

Submission

to the

Department of Primary Industries

on the

Review of the *Sustainable Forests (Timber) Act 2004*

prepared by

Environment Defenders Office (Victoria) Ltd

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About the Environment Defenders Office (Victoria) Ltd

The Environment Defenders Office (Victoria) Ltd (**EDO**) is a Community Legal Centre specialising in public interest environmental law. Our mission is to support, empower and advocate for individuals and groups in Victoria who want to use the law and legal system to protect the environment. We are dedicated to a community that values and protects a healthy environment and support this vision through the provision of information, advocacy and advice. In addition to Victorian-based activities, the EDO is a member of a national network of EDOs working to protect Australia's environment through environmental law.

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Summary of Recommendations

The EDO recommends:

Implement Proper Sustainable Forest Management

- The Final Review Report should identify how the proposed amendments accord with principles of sustainable forest management.
- The Final Review Report should identify what economic objectives are reasonable in light of the need to balance such objectives with environmental and social objectives for Victoria's forests.
- The Final Review Report should identify and evaluate the possible impacts of the recommended changes to the Act on the environment and social features of Victoria's forests.

Timber Release Plans - coupe-level oversight is important

- Retain the requirement for VicForests to seek external approval for logging at a coupe-level (whether via the Timber Release Plan, or another mechanism).
- Retain the Timber Release Plan conditions requiring VicForests' compliance with the instruments described above, particularly the Management Procedures and Forest Management Plans. Alternatively, the requirements to comply with the instruments currently referred to in the Timber Release Plan conditions should be enshrined in the Act itself.

Allocation Orders - retain effective government control

- The Minister's ability to include conditions on Allocation Order should be retained.
- An independent investigation should be conducted into what contract duration native forests can support, taking into account all relevant factors such as bushfire risk, climate change and increasing need for protection for threatened species.

Timber Harvesting Operators Licences - more information and accountability

- Further information must be made publically available about the conditions contained in Licences, particular conditions requiring compliance with environmental standards.
- The requirement to comply with environmental standards at an individual level must be retained, so that individual logging operators are held directly accountable for breaches of the standards.

Protect the Environment

- Address, as a matter of priority, the long-standing failures of environmental protection that apply to logging.
- Appoint an independent expert to investigate opportunities to transition beneficially out of native forest logging, building on the work already done by environment groups.

Introduction

The EDO is pleased to make a submission on the Department of Primary Industries' draft report 'Review of the *Sustainable Forests (Timber) Act 2004*' ('Draft Report').

The EDO makes this submission based on over 20 years of experience practising public interest environmental law, advising and acting for members of the community and environment groups on matters relating to the regulation of Victoria's forests, and the protection of the species whom live in the forests. As such, EDO is aware of many ways Victoria's sustainable forest management system could be improved to better achieve its environmental objectives.

The Draft Review Report does not, however, recommend such changes. Instead, the approach to the review appears to be industry-centred, promoting a drastic reduction in governmental oversight of VicForests' logging practices, one of the key principles underpinning sustainable forest management.

In particular, EDO has concerns about the Draft Reports' specific recommendations in relation to Allocation Orders, Timber Release Plans and Timber Harvesting Operators Licences. These concerns are set out below.

What about Sustainable Forest Management?

The Draft Report proposes the most significant changes to the *Sustainable Forests (Timber) Act 2004* (**the Act**) since it was enacted in 2004.

The *Sustainable Forests (Timber) Act 2004* is the key piece of legislation that regulates logging in Victoria. The purpose of the Act is to implement a 'framework for sustainable forest management and sustainable timber harvesting in State forests'.¹

'Sustainable forest management' refers to a system for managing forests that balances economic, social and environmental concerns, so that all Victorians, including those in future generations, will benefit from a better quality of life.

One of the ways the Act implements sustainable forest management is to separate the policy and environmental oversight aspect of forests (to be carried out by the Department of Sustainability and Environment, the Secretary of the Department and the Minister for Environment) from the commercial aspects of the logging industry (to be carried out by VicForests). This gives the government the ability to carry out an oversight role, and EDO submits this is a key aspect of sustainable forest management.

The EDO considers that the Draft Report's intent, focus and structure ignores, and is inconsistent with a sustainable forest management system, and the need to balance economic objectives with social and environmental ones:

¹ SFT Act, section 4. The Act's implementation of a system of sustainable forest management is a condition of Victoria's management of State forests, as passed from the Commonwealth to the States via the Regional Forests Agreements.

- The Draft Report does not discuss what 'sustainable forest management' is, or how the recommendations made are consistent with such a system. Instead, the term 'sustainability' is mostly used in the Report to refer to the longevity of the logging industry.
- The Draft Report has exclusively economic objectives: increased certainty of supply and reduction of regulatory burdens. These economic objectives fail to recognise that the logging industry is different to other industries. Truly sustainable forest management acknowledges that the economic objectives of the logging industry must always be subject to, and balanced with, the social and environmental impacts of logging. The Report does not consider what economic objectives are reasonable in the context of sustainable forest management.
- Sustainable forest management's balancing of the economic, social and environmental aspects of forests means that alterations to one of these aspects will necessarily have an impact on another. The Draft Report fails to recognise this, and includes no analysis of the possible social and environmental impacts of the proposed economic regulatory change.
- The Draft Report undermines the premise for separating commercial and environmental aspects of forest management by recommending the removal of key mechanisms through which the government oversees VicForests' commercial operations, and its compliance with environmental controls. These are discussed in more detail below.

Recommendations

- The Final Review Report should identify how the proposed amendments accord with principles of sustainable forest management.
- The Final Review Report should identify what economic objectives are reasonable in light of the need to balance such objectives with environmental and social objectives for Victoria's forests.
- The Final Review Report should identify and evaluate the possible impacts of the recommended changes to the Act on the environment and social features of Victoria's forests.

Removal of environmental oversight

The EDO acknowledges that Victoria's logging laws could be improved. In particular, the current two-stage process of Allocation Order and Timber Release Plan may be unnecessarily complex as a mechanism to transfer ownership of timber resources from the State to VicForests.

However, this process currently performs an important role as a mechanism for the government to oversee VicForests' logging activities, and in particular to ensure VicForests' compliance with its environmental obligations. As identified above, such oversight is a crucial aspect of sustainable forest management. Further, native forest logging occurs on public land and it is the expectation of the Victorian public that this land will be managed in the public interest. As a matter of good governance, this requires oversight of a commercial body (VicForests) by those elected to public office (the government).

The Draft Report's recommendations will significantly reduce the government's ability to oversee VicForests' logging activities.

Timber Release Plans

Under the current Act, VicForests cannot commence logging until the Secretary has approved a Timber Release Plan. Timber Release Plans contain crucial information such as the location of the coupes to be logged, the timing of the logging and details of access roads. The Secretary can only approve the Timber Release Plan once he or she is satisfied that it complies with the Allocation Order and the Code of Practice.

The Draft Report proposes to remove the need for VicForests to obtain the Secretary's approval of the Timber Release Plan. Instead, the VicForests Board will obtain responsibility for assessing the Plan's compliance with the Allocation Order and Code of Practice, and approving the Plan.

EDO is concerned about these amendments for the following reasons:

- VicForests will no longer require any external approval for the actual coupes it plans to log. Compliance with environmental controls is critical in the selection of coupes to be logged, particularly in light of changing environmental circumstances and increased scientific information. VicForests must be subject to governmental oversight at this point.
- It is inappropriate for VicForests to be essentially self-regulating in its selection of coupes to be logged, given its exclusively commercial objectives. As mentioned, this is inconsistent with the Victorian community's expectation with regard to government management of public land. Further, self-regulation by VicForests' completely undermines the principle of separation of oversight and commercial operations that underpinned the enactment of the Act.
- Timber Release plans currently contain conditions requiring VicForests to comply with environmental protections. In particular, VicForests is required to comply with Forest Management Plans, the Code of Practice for Fire Management on Public Land, Fire Salvage Prescriptions and the Management Procedures for timber harvesting, roading and regeneration in Victoria's State forests. The amendments proposed in the Draft Report may jeopardise these important environmental controls, as many of these requirements are not made binding by any other instrument.

Recommendations

- Retain the requirement for VicForests to seek external approval for logging at a coupe-level (whether via the Timber Release Plan, or another mechanism).
- Retain the Timber Release Plan conditions requiring VicForests' compliance with the instruments described above, particularly the Management Procedures and Forest Management Plans. Alternatively, the requirements to comply with the instruments currently referred to in the Timber Release Plan conditions should be enshrined in the Act itself.

Allocation Orders

The first step in the planning process that regulates logging is the requirement for the Minister to approve an Allocation Order, which allocates a broadly defined area of forests to VicForests for the purposes of logging.

The Draft Report recommends significantly stripping back the nature of this control by removing the Minister's ability to include conditions on the Allocation Order, removing the 15-year time limit on the Order and removing 5-yearly reviews of the Order.

EDO is concerned about this reduction in regulation, particularly in light of the removal of government control of the Timber Release Plan process discussed above:

- Allocation Order conditions are a crucial mechanism for allowing government to exercise its oversight of VicForests' operations, including by requiring VicForests to comply with environmental controls and furnish relevant data about its activities.
- In particular, the current Allocation Order includes conditions that VicForests provide the Department of Sustainability and Environment with important data relating to VicForests' logging and regeneration activities. The removal of such conditions will leave VicForests with no legal requirement and thus little incentive to prepare and submit such material to the Department, greatly reducing the Department's ability to understand the extent of VicForests' activities, and whether such activities are in compliance with the Allocation Order itself, as well as other environmental protections.
- The extension of the life of the Allocation Order to an unlimited life-span to accommodate 20 year contracts is irresponsible, unless such amendments can be accompanied with clear data indicating that native forests can support such logging, taking into account the factors such as reduction of forest and habitat by bushfire and climate change, and the increasing need to protect certain areas to prevent the extinction of flora and fauna species. Such data has not been made available.

Recommendations

- The Minister's ability to include conditions on Allocation Order should be retained.
- An independent investigation should be conducted into what contract duration native forests can support, taking into account all relevant factors such as bushfire risk, climate change and increasing need for protection for threatened species.

Timber Harvesting Operator Licence

Under the current Act, any person carrying out logging activities such as chain-sawing, driving trucks or climbing trees must obtain a Timber Harvesting Operator's Licence from the Secretary (or his or her delegate). The Draft Report notes that Licences are subject to conditions, including that operators comply with 'environmental standards'.

The Draft Report recommends removing the requirement for logging operators to obtain a Licence. EDO is concerned about this proposal:

- Licences are not public documents, and the Draft Report does not include any detailed information about the conditions included on Licences, particularly the conditions requiring compliance with environmental standards. Such information is crucial in order to assess what environmental protections will be lost if licences are no longer required.
- In any case, the Draft Report notes that if Licences are removed, any environmental standards could instead be provided through Forest Produce Licences or commercial contracts. This is not adequate. Private commercial contracts are not an appropriate mechanism to regulate public environmental controls. Furthermore, Forest Produce

Licence would not hold individual logging operators accountable for breach of environmental standards.

Recommendations

- Further information must be made publically available about the conditions contained in Licences, particular conditions requiring compliance with environmental standards.
- The requirement to comply with environmental standards at an individual level must be retained, so that individual logging operators are held directly accountable for breaches of the standards.

Improvement of environmental controls

As noted above, the Draft Report focuses exclusively on making industry-centric changes to the allocation and vesting aspects of Victoria's logging law. The Draft Report, however, fails to address the many long-standing problems with the environmental protections that apply to logging. Not only is attention to these protections overdue, but failure to do so while at the same time removing other regulatory obstacles to environmentally damaging logging practices as described above, results in even greater risks to the environment.

Environmental controls that require urgent improvement include:

- Out-of-date Forest Management Plans.
- Out-of-date or non-existent Action Statements for many of Victoria's threatened species.²
- Poor enforcement of existing environmental controls.

The Draft Report proposes to entrench native forest logging

Native forest logging is an inherently environmentally damaging activity, although properly sustainable forest management can mitigate some of this damage.

The EDO recognises that in recent years considerable work has been done by Victorian environment groups proposing models for shifting Victoria's logging industry away from native forests towards a plantation-based industry.³ The EDO contents that this approach reflects the public expectation that public land be managed in the public interest, rather than for commercial interests.

However, the Draft Report has not in any way engaged with this avenue of thought. The Draft Report therefore instead misses the opportunity to find a long-term solution to the inherent social,

² See the Environment Defenders Office, 'Where's the Guarantee? Implementation and enforcement of the Flora and Fauna Guarantee Act 1988 & Wildlife Act 1975', 23 March 2012, available at <http://www.edovic.org.au/law-reform/major-reports/wheres-the-guarantee>.

³ See Victorian Forest Alliance, 'Choosing a Future for Victoria's Forests', June 2006 and National Institute of Economic and Industry Research, 'Opportunities, issues and implications for a transition of the Victorian wood produces industry from native forests to plantations', prepared for the Australian Conservation Foundation and The Wilderness Society, 2010.

environmental and economic conflicts involved in native forest logging, and instead entrenches these conflicts for the foreseeable future.

Recommendations

- Address, as a matter of priority, the long-standing failures of environmental protection that apply to logging.
- Appoint an independent expert to investigate opportunities to transition beneficially out of native forest logging, building on the work already done by environment groups.

Conclusion

The approach to amending the *Sustainable Forests (Timber) Act 2004* demonstrated by the Draft Review Report is industry-focused and does not in any meaningful way acknowledge that native forest logging is an inherently environmentally damaging activity. There is very little recognition of the social and environmental impacts of logging in the Draft Report, nor or less an attempt to balance regulation and monitoring of these impacts with improved efficiency for the forestry industry. This must be rectified in the Final Review Report.

Further, the approach ignores the Victorian community's expectation that public land will be managed with the wider public interest in mind. The drastic reduction in governmental oversight of VicForests' logging practices proposed in the Draft report is a worrying departure from this expectation, and moves away from the key principles underpinning sustainable forest management. This also must be addressed in the Final Review Report and any subsequent proposed legislative amendments.

EDO would be please to discuss the contents of this submission at any time, and requests to be consulted in the future with regard to this review process.