

**LAWYERS FOR FORESTS
LAW AND POLICY
BLUEPRINT FOR FORESTS REFORM**



LFF believes the Government should cease logging old growth and high conservation value forests. This blueprint for reform is directed to improving the management of logging in Victoria’s forests, and should not be interpreted as endorsing the continued logging of old growth and high conservation value forests.

1. ECOLOGICALLY SUSTAINABLE FOREST MANAGEMENT

The Government has repeatedly stated its commitment to sustainability in forest management. For example, the Government, in Our Forests Our Future, made a commitment to sustainable forest management.¹

Delivery of *ecologically* sustainable forest management is critical to the environment and current and future generations of Victorians.

The following must be enshrined in legislation:

- Sustainability principles in the Forests Act 1958 (“the Act”), using the Environment Protection and Biodiversity Conservation Act 1999 (Cwth) and Environment Protection Act 1970² as models (“the Sustainability Principles”).
- A requirement in the Act that the Sustainability Principles be taken into account in decision making under the Act and by DSE and VicForests in carrying out their functions.
- A requirement that the objectives of the Flora and Fauna Guarantee Act 1988 (“the FFG Act”) and any biodiversity protection measures in place under the FFG Act (such as Action Statements) are taken into account in decision-making under the Act and by DSE and VicForests in carrying out their functions.
- A requirement for DSE to develop an Ecologically Sustainable Forest Management system, with meaningful benchmarks (“the ESFM System”). The ESFM System should be developed according to the Sustainability Principles, and not dictated and constrained by the inadequacies of the existing forest management framework. It should also incorporate the advice of independent experts.
- Sustainable yield rates must take the effects of woodchipping into account, and must be reviewed as required to comply with the ESFM System and Sustainability Principles.
- A requirement that compliance with the ESFM System and Sustainability Principles be a prerequisite to approval of:
 - the Code of Forest Practices (“the Code”);

¹ In its policy “Our Forests Our Future” the Government stated it “accepts its responsibility to show leadership so that economic growth and social development are environmentally sustainable.”

² Acts are Victorian Acts unless otherwise stated.

- Forest Management Plans (“FMPs”);
 - Wood Utilisation Plans (“WUPs”);
 - Forest Coupe Plans, including pre logging surveys (“FCPs”); and
 - Timber Resource Plans (“TRPs”),
- A requirement that these documents be regularly reviewed to ensure compliance with the ESFM System and Sustainability Principles.
 - A requirement that proper Environmental Impact Assessment, (“EIA”) is carried out before any action is undertaken which may have a significant effect on the environment (this would include pre-logging flora and fauna surveys to determine the existence of rare or endangered species and ecosystems), and mandatory triggers for EIA must be included in legislation.

2. COMPETITION REFORM AND VICFORESTS

The Government has created VicForests by Order in Council³ (“the Order”) without public consultation and before the development of the Sustainability Principles and ESFM System.

VicForests must be required to act in accordance with sustainable forest management principles. This can be achieved by:

- Amendment of the Order to require VicForests to comply with the Sustainability Principles and the ESFM System.
- Inclusion of this requirement in legislation (regardless of whether the requirement is also in the Order).
- Development of Sustainability Principles and ESFM System in accordance with the recommendations contained in Part 1 of this submission, and enforceable in accordance with the recommendations in Parts 4 and 5.

LFF understands that the following forest management functions will be the responsibility of VicForests:

- a) planning and scheduling of coupes for logging;
 - b) determining sale lots;
 - c) logging operations, for example, identification and grading of logs and oversight of logging operations;
 - d) pre and post logging operations, for example regeneration,
- and stated that this will involve control over particular areas for forestry purposes as coupes are scheduled for logging and regeneration.

- The roles of DSE and VicForests in forest management clearly specified in *legislation* to avoid confusion and promote transparency.
- VicForests’ functions primarily related to managing the commercial sale of wood.⁴

³ Published in the Government Gazette 28 October 2003, Special Gazette 198.

⁴ Manage the commercial sale of timber:

- VicForests involved in ‘forest management’ to the minimum extent possible.

In particular, VicForests should not manage the regeneration of logged coupes due to its vested interest in producing commercial crops of timber at the expense of complying with the Sustainability Principles and the ESFM System.

- Approval of TRPs, FCPs and WUPs by DSE, not VicForests.

LFF understands that VicForests will be responsible for the supervision of logging and monitoring of loggers with the Code.

- The requirement for compliance with the Code highlights the urgent need for review of the Code.
- DSE responsibility for monitoring of loggers for compliance with the Code and with the ESFM System and Sustainability Principles.

VicForests should not be the sole monitoring and enforcement entity, as it has a vested interest in maximising revenue which may compromise its monitoring and enforcement of the Code, the ESFM System and the Sustainability Principles.

- The measures outlined in Part 3 above implemented to ensure accountability and transparency in VicForests operations, in particular with respect to its licensing functions. This includes incorporating procedures for meaningful public participation.

LFF understands that VicForests will be required to recover the full costs of logging.

- Specification in the Act of all relevant costs to be included in the assessment of fees and charges . These costs would necessarily include, for example pre- and post-logging coupe surveys of flora and fauna and the costs of maintaining biodiversity. They would also include water costs (including an allowance for loss to aquifers) and the full cost of roading, pest control and fire management costs.
- Requirement for recovery by VicForests of costs of *ecological* sustainability, not just commercial sustainability.

LFF understands that VicForests will be required to achieve an appropriate rate of return (although this is not specified in the Order in Council establishing VicForests).

- Specification in legislation of:
 - what an ‘appropriate rate of return’ is, specify that it is within the context of the Sustainability Principles and the ESFM System; and

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- a) undertaking the management and sale of timber, as agreed by the Treasurer and the Minister for Agriculture; and
 - b) developing and managing an open competitive sales system for timber.

This is to include:

- c) designing, promoting and implementing auctions or tender processes;
- d) setting reserve prices; and
- e) managing existing licences and agreements.

- what happens if an ‘appropriate rate of return’ is not achieved.

Formation of Vicforests – Other comments

- The DSE restructure and creation of VicForests should not be used as a smokescreen for effective and substantive reform.
- The creation of VicForests should be accompanied by a clear commitment from the Government, in the form of legislative protection (based on that used for Water Authorities), to ensure VicForests is not privatised.

3. SIMPLIFICATION

Victoria has a fragmented forest management regime. It is contained in numerous Acts, regulations, plans, codes and guidelines. Responsibility for decision-making on forest management issues is similarly dispersed throughout a range of instruments, some of which are legislative in character and some of which are not.

The legislative and other framework in which forests management is carried out should be simplified and streamlined, including in the following ways:

- The ultimate goal should be a consolidation of the various forest management Acts.⁵
- Review of the relevant legislation should occur as a whole rather than in steps because:
 - a multiple-step review is less likely to result in a simplified and cohesive system of forest management; and
 - the first stage of the review may prejudice outcomes for the subsequent stages of the review. For example, the creation of VicForests and the change in the forest management arrangements between VicForests and DSE by the recent Forests and National Parks (Amendment) Act 2003 has the potential to prejudice the successful development, implementation and enforcement of an appropriate ESFM System.
- Reduction of the number of administrative layers.
- Specification of the forest management framework in legislation or regulations rather than ambiguous administrative guidelines.
- Clarification of the operation of the Forest Operator Licences and Forest Produce Licences under the Act.

⁵ For example, the Conservation Forests and Lands Act 1987 and the Forests Act 1958.

4. PUBLIC PARTICIPATION, ACCOUNTABILITY AND TRANSPARENCY

There is inadequate provision for public involvement in decision-making relating to forests management. This is demonstrated by the long history of disputes over forests management issues. The Government has frequently committed itself to improving public involvement in forest management decision-making, (for example, in *Our Forests Our Future*).⁶

Public involvement in forest management decision-making must be improved for the Government to act on its commitment. The following are some ways this can be achieved:

- Procedures for decision-making (and in particular approvals, amendment and review of sustainable yield rates, prices, the Code, FMPs, FCPs, WUPs and if applicable TRPs) should be set out in legislation.
- Advertising of proposed decisions.
- Relevant information about proposed decisions made freely and publicly available.
- Specific right of public to make submissions in relation to proposed decisions within a period specified in the legislation.
- Expert scientific input into decision-making.
- Decision-making less administratively based.
- Reasons for decisions given.
- Rights for third parties to apply for review at VCAT of specified decisions on specified grounds.

Examples of grounds of review are:

- non-compliance with Sustainability Principles; and
 - inconsistency with ‘higher’ forest management documents, for example where a WUP (or equivalent) is inconsistent with the relevant FMP (or equivalent).
- Relevant documentation made easily available to the public.⁷

⁶ In *Our Forests Our Future* the Government has stated that the priorities of NRE (now DSE) include:

- Strengthening consultation as a routine element of NRE’s normal means of operating;
- Providing communities with the information they require to make informed inputs on forest management issues;
- Improving forest resource information;
- Making the application of the Code more transparent by, for example, introducing community audits; and
- Delivering options for community participation in forest management.

⁷ For example – rules, standards and procedures should be set out in regulations, and not in internal or administrative guidelines, or by order published in the Government Gazette.

- VicForests made subject to the Freedom of Information Act 1982, and required to comply with the spirit of this Act.
- Annual reports on compliance with the Sustainability Principles, the ESFM System and FFG Act requirements provided to a properly resourced ESD Commissioner and made publicly available.
- Proper auditing (financial and non-financial).

5. ENFORCEMENT

Environmental obligations under the existing forest management system are not enforced and cannot be enforced by anyone other than DSE.

DSE's enforcement obligations should be made clear, and specified members of the public should have the right to enforce compliance with environmental obligations, for example, by:

- Provision for enforcement of obligations of licensees to comply with the Code, Sustainability Principles and the ESFM System.

Appropriate enforcement mechanisms may include:

- public standing to enforce compliance through the tribunal and/or judicial system;
- financial penalties for non-compliance;
- rehabilitation bonds;
- linkage of licences (availability and conditions) to performance; and
- public reporting (see above).

7. THE WAY FORWARD

LFF recommends the government release a Discussion Paper followed by an Issues and Options Paper, addressing these issues, outlining a one step reform process, and inviting further submissions from members of the public.

LFF would be pleased to discuss any of the above proposals.

Lawyers for Forests
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