

Review of the Flora and Fauna Guarantee Act 1988

Submission, 29 March 2017

Introduction

In Victoria, forest management and harvesting operations must comply with the Flora and Fauna Guarantee (FFG) Act. Forest growers, managers and harvesters are governed by the *Code of Practice for Timber Production 2014* (The Code of Practice) which states that:

*“The management standards and procedures are informed by relevant policy documents including policies relating to specific forest values such as threatened species, guidelines and strategies within forest management plans made under the Forest Act 1958 **and Action Statements made under the Flora and Fauna Guarantee Act 1988.**”*

Action Statements prepared under the FFG Act are relevant to forestry operations at several levels. They cover numerous individual species, ecological communities and potentially threatening processes. Most decision makers are not required to consider Action Statements in their management processes. However, the compliance requirement created by the Code of Practice has been reflected not only in mandatory Management Standards and Procedures¹, but also in forest management planning and zoning undertaken by VicForests – the agency responsible for managing Victorian State forests – and its contractors.

State forest zones are classified² as follows:

- General Management Zone (GMZ): managed for a range of uses and values, but timber harvesting operations will have a high priority
- Special Management Zone (SMZ): managed to conserve specific features, while catering for timber harvesting operations under special conditions that are set out in a specific plan.
- Special Protection Zone (SPZ): managed for particular conservation values (e.g. protecting threatened species), forming a network designed to complement the formal conservation reserve system. Timber harvesting operations are excluded.

The area where timber is legally available for harvesting is made up from GMZ and SMZ areas which constitute a very small fraction of Victoria’s total native forest area.³ Areas classified as ‘reserved’ are forests within SPZs, and other exclusions such as riparian buffers and steep slopes.

The legal and moral obligations to protect and maintain environmental values are taken seriously by the forest, fibre and wood products industry. As the Consultation Paper rightly notes, this is an area where the current approach to implementing the FFG Act has worked well.⁴ VicForests’ position is that any proposed changes to the structure or implementation of the FFG Act should recognise the substantial landscape management contributions of the industry and should not create new barriers to operation. Future strategies and regulations should seek to maintain the balance between forest conservation and sustainable management and harvesting.

¹ *Management Standards and procedures for timber harvesting operations in Victoria’s State forests 2014*

² *VicForests Procedures Regulatory Handbook 2016*

³ VicForests Area Statement 2014

⁴ Consultation Paper p 25

Landscape scale approaches

The Consultation Paper proposes a requirement for a landscape or area-based response to the Biodiversity Plan (Table 12 Potential Improvement 5). VicForests recognises the value in creating greater efficiency of action by transitioning from focusing on localised individual species to a broad landscape approach.

To a large extent, this approach is already employed by VicForests, who assess the requirements of multiple Action Statements to implement coordinated planning and management of State forests to protect species listed under the FFG Act. These considerations are reflected in the creation and maintenance of SMZs and SPZs that complement the dedicated reserves system.

In addition to abiding by Action Statements, Victorian forest managers are legally obliged by the Code of Practice to protect ecosystem structures and functions. There is a suite of mandatory actions to maintain environmental values and minimise impacts on cultural values and the visual landscape. These actions include:

- Managing harvested forest to perpetuate biodiversity values;
- Regenerating harvested areas using seed sources with provenance to the area;
- Maintaining species composition and representative gene pools;
- Monitoring and maintaining forest health (e.g. weed and pest control);
- Measures to protect all unharvested areas from the impacts of unplanned fires;
- Protecting waterways and riparian habitat using buffers and filter strips;
- Minimising water pollution; and,
- Maintaining the productive capacity of soils.

VicForests supports the overarching principle of an efficient approach to threatened species protection using a landscape-scale planning approach. We wish to highlight the significant contributions to landscape management already undertaken by the forest managers and the potential for significant further benefits if the industry is enabled to develop its role as a land manager.

Listing threatened species and communities

The Consultation Paper proposes that Victoria adopt the Common Assessment Method (CAM) to align with national (Environmental Protection and Biodiversity Conservation Act) and international (IUCN) threatened species listings processes (Table 13, Proposed Improvement 1). VicForests supports consistency and clarity in the threatened species listing process at all levels. However, the CAM includes “*the capacity to adopt assessments made by other jurisdictions that are relevant to Victoria*”.

VicForests does not support this aspect of the proposal because of the potential to remove transparency and undermine the credibility of the of the Victorian assessment process. No further detail is given on the proposed procedure for adopting assessments from outside jurisdictions, or on how differing assessments will be reconciled. However, assessments made by non-governmental agencies (e.g. the IUCN) should not be used without full and transparent evaluation by the Scientific Advisory Council (SAC) and public input.

Control of the listing assessment process must remain with Victorian authorities. To maintain credibility, transparency and meaningful stakeholder engagement, new species assessments using the CAM, must be completely independent of previous assessments carried out by other agencies.

With regard to investigating criteria for defining threatened communities (Table 13, Proposed Improvement 3), the IUCN criteria for ecosystem assessment⁵, introduced in 2013, are problematic and open to highly subjective interpretation. The assessment guidelines have been subject to extensive criticism, which identified operational and conceptual weaknesses in the approach and highlighted the lack of scientific basis for categories and thresholds.⁶

VicForests supports retaining full control of the threatened species listing process (data gathering, assessment and stakeholder engagement etc.) by Victorian agencies. If CAM criteria for threatened species is implemented, it would therefore not be appropriate to adopt assessments from outside jurisdictions. VicForests also does not support the use of IUCN assessment criteria for ecosystems.

Critical Habitat

The Consultation Paper proposes replacing permits for taking protected flora and fauna with a permit for activities that would ‘damage’ the critical habitat (Table 14 Proposed Improvement 3). VicForests supports the protection and maintenance of important forest habitat and notes that protection measures are already used by forest managers (e.g. SMZ and SPZs, protection of very large or tall trees etc).

Broadening the definition of critical habitat has the potential to impact on forest management and harvesting, if areas of State forest are deemed to be “critical” under new criteria. Furthermore, the concept of “damage” to an ecosystem is not defined in the Consultation Paper. Ecosystems function at multiple spatial and temporal scales and assessment of potentially damaging activities should account for the ability of an ecosystem to regenerate following small scale disturbances while maintaining function at the landscape scale.

The discussion of critical habitats proposes that “*Maps of potential critical habitat areas would be tested and improved through consultation with landowners, the Scientific Advisory Committee and the community. This process would inform final declarations of critical habitat.*”

Given the complexity of the concepts under discussion, VicForests’ position is that it would be more appropriate to engage stakeholders from the start of the process and develop the necessary definitions in a collaborative manner. This approach would allow the full implications of the proposed permit process to be fully evaluated.

VicForests recommends, therefore, that DELWP engage in full and transparent stakeholder collaboration to develop and define criteria for:

- **Defining critical habitat, and**
- **The concept of ‘damage’ to habitat.**

⁵ Keith DA, Rodríguez JP, Rodríguez-Clark KM, Nicholson E, Aapala K, et al. (2013) Scientific Foundations for an IUCN Red List of Ecosystems. *PLoS ONE* 8(5): e62111. doi:10.1371/journal.pone.0062111

⁶ Boitani L, Mace G. M. & Rondinini C. (2014) Challenging the scientific foundations for an IUCN Red List of Ecosystems. *Conservation Letters*. doi: 10.1111/conl.12111

Administrative barriers to forest management and harvesting operations

The Consultation Paper recognises that implementation of the FFG Act is currently well integrated into forestry operations and planning. However, this integration is not noted elsewhere in the paper. There are several proposed improvements that, if applied to forest management and harvesting operations, would duplicate existing governance and regulations with little additional benefit. VicForests urges DELWP to consider how all the proposed improvements might act to replicate the Code of Practice and adjust the implementation accordingly. Below we outline some of the key issues.

Public Authority Management Agreements (Table 10, Proposed Improvement 4)

The proposal to broaden the scope of Public Authority Management Agreements (PAMA) makes specific mention of forestry, regarding guidance on managing threatened species. As detailed above, there are well established and satisfactory procedures for managing and protecting a suite of environmental values. Mandatory Management Standards provide detailed guidance for maintaining environmental sustainability and biodiversity, and Action Statement obligations are met through forest zoning and operational planning. Additional guidance developed through a PAMA has the potential to generate a new stream of administrative obligations without creating additional outcomes for threatened species or forest biodiversity.

VicForests requests that DELWP publish a detailed proposal for new functions of PAMAs which is subject to consultation with land managers on both public and private land. VicForests recognises the value of clear guidelines on biodiversity management but does not support the introduction of a new system for forestry in addition to existing regulations.

Compliance and enforcement (Section 4.4.3)

Forest management and harvesting operations are already legally required to comply with FFG Act Action Statement management actions through the Code of Practice for Timber Production 2014. Significant compliance and enforcement mechanisms already exist under the Code.

VicForests advises that new or separate compliance requirements are not needed and would create extra administrative burden to the sector. Any proposed changes should not be applicable to forest management activities.

Transition planning

As described above, the instruments of the FFG Act are fully integrated into forest management at all levels from planning to harvesting operations. Accordingly, environmental obligations and mandatory operational practices are well understood by forest managers and contractors. There is, therefore, a risk that new instruments, processes or legal requirements will be highly disruptive to the industry, even where the final outcomes are similar to those being replaced.

The Consultation Paper does not discuss the process for moving to new arrangements or frameworks. Therefore, this submission notes the risks of associated with insufficient transition planning. These include:

- Inconsistent implementation of new frameworks;
- Loss of production; and
- Unintended non-compliance with new instruments.

VicForests recommends that DELWP collaborate with forest managers and other industry representatives to establish an agreed plan for transition to any new arrangements over an appropriate time scale.