Independent Review of Timber Harvesting Regulation:

Draft Submission by Rubicon Forest Protection Group Inc.
7 Oct 2018

Background

The Rubicon Forest Protection Group Inc. (RFPG) was established in 2015 to protect and promote the values of the Rubicon forest. Our action priorities include:

- stopping unsustainable logging in the Rubicon Forest and promoting conservation in the Central Highlands more generally;
- holding VicForests accountable for breaches of its own policies and guidelines and for good forest practice generally; and
- encouraging visitors to spend time in the Rubicon Forest, enjoy the beauty and join the campaign to halt unsustainable logging.

Our website, rubiconforest.org, provides detailed information on our activities and our analyses.

Context

Before commenting in detail on the Review's terms of reference it is necessary to point out that overshadowing any consideration of the regulation of timber harvesting is the exhaustion of timber supply in Victoria's state forests and the implications this has for the State Government under the Forests (Wood Pulp Agreement) Act 1996.

Our 2016 publication, *Unsustainable!*, sets out why the logging of the ash forests of the Rubicon State Forest and Central FMA since the 2009 bushfires is completely unsustainable, both in terms of the ecology and biodiversity of the area and in terms of log supply. This is a consequence of the over-commitment of wood supply in the Forests (Wood Pulp Agreement) Act 1996 which was unsustainable in ecological terms but which also failed to make any allowance for the effect of bushfires on wood supply.

Since 2009 the scale and intensity of logging in the Rubicon State Forest has increased dramatically. See serial landsat images of logging in the Rubicon State Forest.

The Review is being asked to examine the adequacy of regulation *after* an egregious policy failure has allowed the exhaustion of this resource (for at least 20-30 years) and continued unsustainable harvesting of the fragile remnants. It is open to the Review to conclude that regulatory failure is a consequence of policy failure and that unless the latter is addressed the focus on compliance is a red herring.

Nonetheless we offer the following comments under the three main terms of reference given to the Review.

Part A. The adequacy of DELWP's prosecutions policies, procedures and practice

Over the past 18 months the RFPG has focused increasing attention onto widespread breaches of the *2014 Code of Practice for Timber Production* and other regulatory instruments that DELWP is required to enforce. Our experience over this period has left us deeply concerned about the quality and timeliness of

DELWP's enforcement role and this submission aims to set out and illustrate these concerns as they relate to the terms of reference for the Review.

The Scope section of the Review's Terms of Reference specify a range of questions for evaluation, some of which relate to internal DELWP affairs upon which we are not able to comment.

Code breaches. Over the last three years the RFPG has accumulated a great deal of experience in following DELWP's investigations of allegations of compliance breaches including:

- Buffers between coupes and along watercourses are generally the bare minimum width provided for under the Code (and its forerunner in 2007) and unable to meaningfully serve as wildlife corridors and refuges.
- These inadequate buffers mean that individual coupes merge into giant mega-coupes well in excess of the maximum sizes permitted under the Code.
- We have observed (and reported) several instances where ephemeral springs and watercourses are left unprotected from harvesting and effectively destroyed.
- Until the recent change in Government policy, proper pre-logging surveys were rare with most pre-logging fauna assessments conducted via desk-top assessment and cursory in-coupe inspections. Recent announcements by the Environment Minister about a new pre logging survey program conducted by DELWP, may lead to improved environmental outcomes, but DELWP has failed to provide details about this program to stakeholders which makes it hard for groups to have confidence in the process.
- Moreover, the current process of 'contracted' single species surveys reported on the website are done on selected coupes only and do not incorporate biodiversity or ecosystem services values. Importantly, they have no accountability and are questionable as to their value, given that no details are provided of methodology, duration/dates, equipment, maps of survey area/transects, number of surveyors and details of contractors. For example, why look only for Leadbeater's Possum when Greater Gliders are present but not recorded as occurred recently in Sutcliffe coupe?
- As far as we are aware, no survey sites have been established prior to and following logging to assess impacts on biodiversity/ecosystem values that might show whether Code Principles in relation to biodiversity are being met.
- Blackberries are rampant in logged areas and along most forest roads and tracks with little or no attempts to limit their spread. This makes verges impenetrable by animals of all sizes and strangles the growth of understory plants.
- Little effort is made to remove logging slash from around the base of retained trees – as required by the Code - resulting in frequent tree death in regeneration burns.
- Silvicultural methods that would preserve the floristic diversity of understorey and ground level flora (such as by static long reach harvesters that minimise ground disturbance and avoid regeneration burning) are largely ignored, with the dominant consideration being maximising

harvested area and re-seeding only the overstorey species. Regrowth retention harvesting is a recent welcome improvement but is employed sparingly.

- At current harvesting rates within as little as 5 years there may be no substantially intact areas of 1939 ash regrowth remaining apart from the limited alpine ash areas within the Mt Torbreck and Mt Bullfight reserves. Apart from buffer strips and scattered isolated patches, almost all the remaining 'available' forest will then be in the age range 0-35 years and at great ecological risk due to climate change and fire, especially since ash species do not produce seed until about age 20. Across the Central Highlands RFA, it will bring threatened animals including Leadbeaters possum, the greater glider and the sooty and powerful owls much closer to extinction.
- Provisions under the Code designed to protect area of high landscape sensitivity are routinely ignored. For example Government policy requirements to protect views of the forested escarpment seen from the Maroondah and Goulburn Valley Highways have been ignored as have Code provisions designed to protect the forested landscape as seen from the Rubicon Valley Historic and Cultural Features Reserve.

(Most of the above dot points are taken from RFPG's Submission to the Third Five Yearly Review of the Victorian RFAs (Jan 2018) which includes further elaboration and evidence.)

The Rubicon Forest Protection Group urges the Review to make the following findings.

DELWP's management of breach reports has been characterised by sloppy administration and a general lack of transparency.

1. DELWP commonly fails to formally acknowledge reports of breach allegations submitted by us. This suggests a certain sloppiness of administration which clearly permeates other aspects of DELWP's compliance and monitoring work.

> For example, 22 July 2016 we notified Minister D'Ambrosio of a range of breaches that had earlier been brought to the attention of VicForests, however it was another year before we learned that a case number had been assigned and that it was under investigation

2. Until recently DELWP has claimed that it was unable to release the detailed results of its completed investigations on the grounds that it could jeopardise its investigations. This is patently absurd in terms of the integrity of investigations but makes sense in seeking to minimise public accountability.

> In response to an email from RFPG on 1 August 2018 arguing that communicating decisions without a 'statement of reasons' is a clear breach of due process, we received the following email from Steph Andreata, Manager Timber Harvesting Compliance, on 6 Aug 2018:

"*I note that you have requested copies of the investigation reports and/or supporting information to explain the advice and case decisions that were made by the department. The departmental policy is that the investigation reports completed by our investigating officers are not provided to external parties. This policy is consistent with the guidance material provided under Section 31 of the Freedom of Information Act 1982 which states that a document is exempt form disclosure if they disclose methods and procedures for investigating breaches of the law, or would be reasonably likely to prejudice the effectiveness of those methods or procedures*."

An extract of our reply, emailed the next day, is as follows:

"*I note that you cite S.31(1)(d) of the FoI Act as providing the justification of the Department's policy. I would argue (and the FoI Commissioner would most likely agree) that the test governing the application of this section, ie that disclosure "would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures [used in the investigations]", is most unlikely to be met. Moreover, this justification for non–release is effectively overridden by S.31(2)(e) which states that a report is not exempt from release if it is "prepared in the course of routine law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law". Like the case numbering system, this also has the effect of protecting VicForests' actions from full public scrutiny.* "

3. The DELWP website reports little information about the precise nature of the alleged breaches reported to it or the nature of the results where a case is listed as "closed". And where a report is lodged alleging multiple breaches, only a single case is recorded. We consider this to be wholly at odds with basic principles of accountability expected from a regulator.

RFPG protested about this approach in our email of 7 August as follows:

".. . the practice of lumping quite different breaches together if they apply to the same area – howsoever defined [. .] has the effect of minimising the number of breach reports published and could misrepresent the compliance record of VicForests. The principles of transparency and accountability would suggest that the individual alleged breaches, rather than the territory in which they are alleged to have taken place, should be published.

Finally the way that breach reports are publicly revealed on the website simply as either "case closed" or "case open", with no information provided as to the findings where a case is closed, could suggest a disregard for the accountability of VicForests which is not consistent with DELWP's enforcement role.

Cumulatively, these policies (the aggregation of breaches, the refusal to release investigation reports, the treatment of minor breaches as non-breaches, and the failure to publish findings) could suggest that DELWP places protecting VicForests ahead of transparently enforcing the law.

I look forward to hearing from you in the near future if you believe I am mistaken in my understanding of any of the above matters. But if not I would hope that these process deficiencies on the part of DELWP will be rectified as soon as possible. DELWP's enforcement role is a core pillar of the regional forest agreements and these issues of transparency and accountability will need to be examined closely in the process of 'modernising' the RFAs."

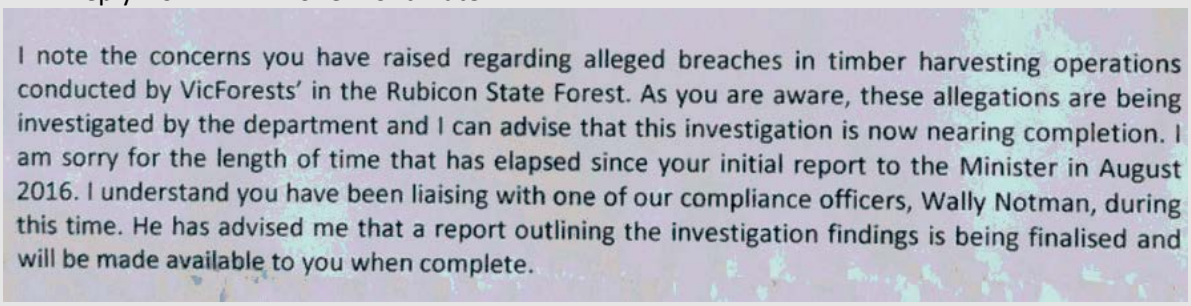
4. DELWP investigation of breach allegations commonly take many months, often years such as in case 2016-0068 cited below, and also in case 2016-0101. This is far longer than would be compatible with

efficient and effective implementation of its regulatory responsibilities. It is perhaps in part due to under-resourcing but also reflects – until very recently - a general 'stonewalling' attitude to public accountability.

Extract of letter from RFPG convenor, Ken Deacon, to Minister D'Ambrosio (22 March 2017):

"*For example the rule preventing contiguous coupes exceeding 120 ha in a five year period – a biodiversity safeguard in the Code of Forest Practice – has been ignored on several occasions that we know of, and probably many more. . . . . In my letter to you of 22 July last year I indicated that we had drawn these breaches to VicForests' attention, but we were told last month by your Department's Freedom of Information unit that that these are still being investigated – eight (now nine) months later!*"

. . . . . reply from DELWP one month later:



I note the concerns you have raised regarding alleged breaches in timber harvesting operations conducted by VicForests' in the Rubicon State Forest. As you are aware, these allegations are being investigated by the department and I can advise that this investigation is now nearing completion. I am sorry for the length of time that has elapsed since your initial report to the Minister in August 2016. I understand you have been liaising with one of our compliance officers, Wally Notman, during this time. He has advised me that a report outlining the investigation findings is being finalised and will be made available to you when complete.

. . . . there had, in fact, been no liaison with Mr Notman on this matter and it was a further year before the close was closed, and another two months before we were advised (email dated 25 June 2018). In May 2017 we wrote again to the Minister alleging that the 120 ha has rule had been breached on the Matlock Plateau. This time it took until 28 May 2018 for a reply advising that the case was closed. In neither case were reasons given. The delay in making a finding – and then initially not providing reasons – effectively tied our hands and gave scope for VicForests to continue what we still regard as illegal conduct (see #6 below).

DELWP interpretations of the regulatory regime for which it is responsible are distorted by its close relationship with VicForests

5. DELWP seems to have elected not to make adverse findings against VicForests where breaches may exist but are deemed to be 'minor' and not warranting prosecution. Minor breaches it appears are not breaches.

On 26 October 2016, Environmental Justice Australia, acting in support of the Rubicon Forest Protection Group, reported the logging of a substantial area, including an entire coupe with a net harvest area 21 ha, that was part of the Rubicon Historic and Cultural Features Reserve and outside the Allocation Order. Strictly speaking it was therefore illegally harvested.

Limited logging of this area was approved in 1995 when the Government endorsed the recommendations of the LCC's Melbourne Area 2 review, and created the Rubicon Historic Area and this was included in the Central Highlands Forest Management Plan, however this arrangement effectively lapsed when VicForests was created and new arrangements put in place under the Sustainable Forests (Timber) Act.)

However the wording of the reply by DELWP on 25 May 2018 is revealing:

"*An investigation has disclosed that there is a discrepancy in the location of the boundary of the allocation order area. In the circumstances, DELWP considers there is no probability of a successful prosecution of VicForests. I advise that this investigation is now closed.*

The discrepancy referred to has been reported to the Department of Economic Development, Jobs, Transport and Resources, which is authorised to reconcile this."

Most reasonable people would see the wording as implying that DELWP has exonerated VicForests and put the whole affair down to a simple administrative mistake, rather than allowing any reflection to be made on the diligence of VicForests to ensure that it only logs areas where the law permits.

And in an email to Ms Andreata, Manager Timber Harvesting Compliance, of 7 August, we made the following inquiry, to which a response has yet to be received.

"I also wish to inquire about the policy – if indeed it is a policy – referred to by Stephen Colquitt during our field inspection on 28 June whereby, if a breach is found to be "minor", a case may be closed without any action being taken by DELWP. The conversation arose in relation to the close proximity (<5m) of a machine track along a short part of an historic tramway revetment, whereas along most of its length the machine track was further than the minimum distance prescribed by the Code. As I indicated in my email to Forest.Reports on 29 June, if an alleged breach is confirmed, this should be publicised regardless of whether DELWP decides to initiate legal action against VicForests. In view of the hollow character of the sanctions for major breaches (with the taxpayer effectively paying any fine imposed), the publication of confirmed breaches (regardless of prosecution) would significantly strengthen the accountability of VicForests for compliance."

6. In many cases DELWP has failed to analyse and assess breaches in the context of the full regulatory framework established by the Code and the *Sustainable Forests (Timber) Act*, relying instead on a narrow reading of specific clauses.

Two of our recent emails to Forest.Reports illustrate this.

The first refers to our rebuttal of DELWP's finding that the narrow and largely treeless strips of "retained vegetation" between certain coupes were sufficient to prevent the formation of what would otherwise comprise an illegally large "coupe aggregate". On 24 September we wrote:

"I thank you for your response of Friday 21 September to our allegations of serious breaches of the Code in relation to coupe aggregates, and in particular for setting out your reasons with such clarity.

Regrettably, your reasoning is clearly mistaken and we ask that it be immediately reviewed by a senior legal expert.

Firstly, you claim that you are "unable to speculate[d] or infer a standard or requirement that is not specified by the prescription being assessed." Yet in the immediately preceding paragraph you infer that long-term (strategic) planning relates solely to forest zoning. There is nothing in the Code that suggests that "long-term (strategic) planning" is restricted to zoning, rather the preamble to that section identifies it as one long term strategic planning tool. The preceding paragraph in the preamble indicates that long term strategic planning "includes outputs such as policies relating to specific forest values such as threatened species and forest management plans".

So here is an immediate contradiction with your claim in the next paragraph about inferences!

And as stated above your inference is patently wrong anyway. The entire TRP process is manifestly a long-term (strategic) planning exercise, and it is this process – to which DELWP presumably had no objections – that allowed the coupe aggregates - that we still maintain are in breach of the Code - to arise. Included within the TRP process is an estimate of the net available harvest area for each coupe, which itself presupposes harvest area boundaries within each coupe. Harvest area boundaries in turn dictate whether or not corridors will be left, so Clause 2.2.2.8 clearly applies here.

Moreover, your reply conceals – or rather exposes - a second error in your analysis, namely that - in relation to clause 2.4.7.1 – "no definition of vegetation is provided by the Code that specifies any required standard that retained vegetation must meet." Since we have clearly established above that Clause 2.2.2.8 is in play in relation to harvest area boundaries, and therefore corridors, then the reference embodied in clause 2.2.2.8 to the purpose of "retained forest" being to "to facilitate animal movement between patches of forest of varying ages and stages of development, and contribute to a linked system of reserves" self-evidently applies to the reference to retained vegetation.

You will note that the purpose of "retained forest" as specified here is twofold: firstly to facilitate animal movement between forest patches, and secondly to link reserves. Your response below alludes to the second of these two purposes only. If due to its paucity "retained vegetation" is unable to facilitate movement of arboreal animals between forest patches then the code has been breached.

Accordingly we request that you:
a) commence action against VicForests for breaching the 120 ha rule in relation to the Matlock and Royston Range coupe aggregates, and
b) demand that VicForests cease logging of Dangermouse forthwith to ensure that the existing unlawfully large coupe aggregate is not further enlarged."

Our second example of the 'narrow reading' approach concerns the protection of views from the Rubicon Historic Area, the protection of which we had been arguing for with VicForests since 2016. On 11 September we received a response from DELWP to our allegations that logging of various coupes on the western flank of the adjacent Royston Range (including Rio, Bonds, Berlei, Calvin and, more recently, Dangermouse) breached the landscape protection requirements of the Code. We welcomed the fact that on this occasion detailed reasons were provided in support of the decision, but we argued in an email reply the same day that these reasons were clearly misguided:

"*1. The RVHCFR [Rubicon Historic Area] is listed in Table 9 of the Planning Standards, which is a table relating to 'Landscape management'. Speculating on the logic of its listing in [the] table is irrelevant unless intended to establish an obvious error, which, as I show below, it is not.*

The scenic value of the RVHCFR was explicitly recognised in the Central Highlands FMP by virtue of its inclusion in Appendix O which relates to "MANAGEMENT OF AESTHETIC VALUES AND AREAS OF HIGH SCENIC QUALITY IN STATE FOREST" and by the inclusion of the Rubicon as a recreational attraction in Appendix P (see below).

Accordingly, the Sustainable Forests (Timber) Act 2004 requires that the rules governing features listed in Table 9 – ie MSP clauses 5.3.1.5 and 5.3.1.6 – be followed. Had Little Jacqui not been logged, or had the required 20m buffer been left, clauses 5.3.1.5 and 5.3.1.6 would, arguably, not have been breached. But it was logged, and the view was opened up and so the breach did occur, continues to occur and will be exacerbated by the continued logging of Dangermouse, as a properly constituted court would no doubt find.

[. . .]

3. The Royston Range undoubtedly is, despite the recent devastation, a 'landscape sensitivity area'. Code clause 2.1.1.1.vi requires VicForests to 'minimise adverse visual impact in landscape sensitivity areas'. In the definition of such areas in the Code, reference is made to 'areas that are readily visible from high-usage recreational facilities such as look-outs, walking tracks, tourist roads, or campsites. Importantly, the reference is made to 'tourist roads', not 'designated' tourist roads, as per your unit's interpretation. Since the road in question that commands 'high visibility' leads to a key tourist feature of the area, namely the Rubicon Historic Area, it is undoubtedly a tourist road. Moreover, the Central Highlands Forest Management Plan explicitly acknowledges this in Appendix P (p. 53 of Appendices) where, under the heading "Current and Potential Attractions for Recreation Zones", it identifies "Additional focus in Rubicon servicing demand from Alexandra/Eildon. Key access roads to two-wheel-drive standard". This is an unequivocal indication of the tourist value of the Royston River Road.

So your finding that "the Royston Range has not been identified by the relevant public land planning documents (. . .) as an area of high scenic quality or visual sensitivity" is incorrect.

Regarding the requirement to 'minimise' adverse visual impact, the logging of Little Jacqui without the required 20m buffer along the Royston River Road ensured that adverse visual impact was, in fact, maximised.

4. I should also stress that the requirement to 'minimise adverse visual impact in landscape sensitivity areas' specified in Code clause 2.1.1.1.vi is in addition to the requirement to abide by specific zoning prescriptions or past planning documents. To suggest that simply reviewing historic documents is sufficient to ascertain whether an area is a 'landscape sensitivity' area' is absurd. Landscape, and human appreciation of it, is a dynamic, not a static, thing."

7. In several cases DELWP has failed to properly assess compliance in relation to specific relevant mandatory clauses, despite these being clearly cited in breach reports we have submitted.

Since its inception, RFPG has been campaigning – principally on biodiversity and ecological sustainability grounds - to protect the remaining unlogged coupes in the Rubicon State Forest from logging. One of these, Sutcliffe, is one of the last unlogged and unburnt refuges in what was once a richly biodiverse area, with species in the coupe including yellow-bellied gliders, greater gliders and possibly the spot-tailed quoll, leadbeaters possum and the endangered barred galaxias, a small fish.

In our endeavour to minimise the impact of logging in Sutcliffe we sought to have the streamside buffers along Tom Burns Creek extended from a minimum of 20m to a minimum of 30m as part of a requirement in the Code to protect barred galaxias. Our arguments were rejected by VicForests and so we appealed to DELWP to uphold the Code and intervene. However in an email received on 21 September, DELWP also rejected our arguments. We promptly responded (24/9) to this rejection as follows, arguing that DELWP was obviously mistaken:

"I thank you for your prompt response to our allegations of breaches in the coupe Sutcliffe, but unfortunately it is irretrievably flawed.

Firstly, while you are correct that clause 3.3.1.2 of the MSPs only requires wider buffers in Barred Galaxias SMZs, Clause 4.2.1.1, through Table 13 of Appendix 3, requires wider buffers in coupes upstream of barred galaxias populations. This latter, more stringent, provision is designed to assist barred galaxias to recolonise areas it presumably formerly occupied. Crucially, this more stringent provision is specifically for the Central Highlands FMAs as opposed to Clause 3.3.1.2 which is a more general prescription applying statewide and to three separate animals. Moreover, the fact that no barred galaxias were found in Tom Burns Creek soon after the 2009 fire is hardly surprising given that much of its upper catchment was burned. 9.5 years on from the fire it may well be that barred galaxias have returned. So this plank of your rejection of our allegation is unsustainable."

No response has been received to our arguments and as far as we know logging has continued unabated.

Part B. DELWP's current capability and capacity to effectively regulate timber harvesting on public land in Victoria.

DELWP is hopelessly compromised in relation to its regulatory role because of its necessarily close relationship with VicForests in the planning of harvesting. DELWP's performance as a regulator betrays all the tell-tale signs of 'regulatory capture'.

We have cited evidence above of general sloppiness in DELWP's performance in compliance monitoring and enforcement. These include:

- failure to acknowledge breach reports;
- unjustified secrecy regarding assessments;
- lack of transparency in relation to breach reports and investigations;
- astonishingly slow breach report investigations;

We have cited evidence that DELWP interpretation of its regulatory mandate is prejudiced in favour of lenience in relation to evaluating VicForests' performance:

- failure to analyse and assess breaches in the context of the full regulatory framework established by the Code and the Act, relying instead on a narrow reading of specific clauses;
- arrogation to itself a judgement that minor breaches are not breaches; and
- the occasional failure to properly assess compliance with specific relevant mandatory clauses.

It appears to us that regulatory capture is the only plausible explanation for these failures. We assume that this would include a failure to properly staff and fund the compliance and monitoring function, and a managerial disposition to 'go softly' on VicForests, as well as a general level of cultural sympathy with the logging project.

We commend for your attention a recent analysis of regulatory capture by the esteemed environmental lawyer, Dr Leonie Kelleher, discussing this issue[1]. You may wish to discuss this document with Dr Kelleher in order to gain more detailed insights into whether regulatory capture is in play here, and some of her ideas for addressing it.

Part C. The review should provide high level advice on options and approaches for future reform of timber harvesting regulation.

Compliance monitoring and enforcement should be transferred to the EPA or some alternative regulator at arms-length from VicForests.

We have argued that DELWP's capacity to carry out the compliance monitoring and enforcement functions is irretrievable compromised by its necessarily close relationship with VicForests in the context of harvest planning.

1. See http://kellehers.com.au/latest-news/regulatory-capture-scandals-and-regulators/. Full PDF here: http://kellehers.com.au/wp-content/uploads/Newsflash_Regulatory-Capture_250918.pdf

Accordingly we argue that VicForests' activities should be subject to the kind of planning appeal processes established under the Planning and Environment Act. We urge the Review to recommend that VicForests planning be appealable at VCAT.

At present private forestry activities are subject to the Planning and Environment Act, as are the activities of almost all other Government agencies. VicForests is the anomaly.

Subjecting VicForests to VCAT oversight would ensure that, where an appeal against a proposed action by VicForests revealed an inconsistency with the Code, this could be remedied immediately.

The Code itself should be thoroughly reviewed and revised as expeditiously as possible, and certainly ahead of the proposed renewal of the RFAs in March 2020.

Many of the shortcomings of the present compliance regime are due to critical deficiencies in the Code itself. There has been no meaningful review of the Code for at least 11 years, despite the 2014 Code and its 2007 predecessor including commitments for its regular review.

See RFPG critique of the Code in Annex 1 (from RFPG's Rescue the Rubicon, March 2018) and, in Annex 2, proposals for reform of the Code (from RFPG's Roadmap for Forests Governance Reform, Sept 2018).

The Allocation Order – a Licence to Log

We urge the Review to recognise the Timber Allocation Order as part of the regulation of timber harvesting in Victoria and therefore as encompassed by the third term of reference provided to the Review.

The Timber Allocation Order is made by the Minister for Agriculture under Part 3 of the Sustainable Forests (Timber) Act 2004 (SFTA). On the publication of an Allocation Order in the Victorian Government Gazette, property in the timber allocated by the Order is vested in VicForests. VicForests may only harvest and/or sell vested timber resources in accordance with the Allocation Order.

The Allocation Order describes:

- the forest stands within State forest to which VicForests has access
- the location of those forest stands
- the total extent and available areas of those forest stands
- the maximum area available for timber harvesting in any five-year period
- any additional activities that VicForests is permitted to undertake
- the conditions with which VicForests must comply in carrying out its functions under the Allocation Order.

It is apparent that the protocols and algorithms upon which the Allocation Order is based are seriously flawed, most obviously in their failure to make allowance for the risk of bushfire but more profoundly for their failure to allow for climate change.

However, rather than recognise this failure, the Allocation Order was amended in 2010 to give VicForests almost complete freedom in relation to the sourcing of timber with the consequence of further compromising the sustainability of the estate.

When VicForests was created in 2004 the Allocation Order specified the available forest stands by Forest Management Area (FMA), but since 2010, following the timber losses in the fires of 2006/07 and 2009, the Order only specifies available forests at a statewide level

Thus, the 2014 Allocation Order (Victorian Government Gazette No S 405) simply specifies the areas of ash and of mixed species in State forests which may be harvested over the next five years. With no FMA specific limits VicForests is free to determine in which FMAs to conduct logging. For the Rubicon State Forest and the Central FMA the impact of this change has been devastating with harvesting rates now double those that were envisaged 13 years ago in the 2004 Allocation Order.

We urge the Review to recommend a review of the principles and methodologies which go into the Allocation Order as a key instrument in the regulation of forest harvesting in Victoria. This includes opening to public scrutiny and comment the modelling that is used to produce VicForests' Resource Outlook, which should be a key input to the Allocation Order.

At present the Allocation Order has an overly simplistic basis which assumes the forests of Victoria have an even distribution of age classes, which is patently not the case.

We urge the Review to recommend the urgent amendment of the provisions of the SFTA which deal with the allocation order so that harvesting limits are set at the FMA level, as well as by ash and mixed species forest types and takes into account the actual distribution of age classes.

Finally

We acknowledge and welcome the steps the State Government, through Minister D'Ambrosio, has taken over the past year to strengthen the regulatory regime with increased funding for pre-harvest flora and fauna surveys and additional investigatory staff. However, unless the problems of regulatory capture and the shortcomings of the Code are addressed the ecological integrity of our forests will be critically compromised, and their ability to support other critical social and economic values will be precluded for decades to come.

We would welcome the opportunity of a face-to-face meeting with the Review to elaborate further on our experience of DELWP's compliance and monitoring performance and on our proposed reforms.

Rubicon Forest Protection Group
7 October 2018

Annex 1. The Code of Forests Practice – Under-specified and unenforced

(See Rescue the Rubicon and The Code of Forests Practice – Under-specified and unenforced)

Under the 1992 National Forests Policy Statement (NFPS) state governments are committed to developing and maintaining their own codes of forest practice, however named.

In speaking about the role of the codes the NFPS notes (p10) that,

Forest management agencies will continue to assess forest areas for the purpose of developing strategic management plans and, where necessary, operational harvesting plans. As a consequence of these forest assessments, areas that have important biological, cultural, archaeological, geological, recreational and landscape values will continue to be set aside and protected from harvesting operations or managed during operations so as to safeguard those values.

Measured against this commitment the Victorian Code of Practice for Timber Production 2014 has been a failure, certainly in the Rubicon State Forest.

The Victorian Code needs to be read in conjunction with the Management Standards and Procedures for timber harvesting operations in Victoria's State forests 2014 which specifies in more detail the principles of the Code.

The provisions of the Victorian Code and the Management Standards are particularly weak where forest biodiversity and scenic values are concerned. Its shortcomings include absurdly narrow protective buffers, inadequate protection of retained trees in regeneration burns, and an outdated schedule intended to protect tourist routes.

Section 2.1.1.1 (vi) of the Code provides that "Long-term forest management planning must … minimise adverse visual impact in landscape sensitivity areas". Section 5.3.1 of the Management Standards provides for protection of landscapes of scenic importance. However, most of the provisions of this section are restricted to scenic routes and vistas specified in Table 9 of Appendix 5 of the Standards and excludes vistas from roads with great tourist potential and only requires 50 m buffers along all of the specified roads.

See also Table 12, Habitat tree prescriptions; Table 13, Rare or threatened fauna and invertebrate prescriptions; Table 14, Rare or threatened flora prescriptions; Table 15, Management of historic places; Table 17, Landscape management prescriptions; and Table 18, Road classification system.

Poor specification of a rule that limits the size of an overall area being logged in a 5 year period allows it to be routinely flouted. Rule 3.1.1.5 provides that,

The size of clearfall, seed tree harvesting or shelterwood coupes should generally not exceed 40 hectares net harvested area. Coupes may be aggregated but not exceed 120 hectares net harvested area over a period of up to five years. Aggregated coupes must not be contiguous (forming a coupe greater than 120 hectares within a five year period).

In the Rubicon State forest there are several such offending areas with more likely. In other areas there are likely to be many more such breaches, especially in coming years as harvestable areas dwindle.

DELWP undertakes Forest audits to monitor compliance with the Code. As of August 2017, there are no audits mentioned or audit reports published since 2015. DELWP also undertakes investigation of breach allegations through Forest reports. It is the experience of the RFPG that the investigations of breach allegations can take years to finalise and logging proceeds apace during such investigations. There is good evidence that drawing out investigations is being used to avoid responding to FOI requests.

The RFPG calls for an independent public inquiry into the provisions and enforcement of the Code of Practice for Timber Production 2014.

RFPG calls for a community based scheme for monitoring logging practices and reporting possible breaches along the lines of the 'official visitors' scheme which operates in the mental health and disability sectors.

Annex 2. Proposed changes to Code and MSPs

(Proposals not exhaustive; taken from RFPG's Roadmap for Forest Governance Reform, Sept 2018)

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 preharvest 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))

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 spottailed 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 Act(eg, habitat fragmentation, invasion by blackberries, loss of hollow-bearing trees from native forests), 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.