

24 April 2025

Great Outdoors Taskforce

By email only: greatoutdoorstaskforce@deeca.vic.gov.au

Dear Great Outdoors Taskforce,

Response to Request – Detail of Legislative Reforms to action the End of Native Forest Logging Commitment

1. We understand that the Great Outdoors Taskforce (**GOT**) is due to report to the Victorian Government in May 2025 on its recommendations as to the future use and management of 1.5 million hectares of state forest in Victoria's North East, Gippsland and East Gippsland (excluding the Central Highlands Eminent Panel for Community Engagement area) which was previously managed for timber production.
2. On 21 January 2025, Environmental Justice Australia (**EJA**) made a submission to the GOT in response to its call for public submissions (**EJA Submission**). Part F of this submission provided detail on what legislative reform is required for the law to properly reflect the Victorian Government's commitment to end native forest logging on public land, and to safeguard against threats posed by future extractive industries.
3. On 17 February 2025, the GOT requested that EJA provide further information to the GOT on the detail of these required legislative reforms.
4. The purpose of this letter is to respond to this request, and to assist and inform the GOT's assessment and understanding of legislative amendments that would go some way to meeting the Government's commitment to end native forest logging on public land in Victoria by safeguarding against the revival of a commercial native timber harvesting industry under the current legal framework.
5. These legislative amendments are proposed in the context of the Victorian Government having committed \$1.5 billion in public funds to support the transition away from native forest logging,¹ and would facilitate the use and management of State forests for other purposes.

¹ Public Accounts and Estimates Committee, Parliament of Victoria, *Inquiry into the 2024–25 Budget Estimates*, 17 May 2024, 3
<<https://www.parliament.vic.gov.au/495dbd/contentassets/9c816d1bca574f91a30f5a97b1fb703f/paec-2024-25-budget-estimates-agriculture-17-may-.pdf>>.

6. This letter is structured as follows:
 - A. Legislating an end to commercial native forest logging
 - B. Improving independent oversight and regulation
 - C. Updating purposes to enable proper management and reflect renewed priorities
7. At the end of each section, specific amendments are proposed to achieve the aims and objectives set out in that section.
8. For completeness, we note that, in a complimentary GOT submission, EJA also contributed to an ecologically robust reserve proposal for eastern Victoria which we believe will help fulfil the Government's commitment to "deliver the largest expansion to our public forests reserve system in our state's history".²

Scope of reforms

9. The legislative reforms detailed in this letter are aimed at achieving the following objectives:
 - (a) Amending current legislation to properly support and implement an end to commercial native forest logging on public land in Victoria.
 - (b) Ensuring independent oversight and regulation of fire management operations and improving outcomes for biodiversity in areas where these operations occur.
 - (c) Revising the purposes and objectives in legislation to reflect the intended future uses of public land (i.e. conservation, recreation and tourism).
10. For completeness, we note that:
 - (a) native forest logging on private land in Victoria is continuing under a different legal framework.³ In line with the GOT's Terms of Reference, this letter deals with public land only.
 - (b) this letter does not extend to provisions that currently enable the removal and use of wood from public land for non-commercial domestic firewood. However, the Victorian Government may consider reintroducing a permit system⁴ to improve oversight and regulation and ensure firewood continues to be made available to local communities for domestic use.
 - (c) this letter does not propose amendments to address the views of Traditional Owners, as this detail is outside of EJA's knowledge and expertise. EJA reiterates its submission⁵ that Traditional Owner views must be at the centre of recommendations made by the GOT.
11. Further, we understand that it is outside the scope of the GOT's mandate to make recommendations on "planned burns or other mechanical bushfire risk reduction treatments in

² Premier of Victoria, 'Delivering Certainty for Timber Workers' (Media Release, 23 May 2023).

³ See Victorian National Parks Association, 'Native forest logging loophole puts wildlife at risk' (Media Release, 28 February 2025) <<https://vnpa.org.au/native-forest-logging-loophole-puts-wildlife-at-risk/#:~:text=A%20loophole%20in%20Victoria's%20planning,to%20citizen%20scientists%20and%20conservationists>>.

⁴ This system was abolished in 2011 by the *Forests Amendment Act 2012* (Vic). See Adam Morton, 'Firewood fee given the chop', *The Age* (online, 1 September 2011) <<https://www.theage.com.au/national/victoria/firewood-fee-given-the-chop-20110831-1jm2i.html>>.

⁵ EJA Submission, Part C.

this process”.⁶ We note that subsection 62(2) of the *Forests Act 1958* (Vic) (**Forests Act**) empowers the Secretary to carry out these works “despite anything to the contrary in any other Act or law”. Accordingly, the amendments proposed in this letter do not disturb the Secretary’s power to carry out necessary works for the immediate prevention and suppression of fire, and planned prevention of fire, however some additional environmental protections are recommended to improve outcomes for biodiversity on public land in the process.

Limitations of this letter

12. This letter is not legal advice and should not be relied upon as legal advice. It is provided as detailed supplementary information to the EJA submission, to inform the GOT and requisite parliamentary drafting processes.
13. We understand that there are a number of processes currently underway that will, or are likely to, impact the legal framework that applies to the management of public land in Victoria. For example:
 - (a) The Victorian Government is currently developing a new Public Land Act with a view to modernising the legal framework to reflect contemporary views and values and adequately support efficient and effective public land management.⁷ It is understood that the Victorian Government is proposing to replace three existing Crown Land Acts, namely, the *Crown Land (Reserves) Act 1978* (Vic), *Forests Act* and *Land Act 1958* (Vic), with the new Public Land Act, which is intended to operate alongside a modernised *National Parks Act 1975* (Vic).⁸ In relation to parks, however, the Government has stated that “there will be no changes to the permitted uses and levels of protection currently afforded to land managed under the National Parks Act.”⁹
 - (b) Treaty negotiations are underway with Victorian Traditional Owners, with a clear intention to keep everything on the table.¹⁰
14. Accordingly, the recommendations below are based on information that is currently publicly available and legislation that is in force as at the date of this letter.
15. Further legislative amendments may be required to comprehensively remove any references to the sections or subsections that are proposed to be repealed or amended in this letter. We understand that Parliamentary drafters would be best placed to undertake appropriate checks to ensure that provisions that no longer have work to do following any proposed amendments are not retained in legislation.

Background

16. The current legal framework that applies to land management in Victoria is outdated. The Victorian Government has acknowledged that the current framework is not fit-for-purpose.¹¹ Existing legislation was drafted with an aim to facilitate extractive industry, rather than enhance conservation, recreation and tourism opportunities. Whilst outside the scope of the reforms

⁶ ‘The Future of Victoria’s State Forests’, *Engage Victoria* (Web Page) [13] <<https://engage.vic.gov.au/project/the-future-of-state-forests/page/message-from-the-great-outdoors-taskforce>>.

⁷ ‘Renewing Victoria’s Public Land Legislation’, *Engage Victoria* (Web Page) [1] <<https://engage.vic.gov.au/renewing-victorias-public-land-legislation>>.

⁸ ‘Renewing Victoria’s Public Land Legislation’, *Engage Victoria* (Web Page) <<https://engage.vic.gov.au/renewing-victorias-public-land-legislation>>.

⁹ DEECA, *Realising the value of Victoria’s public land* (Report, 2021).

¹⁰ First Peoples’ Assembly of Victoria, *Annual Report 2021* (Report, 2021) 27.

¹¹ ‘Renewing Victoria’s Public Land Legislation’, *Engage Victoria* (Web Page) [5] <<https://engage.vic.gov.au/renewing-victorias-public-land-legislation>>.

considered in this letter, it is noted for completeness that existing land management legislation was also not drafted with adequate recognition of Traditional Owner rights.

17. In May 2023, the Victorian Government announced the cessation of native forest logging in Victoria from 1 January 2024.¹²
18. Prior to its repeal via the passing of the *Sustainable Forests (Timber) Repeal Bill 2024* (Vic) (**SFT Bill**) in June 2024, the *Sustainable Forests (Timber) Act 2004* (Vic) (**SFT Act**) contained the legal framework that facilitated commercial logging in Victorian State forests. Under that Act, property in timber passed from the Crown to State-owned logging agency, VicForests, via an 'Allocation Order'.
19. In areas outside of the Allocation Order, property in timber passed from the Crown in accordance with licences (called Forest Produce Licences (**FPLs**)) granted under the Forests Act. In February 2024, the Victorian Government announced that existing FPLs would end on 30 June 2024.¹³
20. On 1 January 2025, the Victorian Regional Forest Agreements (**RFAs**) were terminated. The Victorian Government announced that "[i]n concluding the Victorian RFAs, Victoria will join South Australia and Queensland, who support successful plantation and other fibre industries without a similar agreement."¹⁴ In line with these commitments, it is necessary that the legislative framework provides clarity and certainty in its support of a plantation-based industry.
21. The repeal of the SFT Act (and complementary amendments set out in the SFT Bill) started the process of removing the infrastructure from Victoria's legislation that enabled commercial logging in State forests. However, further amendments are needed to properly codify the Government's commitment to end native forest logging on public land in Victoria, safeguard against threats posed by future extractive industries and reflect the renewed purposes of land management.
22. As noted in the EJA Submission,¹⁵ additional (unpassed) amendments tabled by the Victorian Greens prior to the SFT Bill's passing included examples of provisions that could be introduced or altered to remove these remaining so-called "loopholes".¹⁶

A. Legislating an end to commercial native forest logging

Relevant legislation

23. In order to properly reflect the Government's commitment to end native forest logging, it is necessary to:
 - (a) **Amend** the following legislation:

¹² Premier of Victoria, 'Delivering Certainty for Timber Workers' (Media Release, 23 May 2023).

¹³ See Rochelle Kirkham, 'VicForests Cites Litigation Risk as Reason to End Community Forestry', *Newspaper* (online, 5 February 2024) <<https://www.abc.net.au/news/2024-02-05/vicforests-ends-community-forestry-operations-western-victoria/103418630>>. See also 'Forestry in Victoria', *Department of Energy, Environment and Climate Action* (Web Page) <<https://www.deeca.vic.gov.au/forestry/forestry-in-victoria#:~:text=Commercial%20native%20timber%20harvesting%20in,transferred%20to%20the%20Victorian%20Government>>.

¹⁴ 'Victorian Regional Forest Agreements', *Department of Energy, Environment and Climate Action* (Web Page) [4] <<https://www.deeca.vic.gov.au/futureforests/what-were-doing/victorian-regional-forest-agreements>>.

¹⁵ At [59].

¹⁶ *Sustainable Forests (Timber) Repeal Bill 2024* (Vic), Amendments and New Clauses to be Proposed in Committee by Sarah Mansfield <<https://www.legislation.vic.gov.au/sites/default/files/2024-06/Mansfield-SMA17C.pdf>>.

- (i) **Forests Act** and **Forests (Licences and Permits) Regulations 2019 (Vic) (Forests (Licences and Permits) Regulations)**.
 - (ii) **National Parks Act 1975 (Vic) (National Parks Act)** and the **National Parks Regulations 2013 (Vic) (National Parks Regulations)**.
- (b) **Repeal** the following legislation:
- (i) **Forests (Wood Pulp Agreement) Act 1996 (Vic) (Wood Pulp Agreement)**.
24. It would be appropriate for amendments to the Forests Act, Forest Regulations (Licences and Permits), National Parks Act and National Park Regulations to be dealt with in one proposed Bill.
25. As noted below, the Victorian Government may be required to take additional steps in order to terminate the Wood Pulp Agreement and repeal the Act accordingly.

Forests Act

26. Subsection 7(1) of the Forests Act provides that, despite the *Mineral Resources (Sustainable Development) Act 1990* or any licence, right or authority under that Act, no person shall cut or remove any timber or forest produce in any State forest except in accordance with the regulations under this Act.
27. As noted in the EJA Submission,¹⁷ s 52 of the Forests Act provides a mechanism to permit logging on public land (in reserved and protected forests) via the grant of Forest Produce Licences (**FPLs**) at the discretion of the Victorian Minister for Agriculture.¹⁸
28. Prior to its closure, VicForests was vested with powers to issue and administer FPLs via a delegation from the Minister. VicForests referred to timber harvesting operations undertaken under a FPL as ‘community forestry operations’.¹⁹
29. “Forest produce” is defined in the Act to mean:
- (a) all parts of trees or plants, including any parts below the ground;
 - (b) the products of trees or plants, whether or not those products have become separated from those trees or plants prior to being harvested and includes—
 - (i) honey;
 - (ii) beeswax;
 - (iii) oil distilled from any species of eucalypt;
 - (iv) firewood;
 - (c) stone, gravel, limestone, lime, salt, sand, loam, clay or brick-earth— but does not include—
 - (d) gold, silver, metals or minerals.
30. Section 52, in its current form, is broad and there is no legislative barrier that would prevent the Minister from granting FPLs to applicants for the purposes of conducting large-scale timber harvesting operations in protected and reserved forests. Prior to 2004, the issue of FPLs was the main mechanism facilitating timber harvesting in Victoria.²⁰

¹⁷ At [61].

¹⁸ Sub-ss (1A), (1B). See also *Wombat Forestcare Inc v VicForests* [2023] VSC 582 [5].

¹⁹ Ibid.

²⁰ Heather McRae, *Forest History in Victoria: A Guide to Government Records 1836-1994* (Report, 1999) 9 <<https://www.victoriasforestryheritage.org.au/images/records/forestrecordsinvictoria.pdf>>.

31. In the Second Reading Speech to the SFT Bill, the Minister relevantly stated:²¹

“Section 52 of the Forests Act 1958 allows relevant Ministers to issue permits and licences for activities in State forests. Those licences can be issued to support a broad range of activities including cutting and removing timber. However, they are also issued to support access to a range of other forest products, including grass trees, eucalyptus leaves, soil and rock. They also support important seed collection for revegetation purposes and forest research activities.”

32. Specific amendments to current legislation that would effectively eliminate the availability of FPLs to facilitate commercial logging in reserved and protected forests, as defined in the Act, are set out below. The amendments would not disturb the ability of the Minister to grant FPLs for other purposes, described above however, ultimately, it would be appropriate for these licences to be dealt with separately under legislation, according to their purpose.
33. It is noted that this would require additional, complementary amendments to be made to the Forests Act and Forests (Licences and Permits) Regulations, which are also set out below, including the introduction of appropriate offence provisions.
34. For example, the Forests Act and *Crown Lands (Reserves) Act 1978* (Vic) include offences²² of selling fallen or felled trees that have been cut and taken away in firewood collection areas²³. It is appropriate for a similar offence to be introduced into the Forests Act to extend this to fallen or felled trees that a person has cut and taken away in State forest.
35. Further, the powers conferred on the Secretary to DEECA under ss 18AA and 21(1) Forests Act to permit and engage in the take, sale and conversion of timber in State forest would no longer be relevant. These subsections should be removed or amended accordingly to properly reflect the future intended uses of this land.
36. Finally, we note that many areas of State forest that were previously logged have failed to regenerate under the current legal framework.²⁴ To ensure that restoration is prioritised over commercial interests, the Victorian Government may consider introducing a new section in the Forests Act modelled on s 19(1AA) of the *Forests Practices Act 1985* (Tas) to expressly restrict the clearance and conversion of native forest on public land to single-species plantations.

National Parks Act

37. Section 44A of the National Parks Act provides that it is an offence to cut or take away fallen or felled trees in a park²⁵, unless in accordance with a lease, licence, permit or authorisation held by the person under this Act or any other Act.²⁶
38. Further, regulation 48 of the National Parks Regulations provides that a person must not cut, fell, pick, remove, take, damage or destroy any vegetation in a park. ‘Vegetation’ means any alga,

²¹ Victoria, *Parliamentary Debates*, Legislative Council, 30 May 2024 [21] (The Hon. Lizzie Blandthorn).

²² See *Forests Act 1958* (Vic) s 57ZC. See also *Crown Land (Reserves) Act 1978* (Vic) s 21W.

²³ ‘firewood collection area’ is a defined term in each of the *Crown Land (Reserves) Act 1978* (Vic) and *Forests Act 1958* (Vic).

²⁴ Margaret Blakers, *After the logging* (Report, November 2021) 8, 14; Michael Slezak and Mark Doman, ‘The Disappearing Forests’ ABC News (online, 30 November 2021) <<https://www.abc.net.au/news/2021-11-30/vicforests-accused-of-failing-to-regenerate-logged-forests/100652148>>.

²⁵ Park is defined broadly, as a national park, State park, marine national park, marine sanctuary, landscape conservation area or land that by reason of ss 17A or 18 of that Act, is a park for the purposes of the Act.

²⁶ *National Parks Act 1975* (Vic) s 44A(3)(a).

fungus or flora or part of an alga, fungus or flora, in any stage of biological development and whether alive or dead.

39. It would be appropriate to amend s 44A to explicitly prohibit the sale of timber taken from a national park by inserting a new subsection to this effect, as set out below.

Wood Pulp Agreement Act

40. The Wood Pulp Agreement Act is a contract between the State of Victoria and the paper manufacturing company Australia Paper Pty Ltd (Opal Australian Paper) for the supply of pulpwood from native forests on public land.²⁷
41. The closure of the State's commercial native forest logging industry on public land means that this Agreement is redundant, and it would be appropriate therefore for the Victorian government to terminate the Agreement and repeal the Act in its entirety.
42. We note that, in May 2023, The Wilderness Society Inc obtained advice from Victorian counsel to the effect that the Victorian Government could rely on the force majeure clause²⁸ in the Wood Pulp Agreement to terminate the contract.²⁹ Specifically, that advice suggested that ongoing supply issues, failures to protect endangered species and damage from bushfires in 2009 and 2019-20 could meet the evidentiary threshold to trigger the force majeure clause without penalty earlier than 2030.³⁰

Required amendments

43. In order to implement the changes suggested above, the below amendments are proposed.

FORESTS ACT 1958 - SECT 18AA

Responsibilities of the Secretary in State forest that is Parks Victoria recorded land or land managed by Great Ocean Road Coast and Parks Authority

Despite any other provision of this Act, the Secretary has responsibility for the following matters in any State forest that is Parks Victoria recorded land or land controlled and managed by the Great Ocean Road Coast and Parks Authority—

- (a) all matters relating to fire;
- (b) ~~timber harvesting and~~ the cutting or taking away of fallen or felled trees for domestic use as firewood or for any other purpose;
- (c) the power to enter into an agreement under section 28.

²⁷ We note that, in April 2023, Opal announced its decision to cease manufacturing white pulp and paper at the Maryvale Mill in Victoria due to its inability to source viable alternative wood supplies to replace the shortfall from VicForests: Opal, 'Opal Australian Paper Maryvale Mill supply update (Media Release, 3 April 2023) <<https://opalan.z.com/news/opal-australian-paper-maryvale-mill-supply-update/>>.

²⁸ CI 32.

²⁹ See Annika Smethurst, 'The Legal Manoeuvre Activists Hope Will Trigger an Early End to Native Forest Logging', *Newspaper* (online, 19 May 2023) <<https://www.smh.com.au/politics/victoria/the-legal-manoeuve-activists-hope-will-trigger-an-early-end-to-native-forest-logging-20230519-p5d9o5.html>>. See also Wilderness Society, 'Pulp the Pulp Contract, Not Victoria's Native Forests' (Media Release, 19 May 2023).

³⁰ Ibid.

FORESTS ACT 1958 - SECT 18A

Secretary and Parks Victoria to manage reserve land

(1) Where any land temporarily or permanently reserved under section 4 of the **Crown Land (Reserves) Act 1978** is placed under the control and management of the Secretary pursuant to section 18(1) of that Act the Secretary shall control manage and use the land for the purposes for which it is reserved.

(1A) The Secretary must control, manage and use land placed under the control and management of the Secretary under section 18(1B) of the **Crown Land (Reserves) Act 1978** for the purposes for which it is reserved.

(1B) Parks Victoria must control, manage and use land placed under the control and management of Parks Victoria under section 18(1B) of the **Crown Land (Reserves) Act 1978** for the purposes for which it is reserved.

(2) Subject to this section—

- (a) the provisions of this Act, other than sections 42(6), 42(8), 47 and 49; and
- (b) any regulations applying to and in relation to reserved forests generally—

shall apply to and in relation to the land under the control and management of the Secretary under subsection (1) as if the land were reserved forest.

(2A) Subject to this section—

- (a) the provisions of—
 - (i) this Act, other than sections 42(6), 42(8), 47 and 49; and
 - (ii) the **Safety on Public Land Act 2004**; and
- (b) any regulations made under those provisions of those Acts and any regulations applying to and in relation to reserved forest generally—

apply to and in relation to the land to which subsection (1A) or (1B) applies as if the land were reserved forest and as if the land has been set aside and declared to be a forest park under section 50.

(3) Section 51 applies to—

- (a) any land to which subsection (1) applies as if section 51 authorises the granting of a lease for the use of a kiosk, cafe or store or for scientific research or for a ski tow but for no other purpose; and
- (b) any land to which subsection (1A) or (1B) applies as if section 51 authorises the granting of a lease for any purpose that is not detrimental to the purpose for which the land is reserved.

~~(3A) Section 52 applies to the land to which subsection (1A) or (1B) applies as if section 52 does not authorise the granting of a licence under section 52(1A)(d), (e), (f) or (g) for the purposes of sawlog or pulpwood production.~~

~~(3B) Section 21 applies to the land to which subsection (1A) or (1B) applies as if section 21 does not authorise the Secretary to exercise any of the Secretary's powers under section 21(1)(a), (b), (c) or (d) for the purposes of sawlog or pulpwood production.~~

(4) Notwithstanding subsections (1) and (2), where land is subject to an accepted recommendation the Secretary may give effect to the recommendation even if the recommendation conflicts with the purpose for which the land is reserved.

FORESTS ACT 1958 - SECT 21

Special powers of Secretary and Parks Victoria

(1) Subject to this Act the Secretary may—

- (a) permit the taking or converting of ~~any timber or other~~ forest produce in any State forest at not less than such minimum rates or amounts as are prescribed by or under this Act;
- ~~(b) take and sell any timber or forest produce in any State forest;~~
- ~~(c) convert any such timber into logs sawn timber or merchantable articles and sell the same;~~
- ~~(d) convert any such forest produce into merchantable articles and sell the same;~~
- (e) construct and maintain roads tracks and tramways and other works for the transport of plantation timber, forest produce and merchantable articles and purchase tramways and other works for such purposes and operate tramways or works so constructed or purchased and purchase rent or charter and use vehicles and vessels with the necessary motive power;
- (f) construct purchase or rent and operate sawmills and other mills and kilns and depots for seasoning plantation timber and purchase or rent machinery and plant for the purposes of this section; and
- (g) purchase cattle and depasture them on State forests and sell such cattle.

[...]

Insert –

'plantation timber' means timber taken from managed stands of trees of either native or exotic species, planted or sown primarily for timber harvesting operation purposes.

FORESTS ACT 1958 - SECT 52

Licences and permits with respect to forests

(1) The Minister may grant a licence or permit for a term of not more than 20 years, subject to any covenants, terms and conditions that may be prescribed, any additional covenants, terms and conditions that the Minister considers appropriate to impose in a particular case, and the payment of any rent, fees, royalties or charges that the Minister may determine.

(1AA) The Minister must consider any prescribed matters before granting a licence or permit under this section.

(1A) ~~Subject to subsection (1BA), a~~ A licence or permit granted under this section in respect of Crown land in a reserved forest may only be for any one or more of the following purposes that is specified in the licence or permit—

- (a) to graze cattle;
- (b) to graze cattle under agistment;
- ~~(c) to occupy an area of not more than 2000 hectares for the exclusive cutting of timber;~~
- ~~(d) to thin, cut and remove timber;~~
- (e) to cut forest produce specified in the licence or permit;
- (f) to dig forest produce specified in the licence or permit;
- (g) subject to paragraph (i), to take away forest produce specified in the licence or permit;
- (h) to occupy for residence an area of not more than 0.4 hectares;
- (i) any purpose for which a licence may be granted under Subdivision 2 of Division 9 of Part I of the Land Act 1958, except a bee site licence within the meaning of that Act;

- (j) any other non-commercial purpose whatever relating to or connected with a state forest or forest produce.

~~(1B) A licence or permit granted under this section to enter protected forest may be for any one or more of the following purposes that is specified in the licence or permit—~~

- ~~(a) to cut forest produce specified in the licence or permit;~~
~~(b) to dig forest produce specified in the licence or permit;~~
~~(c) to take away forest produce specified in the licence or permit.~~

Insert new subsection (1BA) –

(1BA) For the avoidance of any doubt, nothing in this section permits the Minister to grant a licence to conduct commercial harvesting of timber in connection with a timber harvesting operation.

(1C) A licence or permit granted under this section to enter land set aside in section 50(1), may be for any one or more of the following purposes that is specified in the licence or permit—

- (a) to provide accommodation;
(b) to store goods and liquid fuels;
(c) to sell goods and liquid fuels;
(d) to erect ski lifts;
(e) to operate ski lifts;
(f) to provide any other facility or service which the Minister considers appropriate.

(1D) A licence or permit to which subsection (1C) applies must not be for an area of more than 1.25 hectares unless the Minister has approved the granting of the licence or permit for a greater area.

(3) No permit or licence granted under this Act shall be transferable except with the authority in writing of the Minister.

(4) Any holder of a licence or permit granted under this section who fails to comply with the prescribed covenants terms and conditions relating to his licence or permit shall be guilty of an offence against this Act.

(5) The Minister may suspend or cancel any licence or permit where the holder of the licence or permit has failed to comply with a prescribed covenant, term or condition of the licence or permit or any covenant, term or condition imposed by the Minister on the licence or permit.

Insert –

'timber harvesting operation' means any of the following kinds of activities carried out by any person or body for the purposes of sale or processing and sale —

- (a) felling or cutting of trees or parts of trees;
(b) taking or removing timber;
(c) delivering timber to a buyer or transporting timber to a place for collection by a buyer or sale to a buyer;
(d) any works, including road works, site preparation, planting and regeneration, ancillary to any of the activities referred to in paragraphs (a) to (c)—
but does not include—
(e) the collection or production of firewood for domestic use.

FORESTS ACT 1958 - SECT 53

Power to submit certain leases licences or permits to auction or tender

(1) Before any lease under section 51 or any licence or permit under section 52 is granted, the right to such lease, if the land manager so recommends, or (as the case may be) the right to such licence or permit may be offered, subject to the regulations, for sale by auction or by tender and the rental of the said lease and the royalties dues or charges payable with respect to forest produce by the holder of the said lease licence or permit shall in that case be fixed thereby.

~~(2) For the purposes of this Act royalty on timber may be assessed, as the Secretary considers appropriate, on timber standing or in the log or on the quantity of merchantable timber produced after conversion from the log.~~

~~(3) The contents of timber cut for milling purposes and measured in the log shall be calculated on the quarter girth system or such other system as is prescribed.~~

FORESTS ACT 1958 - SECT 54

Lease etc. with respect to timber to contain condition as to insurance against loss by fire

~~[REPEAL]~~

FORESTS ACT 1958 - SECT 96AA

Offence to cut etc. timber in a State forest

(1) A person must not cut, split, fell, obtain, remove or take any timber in a State forest, except as set out in subsection (2).

Penalty: 50 penalty units or imprisonment for 1 year or both.

Note

A person involved in the commission of an offence may be taken to have committed that offence: see section 324 of the **Crimes Act 1958**.

(1A) A person must not cut, split, fell, obtain, remove or take any timber in a State forest for the primary purpose of the sale or the processing and sale of the timber., ~~except as set out in subsection (2)(a) or (b).~~

Penalty: In the case of a natural person, 120 penalty units; In the case of a body corporate, 600 penalty units.

Note

A person involved in the commission of an offence may be taken to have committed that offence: see section 324 of the **Crimes Act 1958**.

(2) A person may cut, split, fell, obtain, remove or take timber in a State forest in accordance with ~~one or more of the following—~~

~~(a) a lease, licence, permit or authorisation made, issued, granted or otherwise provided for under this or any other Act;~~

~~(b) the regulations or regulations made under any other Act;~~

~~(e) the provisions of this Act relating to the collection of firewood for domestic use (sections 57O to 57ZF).~~

(3) Subsections (1) and (1A) apply to any timber in a State forest whether or not that timber is owned by or vested in the Crown.

(3A) A proceeding for an offence against subsection (1A) may be commenced not later than 3 years after the date on which the offence is alleged to have been committed.

Insert new section 96AB –

FORESTS ACT - SECT 96AB

Offence to sell fallen or felled trees

(1) A person must not sell fallen or felled trees that the person has cut and taken away in a State forest.

Penalty: [INSERT]

FORESTS (LICENCES AND PERMITS) REGULATIONS 2019 (SR NO 130 OF 2019) - REG 10

Conditions of licences and permits to cut, dig or take away forest produce

[REPEAL]

FORESTS (LICENCES AND PERMITS) REGULATIONS 2019 (SR NO 130 OF 2019) - REG 11

Conditions of licences and permits to cut and take away forest produce

[REPEAL]

FORESTS (LICENCES AND PERMITS) REGULATIONS 2019 (SR NO 130 OF 2019) - REG 12

Declarations permitting holders of licences or permits to cut, dig or take away forest produce

[REPEAL]

FORESTS (LICENCES AND PERMITS) REGULATIONS 2019 (SR NO 130 OF 2019) - REG 17

[REPEAL]

NATIONAL PARKS ACT 1975 - SECT 44A

Offence to cut or take away fallen or felled trees

(1) A person must not, in a park, cut or take away 2 cubic metres or less of fallen or felled trees.

Penalty: 20 penalty units.

(2) A person must not, in a park, cut or take away more than 2 cubic metres of fallen or felled trees.

Penalty: 50 penalty units or imprisonment for 1 year or both.

(3) Subsections (1) and (2) do not apply to a person who—

- (a) cuts or takes away fallen or felled trees in a park in accordance with a lease, licence, permit or authorisation held by the person under this Act or any other Act; or
- (b) cuts or takes away fallen or felled trees in a park in accordance with the regulations or regulations under any other Act.

(3A) A person must not sell fallen or felled trees that the person has cut and taken away in a park.

Penalty: [INSERT]

(4) In this section—

"fallen or felled trees" includes parts of fallen or felled trees;

"tree" or trees has the same meaning as in section 3(1) of the Forests Act 1958.

B. Improving independent oversight and regulation

- 44. The Department of Energy, Environment and Climate Action³¹ (**DEECA**) was responsible for enforcing VicForests' compliance with the timber harvesting regulatory scheme and held the public functions and duties necessary to ensure timber harvesting operations in Victoria's State forests complied with key environment laws.
- 45. The Timber Harvesting Compliance Unit (**THCU**) is an administrative division of DEECA which receives and investigates allegations of unlawful logging. The THCU sits within the Office of the Conservation Regulator (**OCR**), which in turn sits within DEECA's Bushfire and Forest Services division. The OCR is led by the Chief Conservation Regulator. The OCR and THCU exercise, on behalf of the Secretary to DEECA, some of DEECA's regulatory powers - including its timber harvesting regulatory responsibilities. Accordingly, the THCU was responsible for regulating VicForests' operations.
- 46. The OCR was established by DEECA in early 2019 in response to an independent review of timber harvesting regulation in Victoria's public native forests which found that DEECA was 'neither an effective or respected regulator'.³² The Government's intent in creating the OCR was to house DEECA's various regulatory responsibilities in a single division of the Department in order to attempt to improve its practices.³³
- 47. As noted in the EJA Submission,³⁴ the OCR is not vested with powers to regulate fire management operations conducted by Forest Fire Management Victoria (**FFMV**), as they sit within the same division in DEECA, and there is no separate regulator or regulatory body overseeing these works.
- 48. It would be appropriate, therefore, for the OCR, or a similar body vested with regulatory powers, to be housed within another government department or agency, for example, the Environmental Protection Agency (**EPA**) or Department of Justice, to ensure independence and proper oversight of these fire management operations.

³¹ Formerly, the Department of Environment, Land, Water and Planning (**DELWP**).

³² 'Independent Review of Timber Harvesting Regulation', Panel Report to the Secretary of the Department of Environment, Land, Water and Planning (24 October 2018) 3.

³³ Department of Environment, Land, Water and Planning, 'Response to the Independent Review of Timber Harvesting Regulation' (March 2019) 4.

³⁴ At [68], [73].

49. We refer to proposed amendments to the SFT Bill to amend s 62C Forests Act tabled by the Victorian Greens that were aimed at achieving this objective.³⁵ These amendments are set out below.
50. Further, to enhance the protection of biodiversity on public land, it would be appropriate for the management prescriptions that previously applied to timber harvesting operations in State forests to apply to fire management works undertaken pursuant to s 62 Forests Act by the Chief Fire Officer under a delegation from the Secretary DEECA. Specifically, the prescriptions set out in Chapter 2 of the Timber Production Code, including the precautionary principle (clause 2.2.2.2), and Schedule 1: Management Standards and Procedures should apply to fire management operations.
51. It is likely that the simplest way to achieve this outcome would be to insert these provisions into the Code of Practice for Bushfire Management (2012) (amended 2022)³⁶ (**Bushfire Code**) and make appropriate legislative amendments to ensure these obligations are given legal effect.
52. The Bushfire Code is a Code of Practice made by the Victorian Minister for Environment under Part 5 of the *Conservation, Forests and Land Act 1987* (Vic) (**CFL Act**) and administered by DEECA. The Code contains objectives for bushfire management on public land, including national parks, states forests and protected public land, across Victoria; it does not prescribe the operational detail for the achievement of bushfire management outcomes and objectives.³⁷
53. Section 39 of the CFL Act provides that compliance with a Code of Practice is not required unless it is incorporated in or adopted by a relevant law, or by a condition specified in an authority given under a relevant law.
54. Accordingly, if prescriptions from Chapter 2 of the Timber Production Code were inserted into the Bushfire Code, legislative amendments are proposed to give legal effect to those obligations.

Proposed amendments

55. In order to implement the changes suggested above, the below amendments are proposed. For completeness, it is noted that para 51 above indicates that amendments are required to the Bushfire Code. These would not be done by legislative amendment but by the Minister releasing an updated Bushfire Code pursuant to s 32 CFL Act. For completeness, we note that the Bushfire Code is currently under review and an updated Code is due to be published this year.³⁸ It would be useful for the GOT to make recommendations that could inform and guide this process. The detail required in amendments is set out above.

FORESTS ACT 1958 - SECT 62

Declaration of protected public lands

(1) On the recommendation of the Minister the Governor in Council may by Order published in the Government Gazette declare any lands of the Crown not being within a State

³⁵ Sustainable Forests (Timber) Repeal Bill 2024 (Vic), Amendments and New Clauses to be Proposed in Committee by Sarah Mansfield <<https://www.legislation.vic.gov.au/sites/default/files/2024-06/Mansfield-SMA17C.pdf>>.

³⁶ Department of Environment, Land, Water and Planning, 'Code of Practice for Bushfire Management on Public Land (2012) (amended 2022)' (2022).

³⁷ See *Save Our Strathbogie Forests Inc v Secretary to the Department of Energy, Environment and Climate Action* [2024] FCA 317 [61].

³⁸ 'Updating the Code of Practice for Bushfire Management on Public Land', *Engage Victoria* (Web Page) <<https://engage.vic.gov.au/code-of-practice-for-bushfire-management-on-public-land>>.

forest or a national park to be protected public land and may by the like Order revoke or vary any Order so made.

(1A) Where—

- (b) the land is being managed by Parks Victoria or the Great Ocean Road Coast and Parks Authority pursuant to an agreement under section 19A or 19C of the National Parks Act 1975 , the land shall be deemed to be protected public land;
- (c) the land is being managed by Parks Victoria or the Great Ocean Road Coast and Parks Authority pursuant to section 19AA, 19E or 32AA of the National Parks Act 1975 , the land shall be deemed to be protected public land for as long as Parks Victoria or the Great Ocean Road Coast and Parks Authority manages the land pursuant to section 19AA, 19E or 32AA (as the case requires);
- (d) the land is placed under the control and management of—
 - (i) Parks Victoria under section 18(1A) of the Crown Land (Reserves) Act 1978 for the purposes of section 19B of the National Parks Act 1975 ; or
 - (ii) (ii) the Secretary under section 18(1) or (1B) of the Crown Land (Reserves) Act 1978 for the purposes of section 18A of the Forests Act 1958 ; or
 - (iii) Parks Victoria or the Great Ocean Road Coast and Parks Authority under section 18(1B) of the Crown Land (Reserves) Act 1978 for the purposes of section 18A of the Forests Act 1958 —the land is taken to be protected public land;
- (e) the land is under the control and management of Alpine Resorts Victoria within the meaning of the Alpine Resorts (Management) Act 1997 , the land shall be deemed to be protected public land for so long as Alpine Resorts Victoria manages the land.

(2) Despite anything to the contrary in any other Act or law, the Secretary must carry out proper and sufficient work in State forests, national parks and on protected public land—

- (a) for the immediate prevention and suppression of fire; and
- (b) for the planned prevention of fire.

(3) The Secretary must not carry out work of a kind specified under subsection (2)(b) on protected public land not managed and controlled by the Secretary, unless the Secretary has consulted about the work proposed to be undertaken with the person or body responsible, under the Act under which the land is managed and controlled, for the management and control of the land.

(3A) In carrying out works under subsection (2)(b), the Secretary must comply with any relevant Code of Practice.

FORESTS ACT 1958 - SECT 62A

Secretary may apply and use fire for land and resource management

(1) Subject to this Act, the Secretary may, in a State forest or national park, or on protected public land, apply and use fire for the following purposes—

- (a) as part of silvicultural activities undertaken in the State forest or on protected public land;
- (b) to control pest animals and pest plants in the State forest, national park or on protected public land;

- (c) to maintain, manage, protect or enhance the ecology of, or land or vegetation in, the State forest, national park or on protected public land.
- (2) In applying and using fire in a State forest or national park, or on protected public land, the Secretary must ~~have regard to~~ comply with any relevant Code of Practice.

FORESTS ACT 1958 - SECT 62C

Secretary may enter into agreements and arrangements relating to the prevention and suppression of fires and recovery from fires

- (1) The Secretary may enter into an agreement or arrangement with any person or body in Victoria or elsewhere—
- (a) for assistance in the prevention and suppression of fire and recovery from fire;
 - (b) relating to research into the prevention and suppression of fire and recovery from fire;
 - (c) for training in relation to the prevention and suppression of fire and recovery from fire;
 - (d) for the supply of fire fighting equipment and apparatus and systems used in the prevention and suppression of fire and recovery from fire;
 - (e) for the provision by the Secretary of goods or services relating to the prevention and suppression of fire and recovery from fire.
- (2) The Secretary may enter into an agreement or arrangement with Fire Rescue Victoria to enable any specified person, in the circumstances specified in the agreement or arrangement—
- (a) to exercise under section 32B(3)(a), (c), (d) and (e) of the **Fire Rescue Victoria Act 1958** the powers of a senior member of the operational staff in relation to the scene of an alarm of fire in the Fire Rescue Victoria fire district, to the extent authorised by the agreement or arrangement; and
 - (b) to carry out activities relating to the exercise of powers under section 32B(3)(a), (c), (d) and (e) of the **Fire Rescue Victoria Act 1958** in the Fire Rescue Victoria fire district, to the extent authorised by the agreement or arrangement.
- (3) If the Secretary enters into an agreement or arrangement under subsection (2), each specified person, in the circumstances specified in the agreement or arrangement—
- (a) has and may exercise under section 32B(3)(a), (c), (d) and (e) of the **Fire Rescue Victoria Act 1958** the powers of a senior member of the operational staff in relation to the scene of an alarm of fire in the Fire Rescue Victoria fire district, to the extent authorised by the agreement or arrangement; and
 - (b) may carry out activities relating to the exercise of powers under section 32B(3)(a), (c), (d) and (e) of the **Fire Rescue Victoria Act 1958** in the Fire Rescue Victoria fire district, to the extent authorised by the agreement or arrangement.

Note

The effect of this subsection is that the powers that may be exercised and the activities that may be carried out by a specified person depend on the existence and terms of an agreement or arrangement under subsection (2).

- (3A) The Secretary must publish an agreement or arrangement entered into under subsection (2) on the Department's website.

After section 62C(3A) of the Forests Act 1958 insert—

"(3B) The Conservation Regulator of the Department of Energy, Environment and Climate Action, or the Environment Protection Authority, may investigate the ecological implications

of activities undertaken under an agreement or arrangement under subsection (1) or (2) and make appropriate recommendations to the Secretary about the activities.

(3C) A person must not sell, or offer for sale, any timber or forest produce that is cut in or removed from a State forest in undertaking an activity under an agreement or arrangement under subsection (1) or (2).

Penalty: [INSERT]"

Insert the following definition in section 62C(4) of the Forests Act 1958—

"Environment Protection Authority has the same meaning as Authority has in the Environment Protection Act 2017;

[...]"

C. Updating purposes to enable proper management and reflect renewed priorities

56. In its current form, the legal framework that applies to forest management is expressed in terms that are consistent with management for the purposes of extraction, rather than the enhancement of tourism, recreation and conservation. It is appropriate for legislative changes to be made to reflect the Victorian Government's commitment to manage forests for these purposes in the future.
57. Modern legislation commonly includes sections that deal with the purposes and objects of Acts to assist with statutory interpretation.³⁹ It would be appropriate for purposes and objects provisions to be inserted into existing legislation to direct a construction that would promote and facilitate the intended future uses of the land.⁴⁰
58. Examples of similar provisions in existing Victorian legislation include:
- (a) The *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**): The FFG Act includes sections that clearly set out the objectives⁴¹ and principles⁴² of that Act, in order to "guide the administration of the Act and direct decision makers to consider certain matters in exercising functions under the Act"⁴³. The FFG Act was amended in 2020 to strengthen and modernise the framework "in the face of existing and emerging threats such as climate change".⁴⁴ Amendments included updating the Act's objectives to place greater emphasis on prevention of harm and restoration.
 - (b) The *Water Act 1989* (Vic) (**Water Act**): The Water Act includes a section that sets out the purposes of that legislation.⁴⁵ In 2019, the Water Act was amended to provide for the implementation of actions set out in Victoria's strategic plan for the management of water resources in the context of climate change and a growing population.⁴⁶ The amendments

³⁹ Dennis Charles Pearce and Robert Stanley Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 6th ed, 2006) 154.

⁴⁰ In accordance with *Interpretation of Legislation Act 1984* (Vic) s 35.

⁴¹ *Flora and Fauna Guarantee Act 1988* (Vic) s 4.

⁴² *Flora and Fauna Guarantee Act 1988* (Vic) s 4A.

⁴³ Victoria, *Parliamentary Debates*, Legislative Assembly, 24 May 2018, pinpoint (Lily D'Ambrosio).

⁴⁴ Victoria, *Parliamentary Debates*, Legislative Assembly, 24 May 2018, pinpoint (Lily D'Ambrosio).

⁴⁵ *Water Act 1989* (Vic) s 1.

⁴⁶ Explanatory Memorandum, *Water and Catchment Legislation Amendment Bill 2019* (Vic).

included changes to the purposes of the Act in s 1 to align with the government's policy, 'Water for Victoria'.

59. The FFG Act goes further by conferring a duty on Ministers and public authorities to give proper consideration to the objectives and instruments made under that Act when exercising their public functions.⁴⁷ It would be appropriate for a similar duty to be inserted into the Forests Act, alongside any purposes and objects provisions, to ensure that public land is managed in accordance with intended future purposes and uses.
60. Additional amendments to the Forests Act would be required to confirm the renewed purposes for which public land is intended to be managed.
61. For example, the Secretary is empowered under s 22 of the Forests Act to prepare "working plans" for State forests.
62. "Working plan" is defined in s 3 of the Forests Act to mean "a detailed scheme for the control and regulation of the working of a forest or any part thereof and for ensuring the maintenance of a sustained yield of forest produce thereof."
63. As noted in the EJA Submission,⁴⁸ the reference to "sustained yield of forest produce" is obsolete following the end of native forest logging on public land in Victoria and the definition should be revised. Further, the term "working plan" contemplates management for the purposes of production or extraction and a different name – for example, "management plan" – and corresponding definition would be more aligned with the intended future uses of public land. Management plans should also be reviewed and updated regularly.
64. To ensure compliance, and for the avoidance of doubt, it would be appropriate for legislation to expressly state that the Secretary is required to implement and comply with a management plan. Similar wording is found in the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) in relation to recovery plans⁴⁹ and was found in the *Sustainable Forests (Timber) Act 2004* (Vic) in relation to the Code of Practice for Timber Production.⁵⁰
65. The content of Forest Management Plans (**FMPs**), which are "working plans" under the Act, should also be updated to reflect this revised purpose.
66. Currently, FMPs include the Forest Management Zoning Scheme (**FMZS**), which identifies three management zones within State forests:
 - (1) The Special Protection Zone (**SPZ**) which is managed for conservation and excludes timber harvesting.
 - (2) The Special Management Zone (**SMZ**) which is managed to conserve "specific features" while catering for timber production under certain conditions.
 - (3) The General Management Zone (**GMZ**) which is managed for a range of uses, with timber production as the main priority.

⁴⁷ *Flora and Fauna Guarantee Act 1988* (Vic) s 4B.

⁴⁸ At [64]-[66].

⁴⁹ *Environmental Protection and Biodiversity Conservation Act 1999* (Vic) s 269: requirement to "implement".

⁵⁰ *Sustainable Forests (Timber) Act 2004* (Vic) s 45: requirement to "comply".

67. The zoning scheme should be overhauled to reflect the intended future uses of public land – for example, ecological protection zones, heritage protection zones, general recreation zones, climate refuge zones or similar.
68. Finally, the definition of ‘State forest’ under the Act should be updated to align with the renewed non-extractive purposes and objects.

Proposed amendments

69. In order to implement the changes suggested above, the below amendments are proposed.
70. We note that have we recommended inserting new ‘purposes’ and ‘objects’ sections into the Forests Act, alongside a new duty on Ministers and public authorities, however we have not drafted these sections. The detail required in these amendments is set out in paras 56 to 60 above.
71. We have also not included proposed definitions of ‘State forest’ or ‘management plan’, to replace ‘working plan’, and refer instead to the detail in paras 62, 63 and 68 above.

FORESTS ACT 1958 - SECT 22

Working Management plans for State forests

- (1) The Secretary—
- (a) shall prepare and cause to be put into operation working management plans with respect to the control, maintenance, improvement, protection from destruction or damage by fire or otherwise, ~~and removal of forest produce in and from~~ each State forest and any part thereof;
 - (b) may from time to time revise any such working management plan and shall cause the revised working plan to be put into operation; and
 - (c) forthwith after the preparation or revision of any such working plan shall submit the same to the Minister.
- (2) Any such working plan shall specify the detailed plans for the protection of the area from fire and ~~may specify—~~
- ~~(a) the maximum area from which forest produce may be taken annually;~~
 - ~~(b) the maximum quantity of forest produce that may be disposed of annually;~~
 - ~~(c) the silvicultural operations necessary to ensure the regeneration of the best species of forest trees on areas which have been cut over; and~~
 - (d) such other matters as the Secretary considers appropriate.
- (2A) The Secretary must implement and comply with a management plan.
- (3) Subsection (1) does not apply to State forest that is Parks Victoria recorded land or land controlled and managed by the Great Ocean Road Coast and Parks Authority except for ~~the following matters—~~
- (a) the protection from destruction or damage by fire or otherwise; or
 - ~~(b) timber harvesting on the land and the harvesting is subject to an accepted recommendation.~~

Yours faithfully



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