (2017) treats the ash forests and mixed species forests of eastern Victoria as single ecological units, counter to the ecological sustainability requirements of the National Forest Policy.*
6. The guidelines regarding the Allocation Order should be revised to:
 - reflect the necessary drop in estimated sustainable harvest levels; and
 - restore the setting of ecologically sustainable harvest areas at the FMA level as occurred prior to 2010, rather than being set on a statewide basis as at present.
 - *Rationale: This proposal is closely tied to the resource outlook revision, but would also remedy an egregious mistake made in 2010³ when the Government abandoned the FMA-level Allocation Order that aimed to respect the ecological values in each area.*
7. “Timber town” municipalities should be funded to conduct social impact evaluation of local harvesting activity, as required for Forest Stewardship Council certification.
 - *Rationale: The Forest Stewardship Council is widely regarded as the leading the world in terms of the ecological and social perspectives underpinning its forest management*

2. For examples of the scale of the breaches presently occurring see 2017 GECO/FoE/FFRC report “Lawless Logging”. RFPG currently has eight active cases involving multiple alleged breaches being investigated by DELWP

3. Due to the fires of the 2000s upending previous harvesting plans but allowing the subsequent plunder of the Rubicon State Forest and other forests of the Central FMA despite the vast area (13,500ha) of ash forests killed in 2009.

accreditation, and its auditors have previously commented on the inadequacy of VicForests' assessments of the [adverse] social impacts on affected communities.

8. VicForests should be required to adopt harvesting methods other than clearfelling (not simply more trials) across a substantial majority of the ash forest area set for harvesting in any particular year.
 - *Rationale: Clearfelling and subsequent regeneration burning has a resemblance to the impact of major fire on ash forests, but only insofar as the dominant overstorey species is concerned. Clearfell harvesting and burning does massive harm to the multitude of understorey species that comprise a 'natural' forest as well as the native wildlife that the forest supports. It also results in wider and more severe habitat loss than other harvesting methods. As expert reports have shown⁴, ash forests can be regenerated successfully by other harvesting regimes, albeit less profitably.*
9. The Order-in-Council establishing VicForests should to be amended to broaden its forest management obligations beyond simply harvesting and selling logs, with the Board to include at least one member with conservation knowledge and experience.
 - *Rationale: Under the Order in Council, VicForests' responsibilities are to undertake the sale and supply of timber resources in Victorian State forests, and related management activities, as agreed by the Treasurer and the Minister, on a commercial basis and to develop and manage an open and competitive sales system for timber resources. The disregard in its charter, of social and environmental obligations, assuming that they can be safely left to other parties to manage is inconsistent with contemporary ideas about unduly narrow organisational obligations, as the current banking Royal Commission has amply demonstrated.*

Attachment: Some proposed changes to the Code and the MSPs

1. Detailed specification of where full coupe-level flora and fauna surveys to be undertaken.
2. Review of schedule of tourist roads and vantage points from which vistas must be protected, in the near and middle distance.

NOTE: The above two revisions requires consideration of the 'program of landscape, and pre-harvest surveys' announced by Minister for Environment in March but not yet publicly released.
3. Improved blackberry control in logged coupes and along timber haulage roads. Invasion of forests by blackberries is a 'threatening process' listed under the Flora and Fauna Guarantee Act.
4. No logging of slopes >20°. Logging on steep slopes presents unacceptable erosion risks, and makes it very difficult to contain regeneration burns to the logged area.
5. Establish a definition of 'retained vegetation', including structure, composition and extent, in relation to the surrounding forest, in relation to coupe aggregates. Recent findings by DELWP in response to alleged breaches of the provision that 'aggregated' coupes not exceed 120ha (MSPs para 2.4.1.2) reveal that any retained vegetation can meet this provision, no matter how sparse.
6. Improved habitat tree retention requirements (refer MSPs Section 4.1).
7. Improve protection of retained habitat trees from regeneration burns (refer MSPs section 4.1 and clauses 7.2.4.1(c))

4. See for example: Management of Victoria's Publicly-owned Native Forests for Wood Production, 2011, Forest and Wood Products Association Project Report PRC147-0809, web: http://www.fwpa.com.au/images/resources/PRC174-0910_Research_Report_Native_forest_project.pdf

8. Revised definition of 'rainforest' so that emergent eucalypts up to projected foliage of 30% can be considered rainforest, ie remedy current contradiction between 'mixed forest' definition in MSPs and 'rainforest' definition in Code.
9. Mandatory use of silvicultural methods that allow original understorey re-establishment and the specification of this in coupe plans. The failure to protect understorey diversity from the impact of clearfelling operations is widespread, despite the Code (refer MSPs clause 2.3.1.1(h)iii)
10. Updating of all Tables and Appendices in Code and MSPs to ensure that all threatened species in all areas have specific mandatory actions should they be either found within, or nearby, or likely to be found within, or nearby. For example, despite confirmed past sightings of spot-tailed quolls close to a coupe in the Rubicon State Forest, this was not referenced in the coupe plan.
11. Requirement for effective measures to prevent regeneration burns killing retained vegetation and the specification of this in coupe plans (refer MSPs clauses 2.2.2.5 and 2.2.2.10).
12. Improved spatial and temporal specification of requirement that "a range of forest age structure and classes" must be maintained and the specification in coupe plans of how this is being Code achieved (refer Code clause 2.1.1.1iii).
13. Incorporate specific reference in the Code to threatening processes applicable to native forests listed under the Flora and Fauna Guarantee Act⁵, in particular those with Action Statements in place, and require the coupe plans and timber release plans in each individual State Forest (e.g. Rubicon State Forest, Marysville State Forest, etc) to identify how they mitigate the risk that these threatening processes present.
14. Revise Code to regulate log truck traffic on forest roads and small local feeder roads, in particular through curfews and substantially reduced speed limits, to improve amenity for local residents and improve safety for other forest users. (e.g. log trucks speeding on gravel roads in the forest, especially in holiday periods, deter other users from entering the forest.)
15. Ensure proper opportunities for timely well-informed public input into all planning and harvesting decisions.
16. For reported breaches, disclose summary details of each report and the investigation outcomes.

5. For example, habitat fragmentation, invasion by blackberries, loss of hollow-bearing trees from native forests.