Comments by [Redacted] of the "Review of the native vegetation clearing regulations - Consultation Paper"

Thank you for the opportunity to provide comment on the Paper. The document appears to have taken into consideration a range of thoughtful stakeholder input.

My overall view is that the document’s proposals will bring about improvements but that these are within an unsatisfactory paradigm that allows too much loss through undervaluing native vegetation.

While I agree with nearly all the ‘proposed improvements’, they don’t go far enough. In addition, the proposals in Section 6.3: proposed improvements to compliance and enforcement (Page 43) seem poorly thought out and or expressed and are unlikely to succeed.

I have provided more detail below.

There are some fundamental language, concepts and terminology issues crucial to the native vegetation clearance regulations.

No net loss is a fiction. Losses are concrete and immediate. While necessary, offsets are often only notional (e.g., extra security for existing vegetation) or hypothetical (e.g., revegetation that may mature in the future). Lost native vegetation is irreplaceable except in the very long term, hence the current ‘equivalent’ offsets cannot achieve no net loss.

While I understand the political realities behind only requiring clearance proponents to do no more than an equivalent offset of their damage, the time has come for all Victorians to do more for the biodiversity of the state. Those who bring about a diminution of our natural capital should, under the user pays principle be expected to contribute. The question is what might be a fair contribution. Given that ‘no net loss’ is unachievable, I submit that a fair “compensate(ion) for impacts” should be far more than the current level of offsetting.

Please review the equivalence of offsets based on the understanding that offsets can’t achieve ‘no net loss’ and in the light of past offset experiences take a more realistic compensatory approach.

Section 1.3’s proposed improvements in policy (Page 17) #1 claim they will “Prevent the removal of native vegetation that makes a significant contribution to Victoria’s biodiversity.” While laudable, how will a ‘significant’ contribution be defined? Victoria needs an agreed understanding across all stakeholders of what this means and how it, or the cost of offsetting its loss, will be calculated for any particular proposal. Otherwise we risk another review at every change of government as it attempts to placate its loudest complaining constituency that didn’t agree with the regulations resulting from the previous review. I don’t think that agreement exists yet.

Earlier in the document, (page 12) it stated that to achieve no net loss...the regulations must ensure that “the most significant impacts on biodiversity are avoided or not permitted”.

No matter how the significance (of contributions or impacts) is calculated or classed, it is actually a continuum. Creating arbitrary thresholds below which native vegetation or its loss is not considered significant is an inappropriate approach.

Consider the hypothetical situation where significance is scored between 0 and 100% and is categorised into 10 percent point classes. One vegetation patch has a significance score of ‘91%’ (on an imaginary scale) which puts it in the highest/most significance category. The regulations would
not grant a permit for its clearance. A similar patch that scored 90% would be in a lower class, so its clearance could be permitted even though it is almost identical. Using categories or classes of significance will never achieve satisfactory outcomes.

A more logical approach would be to have a continuum (e.g., an exponential function) of incentives to avoid clearance (or disincentives to clear) whereby the cost of the disincentive becomes so high that it (almost all of the time) deters clearance of higher value native vegetation. In the above situation, the disincentive cost for the clearance of either patch would be very similar—because the sites have similar value. In the very rare cases (because the disincentive is appropriate and approaches infinity for ‘100% significance’) the price paid for the offset would be so high that the conservation constituency is satisfied that the offsets may actually offset.

Another problematic statement is: “impacts of clearing native vegetation on Victoria’s biodiversity are minimised” (page 12)

This sounds reasonable but it actually lets the regulatory system ‘off the hook’, by avoiding any possibility of meaningful measure of success. Any level of clearing or its impacts can be claimed to have been the minimum achievable with the available regulatory resources. Surely we need Specific, Measurable Achievable, Realistic Time bound objectives for a regulatory system as important as this!

The no net loss objective must also ensure that “where clearing of native vegetation is permitted, offsets ... compensate for impacts” (page 12). This sounds reasonable, but begs the question of how much compensation.

Is the answer that the improvements to the policy system will, “for any native vegetation that is removed, provide an offset that makes an equivalent contribution to Victoria’s biodiversity.” (page 17)?

The idea of equivalence is problematic. Losses are concrete and immediate. While necessary, offsets are often only notional (e.g., extra security for existing vegetation) or hypothetical (e.g., revegetation that may mature in the future). Lost native vegetation is irreplaceable except in the very long term, so a regulatory system with the objective of ‘no net loss’ should surely require very substantial offsets to “compensate for impacts”.

The average price of a ‘general biodiversity equivalence unit’ is said (page 33) to be ~$53,000/ha (the offset requirement for clearing native vegetation with a condition score of 0.5 and a strategic biodiversity score of 0.5). That would only be a ‘drop in the ocean’ incentive to avoid or minimise clearing for high value land uses like housing development. I doubt the standards and quantities required for offsets are set high enough.

Please develop a non-categorical measure of ‘significance’ (to Victoria’s biodiversity) and an algorithm that calculates the price of compensation that is disincentive enough, in most cases, to protect against the loss, or if clearance is unavoidable, to be a more than adequate compensation.

Mapping

“The most important places to achieve gains and to avoid losses are in locations with higher relative contributions to biodiversity.” (page 12). Well of course! The other arguments for the usefulness of mapping are persuasive, but only if the available mapping is valid. This is still questionable. For instance, the ‘strategic biodiversity score’ mapping doesn’t reflect the disproportionately high habitat value of (native) vegetated waterways (which are more productive, are drought refuges and provide connections across otherwise low value habitat). Nor does it seem to value the matrix of fragmented native vegetation that still exists in many areas that supports (so far) less threatened and common species.

There are many anecdotal accounts of errors in the mapping that undermine confidence that these tools are adequately protecting native vegetation.
The other problem with prioritising higher value locations is that as clearing proceeds elsewhere, this will potentially result in more species becoming VROTs, more EVCs becoming more threatened and will lead to a an even more dichotomous landscape—the relatively biodiverse and the extremely depauperate.

Mapping should only provide the first estimate of the approach to be taken in assessing clearance proposals and the likely offsets needed if permitted. All sites of proposed clearances need to be checked by an independent assessor.

**Low risk pathway. Thresholds to qualify as native vegetation**

Once again, the categoric paradigm (low risk versus high risk) lets us down. As I understand it, in the low risk ‘pathway’, clearance of native vegetation with less than (an arbitrary) threshold of understorey cover (or other criteria) does not require any offset.

**Low risk pathway. Self assessments**

Allowing proponents to self-assess is akin to ‘putting the fox in charge of the hen-house’. In every case this would surely be a conflict of interest in which the public good will inevitably lose out.

**Incremental loss**

The ‘low risk based pathway’ makes clearance of relatively small patches of native vegetation easier for proponents and often results in no offsets and not even a requirement to avoid or minimise clearance. While each individual case may be small when considered in isolation, over time, they will constitute a significant loss. There still doesn’t seem to be enough attention paid to this issue of this incremental but cumulative loss.

Please discontinue or at least improve the low risk pathway. Too much of value is being lost.

Please ensure that all clearance proposals are adequately assessed. Checks by qualified, independent assessors should be required for self-assessed clearance proposals (if still allowed).

**Strategic planning**

Proposed improvement to policy #3 (page 17) suggests municipal strategic planning for biodiversity conservation/native vegetation retention could be undertaken. This should not be optional for rural/regional Local Government Authorities (LGAs) (and probably metropolitan LGAs). Many rural or LGAs would require extra resourcing to do this.

Please ensure municipal strategic planning becomes a much stronger tool for native vegetation retention and improvement, i.e., NET GAIN.

**Tracking losses/ Information management**

A weakness in Victoria’s ability to manage losses of native vegetation is that the State Government has not mandated a uniform system for recording permits and quantities of clearing: “total number of permits and amount of clearing... cannot be estimated because it is currently not uniformly recorded by councils.”(page 18)

Please make a uniform system for recording permits and quantities of clearing mandatory.

**Offsets**

Offsets through revegetation are likely to underperform compared to claimed value and improvement over time.
Please develop a system to monitor offsets, including time series photography to be available online so that community can, through tracking the offset response to clearance of any particular patch, have confidence in the system.

Proposed improvements to compliance and enforcement. (Page 43)
All the measures proposed here seem weak and vague. There is an inherent conflict of interest with LGAs managing native vegetation retention. LGAs’ interest is in maximising rate revenue, therefore, in encouraging development or land uses that raise land values. These almost always conflict with retention or expansion of native vegetation. The proposed compliance and enforcement strategy is unlikely to work in the region I am most familiar with (North Central Victoria). Rural LGAs or their leaders (councillors) are often embedded in the ‘right to farm’ culture that opposes any restriction on clearance of freehold.

Please move the management of native vegetation regulation to authorities that don’t have a conflict of interest.

Issues not covered in the review
Roadside firebreak construction (ploughing or herbicide use) and roadside cropping is an example of LGAs (and lately even VicRoads) not meeting their responsibilities for managing illegal native vegetation clearance. Roadsides in the north of Victoria are often the only refugia (globally) for highly threatened vegetation types or plant species and dependant fauna.

Please establish a system (e.g., regulation, publicity) to as far as possible prevent illegal clearance of roadside native vegetation and to ensure penalties for offenders are appropriate disincentives.

Climate Change renders the whole issue of loss of native vegetation even more serious. There seems to be no recognition that we too easily allow losses of potentially useful genetic variants at the extremities of distribution of a plant species (often because there wasn’t enough cover of them to reach the threshold of being considered a patch of native vegetation).

Please ensure, especially at the edges of species distributions, that the regulation system takes account of and protects the genetic values in remnant vegetation even where the condition may be very low.

Factoring in restoration potential of ground flora
In many types of vegetation (especially woodlands that are often the most at threat of further clearance, at least in North Central Victoria) good quality (diverse, low weed cover) ground flora and understorey vegetation is the most irreplaceable asset. Most trees can easily be replaced given enough time, but so far there is very little evidence of restoration of ground flora in these types of vegetation. Even where much of original diversity has been lost, ground vegetation can often retain characteristics that indicate ‘restorability’, for instance, presence of soil crusts, lack of weeds, at least some ground flora species still occurring, presence of native geophytes. I don’t believe this kind of asset is given enough protection. In many cases removing the pressure of livestock or rabbit grazing allows this kind of country to dramatically recover over 5 to 10 years. Assessing it when it is under pressure fails to accurately evaluate its condition. Sometimes unscrupulous clearing proponents plough or heavily graze land in order to remove evidence of native vegetation before it can be assessed. In all these circumstances the land should be given time to recover so it can be accurately assessed.
Please institute a process to take account of the restoration potential of land proposed for clearing.

Clearance of good quality ground flora
Sometimes clearance of good quality ground flora is unavoidable. As mentioned earlier, the existence of such flora is an irreplaceable asset. In most cases, the soil and flora are destroyed and wasted. **It is possible to translocate topsoil with intact vegetation** to other localities with suitable protected sites, e.g., degraded areas on public land, etc.

Please ensure good quality ground flora destined for clearing is translocated to give it a chance of survival.