

FOREST REFORM IN VICTORIA

Towards ecologically sustainable forest management or mere greenwash?

ANDREW WALKER

In February 2002, the Bracks Government in Victoria released its forestry policy reform document, *Our Forests, Our Future*.¹ From an environmentalist's viewpoint, the three major reforms outlined in *Our Forests, Our Future* (the Three Policy Initiatives) can be summarised as commitments to:

1. ensure Victoria's forests are managed in an ecologically sustainable manner
2. make the legal and administrative mechanisms managing logging in Victoria's forests, (the Victorian Forestry Controls) operate in an open, accountable and transparent manner
3. undertake structural reform, with the formation of Vicforests as a separate entity, to manage the commercial sale of forest produce.

While the writer supports the Three Policy Initiatives, they are expressed in broad terms, with no concrete detail. The Victorian Government has not, apart from the third reform (and then only by its part implementation) outlined how they will be implemented. This article reviews the Victorian Forestry Controls and, in the case of the first and second reforms, makes recommendations for the reforms required to ensure Victoria's forests are managed in an ecologically sustainable manner, and the Victorian Forestry Controls operate in an open, accountable and transparent manner. It also reviews the steps taken to form Vicforests.

Summary of the Victorian Forestry Controls

Following the Regional Forest Agreement (RFA) process initiated by the Keating Government, the Commonwealth Government has essentially withdrawn from involvement in forest management. The Victorian Government has entered into five 20-year RFA agreements with the Commonwealth Government (one for each RFA area), and now generally manages forests without Commonwealth Government intervention.

Under the RFA process, following a 'Comprehensive Regional Assessment', a system of forest reserves was created with 'Comprehensive Adequate and Representative' (CAR) Reserve Forests (basically forests identified as worthy of protection based on certain criteria). Other forests (state forest) were generally identified as suitable for logging.

For state forest within an RFA area, the Commonwealth Government agreed to remove export controls and not require Environmental Impact Assessment (EIA) for logging operations. Accordingly, the Commonwealth

Government's environmental protection legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act) does not apply to logging activities in such forests.² Finally, the Commonwealth government accredited, and the Victorian Government agreed to implement, the Victorian Forestry Controls.

Under the Victorian Forestry Controls, the Code of Forest Practices for Timber Production ('the Code') is the umbrella document for logging operations in Victoria.³ The state is divided into 15 Forest Management Areas (FMAs),⁴ and the Victorian Government has prepared Local Prescriptions for some FMAs. They provide detail as to how the Code is to be implemented for each FMA.⁵ Regional level Forest Management Plans (FMPs) are prepared, in theory, in accordance with the Code. FMPs often cover more than one FMA, and all or part of an FMA. A number of FMAs have not had FMPs prepared for them.⁶ The FMPs generally identify which areas of state forest are to be fully or partially protected (in the form of Special Protection Zones (SPZs) and Special Management Zones (SMZs) respectively)⁷, and which areas should be logged (identified as General Management Zones in the FMPs).

Wood Utilisation Plans (WUPs) are then prepared by the Department of Sustainability and Environment (formerly the Department of Natural Resources and Environment) ('the Department') and show which areas within an FMA are to be logged in a particular year. WUPs should be prepared in accordance with the Code and the relevant FMP, and allocate coupes for logging within the forest identified in the FMP as suitable for logging. Under the Code, Forest Coupe Plans (FCPs) are then prepared and approved before logging commences. Logging in state forests in accordance with an FMP, WUP and FCP is effectively exempt from the operation of Victoria's endangered species protection legislation, the *Flora and Fauna Guarantee Act 1988* (Vic) (the FFG Act) by reason of an Order made by the Governor in Council under the FFG Act⁸ (the FFG Order).

Under the *Forests Act 1958* (Vic),⁹ Sustainable Yield Rates are specified for each FMA in Schedule 3 to the *Forests Act*. The Sustainable Yield Rates set the hardwood sawlog supply levels (for logs above a specified minimum size) for each FMA. They do not, however, relate to other forest resources taken. For example, they do not take woodchipping levels into

REFERENCES

Website addresses below were accessible at 29 March 2004.

1. Victorian Government, Statement by the Premier of Victoria The Hon Steve Bracks MP and the then Minister for Environment and Conservation The Hon Sheryl Garbutt MP, February 2002 <www.dse.vic.gov.au/web/root/domino/cm_da/nrenfor.nsf/frameset/NRE+Forestry?OpenDocument>.
2. EPBC Act, ss 38–42.
3. Revision 2, November 1996, Department of Natural Resources and Environment.
4. To add to the confusion — these do not integrate with the five RFA area boundaries, so that an FMA may straddle two RFA areas.
5. In some cases the Local Prescriptions are inconsistent with or further water down the Code. Refer to the text accompanying n 25 below.
6. The Gippsland, Portland, Horsham and Mildura FMAs do not have FMPs.
7. Although clearfell logging is often permitted in SMZs, so their value as protected forest is limited.
8. FFG Order 1988, made under s 48(3) of the FFG Act and proclaimed on 15 December 1998. It expired on 30 November 2003 but was renewed in January 2004.

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account, the volumes of which usually exceed the sawlog volumes.

The Secretary to the Department (the Secretary) may grant any person a timber licence under s 52 of the *Forests Act*. In practice, the Secretary issues Forest Operator Licences (FOLs) and Forest Produce Licences (FPLs). In theory FOLs regulate the actions of those people contracted to work in forestry operations, and are governed by the *Timber Harvesting Regulations 2000* (Vic). FPLs authorise the taking of forest produce from the licensed area, and are governed by the *Forests (Licences and Permits) Regulations 1999* (Vic).

The Secretary must ensure that the volume of hardwood sawlogs authorised to be taken from state forest within a particular FMA under licences or permits issued under s 52 does not exceed the total of the Sustainable Yield Rates. The Minister must review the Sustainable Yield Rates every five years having regard to a number of matters. These include having regard to the maximum volume of hardwood sawlogs that could be harvested from the area under review without impairing the capacity of the area to sustain the harvesting of a similar quantity of hardwood sawlogs over each succeeding year.

As demonstrated above, and as evidenced by the number of acronyms, Victoria has a fragmented and multi-layered 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. There is scope for reducing the number of administrative layers, or at least reviewing them for consistency.¹⁰

The background to *Our Forests, Our Future* and reforms since its introduction

The Vanclay report

In 2001 the Victorian Government conducted a review of the Sustainable Yield Rates and appointed an advisory body, the Peak Strategy Group, to advise it. Consultants appointed by the Peak Strategy Group advised in their report (the Vanclay report)¹¹ that the Sustainable Yield Rates had, on average, been set 30% too high. The consultants also stated that the Department was not in a position to make long-term resource commitments (that is, grant long-term logging licences) given uncertainties in the data.¹²

The Our Forests, Our Future policy

The Victorian Government released *Our Forests, Our Future* following the public release of the Vanclay report. *Our Forests, Our Future* responds to some of the matters raised in the Vanclay report and outlines the Victorian Government's proposed reform of the forest industry in Victoria. The key reforms outlined in *Our Forests, Our Future* include commitments to:

- the ecologically sustainable management of the state forests;
- open, accountable and transparent government. In particular, the Victorian Government stated that the Department's priorities would be:
 - strengthening consultation as a routine element of the Department's normal means of operating
 - providing communities with the information required for them 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
- delivering options for community participation in forest management finalisation of the State Forest Resource Inventory (SFRI) (intended to be a comprehensive and consistent database for establishing the Sustainable Yield Rates for each FMA);
- establishment of the Sustainable Timber Industry Council to advise government on industry development issues;
- overcoming the Department's internal conflict of interest (as the sole supplier of forest produce from state forests and the recipient of income from the sale of forest produce from state forests, while at the same time acting as the environmental regulator), and to comply with National Competition Policy Principles, to create a commercial entity, Vicforests, to manage the commercial aspects of logging operations
- acknowledging the recommendation in the Vanclay report that the Department should not make long-term resource commitments to enter into short-term logging licences, giving the Department the flexibility to adjust supply commitments.

In my opinion, *Our Forests, Our Future* is deficient, in that it does not protect any additional old growth or high conservation value forest, or seek to phase out logging in these areas.¹³ Nor does it commit the Victorian Government to amending the method of calculating the Sustainable Yield Rates so that the full impact of logging

9. *Forests Act 1958* (Vic) ss 52, 52A–52E, Schedule 3.

10. For example, by changing FMA boundaries so that they complement RFA boundaries. Refer also to the text accompanying n 36, 37.

11. Refer to the Report of the Expert Data Reference Group, Professor Jerome Vanclay and Dr Brian Turner, 31 October 2001 <www.dse.vic.gov.au/web/root/domino/cm_da/nrenfor.nsf/frameset/NRE+Forestry?OpenDocument>.

12. In this respect, Professor Vanclay and Dr Turner agreed with the submissions made by Lawyers for Forests, (LFF); refer LFF submission to the Victorian Government on the Timber Licence Renewal Project, December 2001 <www.lawyersforforests.asn.au/lawpolicy.html>

13. Although in separate policy announcements the Victorian Government has committed to phasing out logging in the Otways and the Wombat State Forests, and taken steps to create an expanded Otways National Park. It appears, however, that as a result logging in the Central Highlands and Gippsland regions has increased to meet the shortfall created.

is taken into account, and not just sawlog removal. It also does not specify how the Victorian Forestry Controls will be revised to achieve the key reforms outlined in *Our Forests, Our Future*. For example, it does not specify the nature of the proposed community participation, nor indicate how ecologically sustainable forest management will be achieved. In the absence of such detail, this article considers the measures which should be implemented. These are outlined below.

Implementation of the policy — Vicforests

The *Forests and National Parks Acts (Amendment) Act 2003 (Vic)* (the FNPAA Act) paved the way for Vicforests to be established as a 'State Business Corporation' and legal entity separate from the Department.¹⁴ Vicforest's principal objective is to perform its functions for the public benefit by operating its business as efficiently as possible consistent with prudent commercial practice and maximising its contribution to the economy and well being of the state.¹⁵

Deficiencies in the Victorian forestry controls

There are a number of deficiencies in the Victorian Forestry Controls which must be rectified if the Victorian Government is to fully implement the Three Policy Initiatives. The deficiencies include those listed below.

No ecologically sustainable development principles apply

Ecologically or Environmentally Sustainable Development principles (ESD Principles) are now an accepted basis for environmental decision-making. For example the EPBC Act and the *Environment Protection Act 1970 (Vic)* (the EPA Act) incorporate ESD Principles.¹⁶ The ESD Principles are generally accepted to be:

- full integration of economic, environmental and social considerations
- the precautionary principle (that is — if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation)
- the principle of inter-generational equity — the present generation should ensure that the health diversity and productivity of the environment is maintained or enhanced
- conservation of biological diversity and ecological integrity
- promotion of improved valuation, pricing and incentive mechanisms.

The Victorian Forestry Controls (including the *Forests Act*, the *Conservation Forests and Lands Act 1987 (Vic)* (the CFL Act) and the Code) do not incorporate the ESD Principles. Arguably there is no requirement for decision-makers to take ESD principles into account in decision-making under these controls.

No ecologically sustainable forest management system developed

Under the five RFAs, the Victorian Government agreed to implement what can be described as an Ecologically Sustainable Forest Management System (ESFM System) for each RFA area.¹⁷ Under the RFAs, the ESFM System comprises three components, an Integrated Forest Planning System (IFPS), the State Forest Resource Inventory, and Sustainability Indicators. The Victorian Government also agreed to implement the ESFM System components by specified dates ('Milestone Dates').¹⁸ It is worth noting that in committing to completing the SFRI in the *Our Forests, Our Future* policy, the Victorian Government is doing no more than confirming that it will seek to comply with one of its environmental obligations under the five RFAs.

Although the State Government has made various statements promising to implement the ESFM System or parts of it,¹⁹ the fact is that it is not in place, well after

14. Vicforests was established by an Order of the Governor in Council under the *State Owned Enterprises Act 1992 (Vic)*. The Order was published in the *Government Gazette*, 28 October 2003, Special Publication 198.

15. The FNPAA Act s 18. This is confirmed by the Order (above n 14) which provides that the purpose of the Order is 'to create a statutory body to undertake the management and sale of timber resources in Victorian state forests on a commercial basis'.

16. EPA Act ss 1B–1E and EPBC Act s 3A. Section 1B of the EPA Act states that it is the intention of Parliament that the principles of environment protection (that is the ESD Principles outlined in s 1B–1E of the EPA Act should be taken into account in the administration of the Act.

17. In the case of Sustainability Indicators, to jointly develop with the Commonwealth Government.

18. See for example the Gippsland RFA clauses 46(c), 49, 51 and Attachments 4,10.

KEY TO ACRONYMS

CAR — Comprehensive Adequate and Representative Reserve Forests

EIA — Environmental Impact Assessment

ESD Principles — Ecologically or Environmentally Sustainable Development principles

FMA — Forest Management Area

FMP — Forest Management Plan

FOL — Forest Operator Licence

FPL — Forest Produce Licence

RFA — Regional Forest Agreement

SFRI — State Forest Resource Inventor

SMZ — Special Management Zone

SPZ — Special Protection Zone

VCAT — Victorian Civil and Administrative Tribunal

WUP — Wood Utilisation Plan

ABBREVIATIONS — LEGISLATION

CFL Act — *Conservation Forests and Lands Act 1987 (Vic)*

FFG Act — *Flora and Fauna Guarantee Act 1988 (Vic)*

FFG Order — Order made by the Governor in Council under the *Flora and Fauna Guarantee Act 1988 (Vic)*

FNPAA Act — *Forests and National Parks Acts (Amendment) Act 2003 (Vic)*

EPA Act — *Environment Protection Act 1970 (Vic)*

EPBC Act — *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

P&E Act — *Planning and Environment Act 1987 (Vic)*

In the absence of appropriate community participation in forestry decision-making, limited reporting mechanisms, and the vague nature of the Victorian Forestry Controls, Victoria's forests are not managed in an open, accountable and transparent manner.

the expiry of a number of the Milestone Dates. Given the history of the development of the ESFM System and the nature of the current Victorian Forestry Controls, I am not confident that an ESFM System will be implemented in the near future, or be of sufficient clarity to ensure Victoria's forests are managed sustainably.

Flora and Fauna Guarantee Act 1988 (Vic) not taken into account

The FFG Act is the principal legislation in Victoria aimed at protecting Victoria's biodiversity. The FFG Act has a range of measures by which biodiversity conservation is sought to be maintained. One of these is the preparation of Action Statements which outline protection measures for Victoria's listed threatened taxa, communities of flora or fauna, and management of potentially threatening processes.²⁰ However, the FFG Order authorises the taking of protected flora, where that taking is a result of or incidental to logging operations or associated road works authorised under the Forests Act and provided the taking complies with certain conditions.²¹ As a result, individual protected flora permits that would ordinarily be required under the FFG Act are not required.

So, leaving aside the deficiencies with and in the implementation of the FFG Act, a significant proportion of Victoria's forests (and therefore a significant portion of Victoria's flora and fauna habitat) is effectively exempt from the operation of the FFG Act. Further, Action Statements are not fully implemented in the FMPs nor are they required to be taken into account in forest-related decision-making.²² This is in addition to the inadequacy of Action Statements and the failure to regularly review them or even prepare them.

No environmental impact assessment required

The argument is often made that logging in RFA areas has already been the subject of EIA, under the RFA process and with the creation of CAR reserve forests and state forests. However, this argument assumes that the RFA process involved a rigorous scientific analysis of Victorian forests, and identified those Victorian forests worthy of protection. It also assumes that the Victorian Forestry Controls were updated to incorporate knowledge gleaned from the RFA process. However neither is the case.²³

The Victorian Forestry Controls are also inadequate in their EIA. The FFG Act effectively does not apply. The approval or amendment of the Code, Local Prescriptions, FMPs (including changes to SPZs)

WUPs and FCPs does not require any EIA. Therefore, the effects of logging on threatened species are not accurately known. Accordingly, there is no guarantee that logging has no adverse environmental impacts and it cannot be said that Victoria's forests are managed in accordance with ESD Principles.

Openness, accountability and transparency

In the absence of appropriate community participation in forestry decision-making, limited reporting mechanisms, and the vague nature of the Victorian Forestry Controls, Victoria's forests are not managed in an open, accountable and transparent manner. The lack of such management, including the deficiencies in the public participation process which significantly contribute to it, are outlined below.

Victorian Forestry Controls not complied with or enforced

The Victorian Government has failed to comply with the Victorian Forestry Controls. For example, it has not conducted the five-year reviews required under the RFAs.²⁴ The Department has not incorporated the existing Action Statements in FMPs, Local Prescriptions, WUPs and FCPs and the Department has approved Local Prescriptions which do not comply with or further water down the Code.²⁵

The Victorian Forestry Controls are not adequately enforced. For example, auditing of the Code has been inadequate.²⁶ Recently this task was passed to the Environment Protection Authority (EPA). It is too early to ascertain whether the EPA's monitoring of the Code will be any more effective, although the EPA audit for operations in 2002–2003 acknowledges some serious deficiencies still exist in the auditing processes.²⁷ Where Code breaches have been detected, punitive action has rarely been taken.

Content of Victorian Forestry Controls inadequate

A number of aspects of the Victorian Forestry Controls are vague and unenforceable. Further, the Code sets out few minimum compliance standards, generally setting 'goals and guidelines' rather than creating clear and enforceable mandatory obligations.²⁸ In addition, the content of the Victorian Forestry Controls often fails to reflect accepted scientific views. For example, the definition of 'rainforest' in the Code does not properly reflect the definition that was provided to the then Victorian Government (at the Government's instigation) by the Rainforest Technical Committee in 1986. The FMPs also further limit the definition of rainforest by

19. The Victorian Government has also indicated that it is in the process of developing what it calls an Environmental Management System, which will presumably incorporate the IFPS, SFRI and the Sustainability Indicators. See <www.dse.vic.gov.au/web/root/domino/cm_da/nrenfor.nsf/frameset/NRE+Forestry?OpenDocument>. I have also been advised that the Victorian Government will adopt ESD principles and criteria and develop a suite of indicators against which Vicforests will report, with a consultation process in relation to the criteria planned for 2004: letter from the Minister for the Environment to LFF, 30 December 2003.

20. For example, the loss of hollow bearing trees and myrtle wilt.

21. Section 48(3) of the FFG Act provides that the Governor in Council may authorise the taking (which arguably includes the destruction and disturbance of) protected flora, on terms and conditions set out in the Order. The conditions, to the extent that they are enforced, are inadequate, and do not ensure the objectives of the FFG Act and in particular listed taxa are adequately protected.

22. See Lawyers for Forests, 'Review of the Flora and Fauna Guarantee Act 1988 (Vic)', November 2002 <www.lawyersforforests.asn.au/lawpolicy.html>. The review outlines the operation of the Act and discusses the deficiencies in the Act and its implementation. See ss 4.3 and 4.4 for a critique of the preparation, content and implementation of Action Statements.

23. As an example of the flaws in the RFA process, the West Victoria 'Comprehensive Regional Assessment' contains an acknowledgment of its deficiencies. Volume 2 of the report at page 26 lists 38 endangered taxa. For five (or 13.2%) of these, it is stated that the Department had insufficient data to establish whether the taxon was critically endangered, endangered, vulnerable, or at lower risk. As an example of the failure to update the Victorian Forestry Controls following the RFA process, a number of FMPs (the East Gippsland, Midlands and Otways FMPs) were prepared before the 'Comprehensive Regional Assessment' for the relevant region and have not been updated to incorporate any additional information obtained.

24. Nor, as noted above, has it developed an ESFM System for the RFA areas.

25. Compare, eg, s 2.3.5 of the Code with the Local Prescription for the Central Highlands in relation to logging on slopes greater than 30 degrees.

26. For example, when the Department undertook the audits, the auditing process was not conducted annually for each FMA and so some FMAs were unaudited for years.

27. In particular the EPA failed to audit active coupes. Accordingly the EPA acknowledged events which occurred during the coupe operation stage may not have been evident at the time of coupe inspection, particularly if the audit was undertaken after the regeneration burn. There are a number of other Code compliance issues which were not addressed and these are listed in Appendix F. EPA *Timber Production on Public Land — Findings and Recommendations*, December 2003 <www.epa.vic.gov.au/EnvAudit/reporting.asp>.

28. For example, s 2.3.6 of the Code deals with the conservation of flora and fauna. However this section refers to conservation 'guidelines', which in turn refer to 'approaches' that should be 'considered' making enforcement unlikely. A rare example of a 'mandatory' prescribed requirement is the obligation to provide stream buffers in logging areas. However, the 2002–03 EPA audit (above n 27) found numerous examples where this requirement had not been complied with.

29. For example, the Central Highlands FMP states, in Appendix E: 'To be considered rainforest a stand of trees meeting the above criteria should be at least 0.4 hectare or linear strips along streams should be at least 20 m wide and not less than 100 m long'.

stating that stands of flora are not considered rainforest unless they cover an area greater than 0.4 hectare.²⁹

Lack of community participation

There is inadequate provision for public involvement in forest management decision-making, including those outlined below. Inadequate community participation has contributed to the public perception that forest management is not transparent, and to the level of direct action in Victoria's forests. For the Victorian Government to implement its promise of community participation, the community must be guaranteed meaningful participation.

The recent introduction of community participation initiatives in the Wombat State Forest is a welcome initiative but more is required. Currently, public participation is undertaken at the whim of the Victorian Government. There is no specified community participation process. For example, there is no requirement to advertise (or invite submissions regarding) the adoption of or changes to the Victorian Forestry Controls. The relevant legislation and the Code, FMPs, WUPs and FCPs are essentially silent as to community participation in the preparation or amendment of those documents.

In addition, it is often difficult to obtain information. For example, forest campaigners have had difficulty in obtaining information about the steps taken by the Department to implement both Action Statements and the RFAs. Some FMPs are out of print and are not fully accessible on the Department's website, and details about enforcement of the Code are not made publicly available.

The Victorian Forestry Controls also do not require decision-makers to provide reasons for decisions. This makes it difficult for an interested party to ascertain why a decision has been made, or seek review of the decision. Accordingly decision-makers are not held accountable.

Further, there is a lack of government reporting mechanisms. Even when there are such mechanisms, reports are not provided. For example, the RFA Annual Reports for 2001, 2002 and 2003 have not been made publicly available (or it appears even prepared), although the parties are required to provide them as a means of assessing progress towards the implementation of the Milestone Dates.

Aside from a lack of enforceable provisions, one of the most significant omissions from the Victorian Forestry

Controls is the lack of specified third party standing to uphold the provisions that can be enforced. Extending review rights to the general community would not only broaden the resource base for taking action, but would also empower people and allow those interested to take an active role in the ecologically sustainable management of Victoria's forests. Without facilitating third party administrative review of decisions, the Victorian Government is not fully bound to comply with the law, and is therefore not fully accountable.

Formation of Vicforests

The State Government, in creating VicForests, has implemented the third of the Three Policy Initiatives. However Vicforests' objectives refer to commercial rather than ESD outcomes, and there is no statement in the Order to the effect that the commercial objectives should be achieved within an ESD framework. The division of forest management functions between the Department and Vicforests is also uncertain. With its commercial and timber resource utilisation functions, Vicforests obviously has an inherent bias to financial gain at the expense of environmental outcomes. The Department should have sufficient power to ensure this does not occur. The financial tail should not wag the ecologically sustainable dog.

I also understand that, in accordance with National Competition Policy principles, Vicforests will be required to recover the costs of logging in its licensing fees, although this is not specified in the Order. Those costs are not simply financial, and should include matters such as loss in ecological biodiversity, water resources and the cost of installing logging-related infrastructure such as roads.

Recommendations for reform

Ecologically sustainable forest management

For the Victorian Government to implement the first of the Three Policy Initiatives, the Government must:

- amend the *Forests Act* and CFL Act to include the ESD Principles, using the EPA Act and the EPBC Act as models;
- require the ESD Principles to be taken into account in decision-making under the *Forests Act* and by the Department in carrying out its functions
- require the Department to implement the ESFM System, after appropriate public consultation. The ESFM System should incorporate meaningful benchmarks and be developed in accordance with the ESD Principles. It should not be dictated and

The financial tail should not wag the ecologically sustainable dog.

- constrained by the inadequacies of the existing Victorian Forestry Controls. It must require the advice of independent scientific experts to be considered
- require all decision-making about forests to take into account the objectives of the FFG Act and any biodiversity protection measures in place under that Act (such as Action Statements)
 - require Sustainable Yield Rates to take the effects of woodchipping into account, and be reviewed as required to comply with the ESFM System and ESD Principles
 - require compliance with the ESFM System and ESD Principles as a prerequisite to approval or amendment of the Code, the Local Prescriptions, FMPs, WUPs and FCPs
 - require that these forest-related documents be regularly reviewed to ensure compliance with the ESFM System and ESD Principles
 - require that proper EIA is carried out before any action is undertaken which may have a significant effect on the environment (this would include a requirement for comprehensive pre-logging flora and fauna surveys in all areas proposed to be logged to determine the existence of rare or endangered species and ecosystems), and include mandatory triggers for EIA.³⁰

To ensure full accountability, these requirements and, in particular, decision-making requirements should be outlined in legislation and not vague and unenforceable guidelines or policies.

Accountability and transparency

For the Victorian Government to fully implement the second of the Three Policy Initiatives, it must adopt the following reforms, and where appropriate incorporate the reforms in relevant legislation.

Community participation

In relation to community participation, the following recommendations for reform are made:

- procedures for decision-making — and, in particular, approvals, amendment and review of sustainable yield rates, prices, the Code, Local Prescriptions, FMPs, WUPs and FCPs (the Recommended Reviewable Decisions) — should be set out in legislation, and required to be advertised
- the public should have a specific right to make submissions in relation to the Recommended Reviewable Decisions within a period specified in legislation

- relevant information about proposed decisions should be made freely and publicly available.
- reasons for decisions should be given
- relevant documentation should be made easily available to the public³¹
- VicForests should be made subject to the *Freedom of Information Act 1982* (Vic) and required to comply with the spirit of that Act
- annual reports on compliance with the ESD Principles, the ESFM System and FFG Act requirements should be provided to and reviewed by a properly resourced ESD Commissioner and made publicly available³²
- third parties should be able to apply for review by the Victorian Civil and Administrative Tribunal (VCAT) of specified decisions (including the Recommended Reviewable Decisions) on specified grounds. Examples of grounds of review are failure to comply with ESD Principles, and inconsistency with 'higher' forest management documents.³³

An appropriate model for review (and enforcement) action is that used in the Victorian planning process under the *Planning and Environment Act 1987* (Vic) (the P&E Act). This model allows 'any person' to apply to VCAT for the review of certain decisions and an enforcement order to enforce the provisions of the P&E Act and planning schemes made under it.

Two issues arise from introducing third party rights: the appropriate forum, and the extent of third party standing.³⁴ As it would be similar to the Victorian planning appeal system under the P&E Act, VCAT (rather than, for example, the Magistrates Court) is the appropriate forum. Appropriately experienced and qualified personnel should be appointed to VCAT to handle these proceedings.

To allay concerns that third party standing is too wide, a provision similar to that in the P&E Act could be introduced, whereby someone who brings a vexatious or frivolous matter before VCAT risks having costs awarded against them. If this measure is considered an insufficient deterrent, the standing test could be slightly narrower, and mirror that found in the EPBC Act.³⁵

Enforcement and compliance

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

30. Mandatory triggers should apply where a certain action is likely to have a significant effect on the environment. Examples of mandatory triggers are found in the EPBC Act.

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

32. The Victorian Government recently passed the *Commissioner for Environmental Sustainability Act 2003* (Vic), creating and outlining the objectives and powers of that Commissioner. Review of annual reports fits squarely within the objectives and powers of the Commissioner.

33. For example where a WUP is inconsistent with the relevant FMP, or the FMP inconsistent with the ESFM System.

34. For further explanation of the reasons why I believe VCAT is the appropriate forum and the restrictions on standing that could be introduced to allay concerns that the 'floodgates could be opened' refer to the LFF 'Review of the Flora and Fauna Guarantee Act 1988' (Vic) (above n 22) 33–34.

35. Sections 475–80 of the EPBC Act restrict standing to 'an interested person', where an 'interested person' is a person who has been involved in activities for the protection and conservation of, or research into, the environment in the two years preceding the proposed conduct.

36. Particularly the *Conservation Forests and Lands Act 1987 (Vic)* and the *Forests Act 1958 (Vic)*.

37. For example, the creation of VicForests has the potential to prejudice the successful development, implementation and enforcement of an appropriate ESFM System.

38. This should be limited to:

- undertaking the management and sale of timber, as agreed by the Treasurer and the Minister for Agriculture
- developing and managing an open competitive sales system for timber, which should include designing, promoting and implementing auctions or tender processes, setting reserve prices, and managing existing licences and agreements.

39. Although the mechanism for calculating the value of the environmental costs is a difficult question.

* LFF is a non-politically aligned association of legal professionals working to promote the conservation and better management of Victoria's native forests.

LFF believes there should be no logging of, or other activities that detrimentally affect, old growth and high conservation value forests. However, while such logging and other activities continues to occur, LFF's main focus is on the legal and administrative mechanisms in place to conserve and manage Victoria's native forests. This article reflects that position, but the views expressed in this paper do not necessarily reflect those of LFF.

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of obligations of FOL and FPL holders to comply with the Code, ESD Principles and the ESFM System. Appropriate enforcement mechanisms may include public standing to enforce compliance (discussed above), financial penalties for non-compliance, rehabilitation bonds, linkage of licences (availability and conditions) to performance and mandatory public reporting. The Victorian Government should also ensure proper auditing is undertaken.

Simplification

Ambiguity and complexity also lead to a lack of accountability. There are a number of opportunities for simplifying the overly complex Victorian Forestry Controls. The ultimate goal should be a consolidation of the various forest management Acts.³⁶ Unfortunately Victorian Governments have traditionally adopted a piecemeal approach to reform. However, a multiple-step instead of a single-step review is less likely to result in a simplified and cohesive system of forest management. The first step may also prejudice outcomes for the subsequent stages.³⁷

Simplification measures include the reduction of the number of administrative layers and specification of the management framework in legislation or regulations rather than ambiguous administrative guidelines. Clarification also assists simplification. Matters that can be clarified include the status of the Code (with the status put beyond doubt by the legislature), and the operation of the FOLs and FPLs, including the requirement for FOL holders to comply with the Code.

Vicforests

Although the Victorian Government has created Vicforests, and the separation of commercial resource exploitation and environmental regulation roles between the Department and Vicforests is welcome, the nature of the separation is unclear. The roles of the Department and VicForests in forest management should be clearly specified in legislation to avoid confusion and promote transparency. Vicforests has a vested interest in producing commercial crops of timber at the expense of complying with the ESD Principles and the ESFM System. VicForests' functions should, therefore, be primarily related to managing the commercial sale of wood,³⁸ and its 'forest management' role limited as far as possible. In particular, VicForests should not manage the regeneration of logged coupes. The Department not Vicforests should approve FMPs, WUPs and FCPs, and monitor compliance with the Code, the ESFM System and ESD Principles.

It should also be specified that Vicforests must act in accordance with ESD Principles and the ESFM System. This can be achieved by amending the Order to require VicForests to comply with the ESD Principles and the ESFM System, and including this requirement in legislation (regardless of whether the requirement is also in the Order).

To ensure that the full cost of logging is recovered under licences, legislation should specify all relevant costs to be included in the assessment of licence fees and charges, including environmental costs such as loss of ecological biodiversity.³⁹

It should also be noted that Paperlinx, Victoria's largest consumer of native forest wood and, as successor, the writer understands, to Amcor Pty Ltd, has the benefit of special legislation, the *Forests (Wood Pulp Agreements) Act 1996 (Vic)* which guarantees its forest resource (and sets the price and volume) within a certain radius of its mill. To ensure there is a fair and level playing field across the whole industry, the Victorian Government should review the arrangements with Paperlinx.

Conclusion

Accountability and community participation in the management of Victoria's forests is a poor second cousin to accountability and community participation in the Victorian planning system, with its extensive public notice, submission and appeal processes. As local, national and global awareness of the need for ecologically sustainable management of public resources heightens, there is no reason that it should remain so.

It is too early to ascertain whether the Victorian Government will implement the reforms required to ensure Victoria's forests are managed accountably and ecologically sustainably. Based on the implementation of *Our Forests, Our Future* to date, the failure of the current (and the previous) Victorian Government to comply with the RFAs, and the piecemeal reform approach traditionally adopted, the indication is that it will not do so. However without the implementation of these reforms, logging operations in Victoria's forests will continue to be conducted in an unaccountable and unsustainable manner, and the *Our Forests, Our Future* policy will be a victory of spin over substance.

ANDREW WALKER is the convenor of the Law and Policy Section of Lawyers for Forests (LFF).*

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