

Response to the Independent Review of Timber Harvesting Regulation

March 2019

Acronyms	
AELERT	Australasian Environment Law Enforcement and Regulators Network
Code	Code of Practice for Timber Production 2014
DELWP	Victorian Department of Environment, Land, Water and Planning
DHHS	Victorian Department of Health and Human Services
EPA	Environment Protection Authority Victoria
RFA	Regional Forest Agreement
SET	Senior Executive Team (DELWP)
SFT Act	<i>Sustainable Forests (Timber) Act 2004 (Vic)</i>

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Foreword

A strong and effective regulatory framework that protects our natural environment is critical to ensuring that Victoria continues to be a liveable, inclusive and sustainable place to live, work and visit.

The Department of Environment, Land, Water and Planning's (DELWP's) priority is to ensure high levels of compliance with the laws that protect our forests, waterways and threatened species. The community must have confidence that when those laws are broken we will take appropriate action.

These factors underscore the importance of the commissioning an expert panel to undertake an Independent Review of Timber Harvesting Regulation. The expert panel recently came back to us with a comprehensive report, making 14 recommendations - all of which we have accepted.

Although the Independent Review of Timber Harvesting Regulation was established to investigate timber harvesting regulation, the findings and recommendations went far beyond that to encompass all aspects of regulation undertaken by DELWP. I thank the panel for its excellent work, which provides us with comprehensive recommendations to reform the way we undertake our regulatory functions.

To oversee these reforms, we are appointing Victoria's first Chief Conservation Regulator. The Chief Conservation Regulator will lead the Office of the Conservation Regulator and have responsibilities for overseeing and discharging DELWP regulatory functions.

In addition to lifting the regulatory performance of DELWP, the Office of the Conservation Regulator will drive a more open and transparent approach – building a better understanding of its regulatory tasks, and ultimately the community's trust and confidence in the work that it does to protect the environment.

I am committed to building on the dedication and professionalism of DELWP staff by ensuring that the Office of the Conservation Regulator draws on the expertise that exists within DELWP, along with best practice from other jurisdictions, both in Australia and overseas.

I am pleased to be bringing about this important change and provide stronger regulatory oversight for Victoria's natural environment.

John Bradley

Secretary of the Department of Environment
Land, Water and Planning

1.0 Background on the independent review

The regulatory framework for timber harvesting in Victoria exists to ensure the environmental, cultural and economic values of our forests are protected and enhanced for current and future generations. As Victoria's timber harvesting regulator, it is the role of DELWP to enforce compliance with this framework on behalf of the Victorian community.

It is critical that the public have confidence in the operations and conduct of Victoria's timber harvesting regulator – including that when a breach of the regulatory framework occurs it will be competently and thoroughly investigated and prosecuted. It is also important that DELWP takes up all opportunities for evaluation and learning, as part of its approach to continuous improvement.

On 30 August 2018, a prosecution of VicForests by DELWP for an alleged breach of the *Sustainable Forests (Timber) Act 2004* (Vic) (SFT Act) was struck out by the presiding Magistrate on the basis that the charge laid did not meet the requirements of the *Criminal Procedure Act 2009*.

In response to this outcome, the Minister for Energy, Environment and Climate Change, Hon Lily D'Ambrosio MP, requested the DELWP Secretary to commission an independent review into the following matters:

- (a) the adequacy of DELWP's prosecutions policies, procedures and practices;
- (b) DELWP's current capability and capacity to effectively regulate timber harvesting on public land in Victoria; and
- (c) an initial assessment of whether further regulatory or legislative reform is required to ensure modern, best-practice regulation of timber harvesting in Victoria.

The panel was asked to make recommendations and findings on matters (a) and (b). In relation to matter (c), the panel was asked to provide high level advice on options and approaches for future reform of timber harvesting regulation.

The DELWP Secretary appointed an independent panel to conduct the review. The panel comprised:

- Mr Nial Finegan (lead) – former Chief Executive of the EPA Victoria. Nial also previously held the role of Deputy Secretary, Department of Justice and held senior roles at VicRoads.
- Ms Jane Brockington – Deputy Chair of the 2015 Independent Inquiry into EPA Victoria and previously Chief Executive Officer of the Victorian Commission for Liquor and Gambling Regulation and of the 2009 Victorian Bushfires Royal Commission.
- Mr Peter Rozen – a member of the Victorian Bar for 20 years, and previously a prosecuting lawyer in the Department of Labour (now the Victorian WorkCover Authority).

The full Terms of Reference for the independent review are provided in **Appendix 1**.

The independent review panel provided its final report to the DELWP Secretary on 24 October 2018.

2.0 What will change

In its report, the independent review panel made 14 recommendations for improvement. DELWP **accepts all recommendations** and has provided a response to each of these in part three of this document.

In making these recommendations, the independent review panel found that, despite having dedicated, professional staff and having made improvements to its approach, DELWP still has work to do to ensure it has the requisite regulatory craft, systems and processes, and an enabling legislative framework and the necessary regulatory tools, to be a modern and effective regulator.

DELWP is committed to making the significant changes that are required for it to become a world-class environmental regulator that the Victorian community can have confidence in. This commitment extends beyond fixing the issues that the independent review panel identified with DELWP's approach to timber harvesting regulation, to lifting its performance across all areas of environmental regulation that it has direct responsibility for – from timber harvesting to wildlife and heritage. A full list of the relevant legislation in which DELWP has direct compliance and enforcement responsibilities is provided in **Appendix 2**.

The implementation of these changes has already commenced. They may take time to embed fully into the organisation, and DELWP is committed to public transparency about improvement priorities and timeframes. It will publicly report on its performance, and the delivery of all 14 recommendations.

These reforms will create a more effective regulator, strengthening protection of the environment. Greater transparency and improved engagement will be at the cornerstone of the new approach, giving the community a much better understanding of relevant laws, and clear opportunities for supporting the protection of the natural environment.

An integrated and effective regulator

The independent review panel found that DELWP would benefit from establishing a single, identifiable 'regulator' in DELWP. The current structure, where the regulator is split across different parts of the department, is less effective in discharging the regulatory function. Furthermore, the panel was clear – to be effective, the role of the regulator must go beyond compliance activities alone, extending to education, public transparency and avoidance of harm.

DELWP's operating model and regulatory approach will be coherent, consistent and complete. DELWP will create an integrated and effective regulator within the department, that works across the 20 Acts of Parliament for which it has direct regulatory responsibility.

To do this DELWP will:

- Appoint a **Chief Conservation Regulator**, a senior executive that has accountability and independent regulatory decision-making authority for all environmental regulation undertaken by the department.
- Establish the **Office of the Conservation Regulator**, bringing together the parts of the department with regulatory responsibilities into a single division that is focused on best-practice regulation.
- Ensure that the Office of the Conservation Regulator has the capacity and capability to execute the full role of an effective regulator. This means building on the strong compliance focus that exists in the department to ensure a balanced, risk-based regulatory approach is taken, using a mix of education, support and deterrence to deliver improved environmental outcomes.

Building community confidence

The panel's report makes it clear that, as a regulator, the department must become more outward looking – engaging better with the community, stakeholders and regulated entities, and being more open and transparent about its regulatory approach, including its limitations and constraints. This will improve understanding of DELWP's role as a regulator and build trust and productive relationships.

DELWP will publicly share more information about its regulatory role, responsibilities and purpose, and where appropriate, will provide opportunities for the community to actively participate in achieving improved regulatory outcomes.

To do this DELWP will:

- Publish a **Statement of Intent** for key areas that it has direct responsibility for environmental regulation. These statements will make it clear why it regulates, what it regulates and how it will regulate – including the enforcement powers and tools that it has. The statements will also have performance measures and targets that will be publicly reported against. The first statement of regulatory intent to be published will be for timber harvesting.
- Put the 'community at the centre' of its regulatory practice. A **Communications and Engagement Strategy** will be developed as a public commitment to what community, stakeholders and regulated entities can expect from the Office of the Conservation Regulator. This will include outlining our approach and making commitments to publishing information products and holding community open days, so people can directly interact with staff and gain a better understanding of the work that they do.
- Be more open and transparent about the decisions that it makes as a regulator – publishing information about its decisions and the reasons for those decisions. If information cannot be published because it could jeopardise an ongoing investigation or breach privacy requirements, the department will be clear about this.
- Consult and listen to communities to inform how and where regulatory effort is targeted to address the risk of greatest harm to the environment. The community will become a critical source of intelligence in achieving better outcomes in the protection of the environment. DELWP will make it easier for people to provide information for this purpose.

Doctrine

Doctrine – common policies, principles, procedures, standards and guidelines – are essential for aligning the efforts of a regulator, and in ensuring the timely and consistent use of regulatory tools and decision-making. Publishing this doctrine aids in improving transparency and accountability. The independent review panel recognised that DELWP has work underway to improve internal processes, and the department will ensure it has the necessary doctrine in place to perform as a world class regulator.

To do this DELWP will:

- Develop and publish a **Regulatory Framework** document that provides an effective framework for the performance of its regulatory functions. It will clearly and transparently set out how the department will take a risk-based and intelligence-led approach to regulation – informing organisational improvement and better engagement with the community and stakeholders. The main audiences for this framework are the Victorian community, regulated entities and staff in the Office of the Conservation Regulator.
- Publish a **Compliance and Enforcement Policy** that provides clarity to the Victorian community, regulated entities and staff in the Office of the Conservation Regulator about how it will apply the law and exercise its judgement and discretion around compliance and enforcement.

- Finalise an updated **Prosecutions Policy** - an internal policy document to guide Authorised Officers and prosecutors on procedural requirements and decision-making for the prosecution of offences through the courts.
- Publish annual **Compliance Plans** – at the regional and state level – that identify regulatory priorities to address the areas of highest risk of harm to the environment.
- Review its current guidelines and standard operating procedures to identify any gaps and ensure that they are filled on a priority basis.

Better tools and capability

An effective regulator requires a fit-for-purpose regulatory framework; appropriate regulatory powers, sanctions and methods; the right skills, culture and leadership; and the people, technology, processes and infrastructure it needs to achieve its purpose. The independent review panel found that DELWP needs a deliberate strategy to build its regulatory practice and capability. DELWP will take a planned approach to developing the tools and capabilities it needs to be a best-practice regulator.

To do this DELWP will:

- Undertake a **Regulatory Capability Assessment** to identify enhancements to people, process, technology and infrastructure for delivering regulatory services. This assessment will inform a capability development plan for the Office of the Conservation Regulator.
- Build a community of practice with all DELWP and partner with other regulators to support improved regulatory capability. DELWP will ensure strong engagement in broader forums such as the Regulators Community of Practice convened by the Commissioner for Better Regulation and the Australasian Environment Law Enforcement and Regulators Network (AELERT). This will allow greater collaboration – including sharing knowledge and experience – on approaches to developing regulatory practice and craft;
- Consider the tools, functions and powers that the Office of the Conservation Regulator needs to effectively discharge its direct regulatory responsibilities and, in doing so;
- Examine options to improve the regulatory framework for forest management.

These processes will include the opportunity for the Victorian community, stakeholders and regulated entities to put their ideas forward.

Building on the positives

The independent review panel identified that DELWP has dedicated and professional staff that act impartially in delivering its regulatory functions. It also found that the department has made significant improvements to its regulatory approach over the past two years. This provides a strong foundation for the continued focus and effort that is required, and DELWP will build upon the many strengths and good practices that exist in achieving a coherent and consistent approach to environmental regulation.

To do this DELWP will:

- Engage with its staff and other regulators to ensure that best operational practices are identified and applied across all its regulatory responsibilities.
- Ensure the positive findings of the independent review panel are applied in improving systems and processes. The commitment, professionalism and impartiality of staff will be important as DELWP reforms its approach to environmental regulation.
- Continue to talk with, and seek advice from, other regulators that are in undergoing reforms – including the Department of Health and Human Services (DHHS) and EPA Victoria – and those that work in similar areas of regulation, such as the Tasmanian Forest Practices

Authority and the NSW EPA. This will assist the department to identify best practice and benchmark its approach.

Stronger oversight

As a regulator DELWP is ultimately accountable to the Victorian Government, and through it, to the Victorian community. Effective and credible mechanisms for the oversight of regulators can give confidence to the community as well as enhance quality in regulatory practices and reforms. There will be stronger management and oversight of DELWP's regulatory performance.

To do this DELWP will:

- Appoint a **Stakeholder Reference Group** to enable regular discussion and debate on environmental regulation with an informed and diverse group of stakeholders. The group's focus will primarily be forward looking, providing advice on the policies, strategies and processes that frame DELWP's regulatory work.
- Create a **Regulation Sub-committee** of its Senior Executive Team (SET). This Sub-committee will be responsible for monitoring the performance of DELWP as a regulator, including the implementation of 14 recommendations made by the independent review panel. The Sub-committee will report to the SET, which is chaired by the DELWP Secretary and comprises the department's Deputy Secretaries.

DELWP will:

- Establish an **Independent Regulatory Assurance Panel**, comprising relevant experts who can provide advice and support to the Chief Conservation Regulator.

3.0 Response to individual recommendations

Recommendation 1:

Develop and publish the following documents to better align efforts and improve transparency and accountability:

- a. a multi-year Regulatory Strategy with the following objectives:**
 - i. direct a multifaceted regulatory approach based on the principles of better regulation and including education, enforcement, engagement and evaluation**
 - ii. provide a strong, specific and general deterrent that holds offenders to account**
 - iii. improve the ease, efficiency and effectiveness with which sanctions are applied**
 - iv. provide confidence in the native timber harvesting regulatory system.**
- b. a Compliance and Enforcement Policy that sets clear industry and community expectations on how DELWP will apply the law, what it will and will not do, taking account of culpability and environmental risk.**
- c. an internal annual Regulatory Work Program to help prioritise and direct resources and effort to areas of highest risk.**

This recommendation is accepted.

DELWP will develop and publish its Regulatory Framework by 30 May 2019, which will meet the recommended objectives of the multi-year Regulatory Strategy identified by the panel. DELWP will also publish a Compliance and Enforcement Policy by 30 May 2019.

State and regional Compliance Plans, which describe the annual regulatory work program will be produced by 30 June 2019 and annually thereafter. These plans will identify regulatory priorities to address the areas of highest risk of harm to the environment. These plans will be supported by internal annual work programs to prioritise and direct resources.

Recommendation 2:

Publish and publicly report against a Statement of Regulatory Expectations including how DELWP will regulate timber harvesting, criteria for accepting forest reports and timelines for investigations. This statement will commit DELWP to publishing the outcomes of compliance investigations including the reasons for decisions. This will increase transparency and help to build trust and productive relationships.

This recommendation is accepted.

DELWP will publish a draft of a Statement of Regulatory Intent for timber harvesting for public consultation by 30 March 2019. This will be a public statement that includes how DELWP will regulate timber harvesting, criteria for accepting forest reports, timelines for investigations, and a commitment to publishing the outcomes of compliance investigations, including reasons for decisions. A final Statement of Regulatory Intent for timber harvesting will be published by 30 May 2019 following public feedback.

DELWP will publish a Statement of Regulatory Intent for other key areas that it has direct responsibility for environmental regulation by 30 August 2019.

DELWP will publicly report on its performance against these Statements of Regulatory Intent. Reporting will occur by 1 October each year for the previous financial year.

Recommendation 3:

Publish collateral to aid community engagement and understanding of its role as Victoria's native timber harvesting regulator. DELWP should also undertake a survey of native timber harvesting stakeholder perceptions and expectations to help inform its engagement activities and collateral.

This recommendation is accepted.

A Communications and Engagement Strategy will be developed as a public commitment to what the community, stakeholders and regulated entities can expect from the Office of the Conservation Regulator. This plan will outline our approach to the development of collateral to aid community engagement and support understanding of its role as Victoria's native timber harvesting regulator.

The Strategy will be published by 30 June 2019.

To inform the implementation of the plan, DELWP will run focus groups and undertake a community and stakeholder perceptions survey.

Information on stakeholder perceptions and expectations will also be gathered as part of the engagement process to modernise Victoria's Regional Forest Agreements which will be completed by March 2020.

Recommendation 4:

Lead engagement to change the focus of the community, industry and the regulator from the point of harvesting to the planning stage. This will help reduce the sense of urgency, conflict and inefficiency and improve outcomes.

This recommendation is accepted.

Consistent with the response to Recommendation 3, DELWP will develop a Communications and Engagement Strategy for its regulatory activities by 30 June 2019.

This plan will set out DELWP's approach to engagement, including how it will better engage with the community and industry at the planning stage – by increasing the compliance focus on the Allocation Order and Timber Release Plan, in addition to timber harvesting operations.

Recommendation 5:

Review the governance and management reporting arrangements for the regulation of native timber harvesting to ensure:

- a. DELWP's SET has proper oversight of regulatory functions and risks**
- b. proper and efficient case management**
- c. a consistent approach to compliance and enforcement activities, particularly high-risk investigations and prosecutions**

This recommendation is accepted.

DELWP will create a Regulation Sub-committee of its SET. This sub-committee will be established by 30 April 2019 and will monitor the performance of DELWP's regulatory performance, functions and risks.

DELWP has also established the Office of the Conservation Regulator. The Office of the Conservation Regulator will bring together the parts of the department with regulatory responsibilities into a single division that is focused on best-practice regulation. This will provide

improved management arrangements for timber harvesting regulation, including proper and efficient case management and a consistent approach to compliance and enforcement activities. The Office of the Conservation Regulator will be fully operational by 30 June 2019.

In addition, by 30 May 2019 DELWP will:

- Appoint a Stakeholder Reference Group to enable regular discussion and debate on environmental regulation with an informed and diverse group of stakeholders. The group's focus will primarily be forward looking, providing advice on the policies, strategies and processes that frame DELWP's regulatory work. An expression of interest process for the Stakeholder Reference Group will commence by 30 March 2019.

By 30 May 2019, DELWP will:

- Establish an Independent Regulatory Assurance Panel, comprising relevant experts who can provide advice and support to the Chief Conservation Regulator.

Recommendation 6:

Undertake a Regulatory Capability Assessment to identify enhancements to people, process, technology and infrastructure for delivering regulatory services. This will help ensure that DELWP's current and future regulatory functions are supported by strategy and planning for capability and resourcing. The Regulatory Capability Assessment and Regulatory Strategy should inform each other.

In undertaking this assessment, the Secretary should review the current organisation of the timber harvesting regulatory functions, noting that the existing arrangements are not delivering effectively. It would also allow for better resource allocation, maximise existing capabilities and enhance career progression.

This recommendation is accepted.

DELWP will undertake a Regulatory Capability Assessment associated with the development of its Regulatory Framework. This will be completed by 30 May 2019.

The Regulatory Capability Assessment and Regulatory Framework will inform the design of the Office of the Conservation Regulator, which will be fully operational by 30 June 2019.

Recommendation 7:

Increase staff capabilities through building a community of regulatory practice; participation in regulator network; formal mentoring and support; training and development in regulatory practice; and secondments to build expertise and short-term capacity.

This recommendation is accepted.

DELWP will develop a Capability Development Plan, informed by a capability assessment. The plan will set out actions to increase staff capabilities, such as formal mentoring and support; training and development in regulatory practice; and secondments to build expertise and short-term capacity. The plan will be developed by 30 June 2019.

DELWP will partner with other regulators in its portfolio to establish a community of regulatory practice. This will provide learning and development opportunities for staff. The community of practice will be established by 30 April 2019.

Recommendation 8:

Write and implement procedures including a prosecutions policy, guidance on the application of the precautionary principle, the use of contested tools in the regulatory framework and how to deal with the 'honest and reasonable mistake' defence, a standard operating procedure for Section 70 of the Sustainable Forests (Timber) Act 2004 (SFT Act) and a process for internal review of decisions.

This recommendation is accepted.

DELWP will finalise the update of its Prosecutions Policy by 30 May 2019, following development of the Regulatory Framework. This will be an internal policy document to guide Authorised Officers and prosecutors on procedural requirements and decision making for the prosecution of offences. The policy will be aligned to the policies of the Office of Public Prosecutions Victoria, with which DELWP must comply.

Additional internal guidance material to support effective compliance and enforcement activities will be developed by 30 April 2019.

Recommendation 9:

Make better use of the tools available across all the relevant Acts to ensure better outcomes in timber harvesting.

This recommendation is accepted.

DELWP will provide guidance material to its Authorised Officers on the use and application of the tools available across all relevant Acts to achieve better regulatory outcomes. This will commence immediately with further guidance available by 30 April 2019 and additional support developed thereafter.

Recommendation 10:

Improve existing regulatory tools including through:

- a. engaging with stakeholders to develop a common understanding of the Code of Practice for Timber Production 2014 (the Code). Where there is any disagreement on interpretation, DELWP should engage expert and/or legal advice to develop guidance**
- b. reviewing Sections 45 and 46 of the SFT Act considering the limitations imposed by the availability of the 'honest and reasonable mistake' defence**
- c. reviewing Sections 70 and 71 of the SFT Act to make it a more effective administrative compliance tool.**

This recommendation is accepted.

DELWP will pursue a variation to the Code to correct errors and ambiguities, and to incorporate new environmental protections, such as for large trees. This will include a public consultation process. As part of this process, DELWP will engage with stakeholders to develop a common understanding on the Code.

DELWP will review sections 45, 46, 70 and 71 of the SFT Act and will provide any recommendations to Government on amendments to address limitations and make it a more effective administrative compliance tool. This review will be completed by 30 April 2019.

Recommendation 11:

Develop new tools to allow for a more graduated and proportionate response to non-compliance. This may include official warnings, remedial notices and a broader range of sanctions including additional infringements.

This recommendation is accepted.

DELWP will examine options to provide more graduated and proportionate tools for non-compliance and provide these recommendations to the Government. This will be completed by 30 April 2019.

Recommendation 12:

Create new powers and protections to assist Authorised Officers in conducting their duties, including coercive power to obtain information and documents rather than having to rely on clause 20 of the Allocation Order (issued under the SFT Act).

This recommendation is accepted.

DELWP will examine options to create new powers and protection to assist Authorised Officers and provide these recommendations to Government. This will be completed by 30 April 2019.

Recommendation 13:

Facilitate the creation of a system of shared data between government agencies, environmental non-government organisations and VicForests to improve the environmental and community outcomes for forests and better direct regulatory efforts.

This recommendation is accepted.

DELWP will work with other government agencies, environmental non-government organisations and VicForests to scope and create a system of shared data. This will be completed by 31 December 2019.

Recommendation 14:

Consider modernising the legislative framework for timber harvesting including:

- a. creating a general duty to minimise risks of harm to environmental values in the SFT Act**
- b. reviewing the current timber harvesting approach to see whether a single ‘tenure neutral’ system would deliver better outcomes**
- c. examining the merits of schemes such as the Tasmanian Forest Practices Authority accreditation of third parties to better monitor compliance.**

This recommendation is accepted.

DELWP will work with Government on considerations to modernise the legislative framework for timber harvesting as part of the Future of our Forests work. This work includes embarking on a major program to modernise the State’s Regional Forest Agreements (RFAs) and the forest management system they accredit, through comprehensive engagement with Victorian communities.

4.0 Reporting

A summary of the actions and timelines DELWP has committed to is included in **Appendix 3**.

DELWP will report on progress and achievements in implementing the responses to the recommendations made by the independent review panel. These reports will be provided to the Minister for Energy, Environment and Climate Change, the Secretary and made available to the community.

In addition, the Independent Regulatory Assurance Panel will independently monitor and report on DELWP's progress in making changes to how it delivers environmental regulation, including implementing the responses to the recommendations made by the independent review panel.

Appendix 1: Terms of reference

Background

On 30 August 2018, the prosecution of VicForests by the Department of Environment, Land Water and Planning (DELWP) for an alleged breach of the *Sustainable Forests (Timber) Act 2004*, was struck out by Magistrate Hayes on the basis that the charge laid did not meet the requirements of the Criminal Procedure Act 2009.

The regulatory framework for timber harvesting exists to ensure that the environmental, cultural and economic values of our forests are protected and enhanced for current and future generations. As Victoria's timber harvesting regulator, it is the role of DELWP, and in particular the Timber Harvesting Compliance Unit, to act in the best interests of the Victorian community in enforcing compliance with this framework.

It is critical that the public have confidence in the operations and conduct of Victoria's timber harvesting regulator – including that when a breach of the regulatory framework occurs it will be competently and thoroughly investigated and prosecuted.

It is also important that DELWP takes up all opportunities for evaluation and learning, as part of its approach to continuous improvement.

In light of this outcome, the Secretary of the Department of Environment, Land, Water and Planning (DELWP) has commissioned an independent review to be conducted with respect to the following matters:

- a) the adequacy of DELWP's prosecutions policies, procedures and practices;
- b) DELWP's current capability and capacity to effectively regulate timber harvesting on public land in Victoria; and
- c) an initial assessment of whether further regulatory or legislative reform is required to ensure modern, best-practice regulation of timber harvesting in Victoria.

The Review should have regard to the work currently underway within DELWP to reform forest management in Victoria more broadly, including through the process of modernising Victoria's five Regional Forest Agreements (RFAs).

The Review should also recognise DELWP remains subject to the policies of the Office of Public Prosecutions Victoria.

Scope

In undertaking parts (a) and (b), the Review is to evaluate:

- i. DELWP's current approach to regulating timber harvesting operations, recognising the multifaceted role it plays in public land management and the existing regulatory framework;
- ii. DELWP's current compliance framework, including policy, strategy and the development and execution of its compliance work program;
- iii. DELWP's procedures and processes, including for compliance operations, investigations of alleged breaches of the regulatory framework, the laying of charges and the development of an appropriate workplace culture for a regulator;
- iv. The quality and timeliness of investigations and briefs of evidence;
- v. The training and professional development of staff involved in compliance, enforcement and prosecutions;

- vi. Quality assurance and risk management processes, including internal peer review and the use of external counsel;
- vii. Public accountability mechanisms concerning DELWP's regulatory responses; and
- viii. Other relevant factors.

The Review should make findings and recommendations on these matters.

In undertaking part (c), the Review should provide high level advice on options and approaches for future reform of timber harvesting regulation. This advice would provide direction for a further reform program, rather than a comprehensive assessment itself, and should be informed by:

- DELWP's current work to reform the management of Victoria's forests, including through the modernisation of the RFAs; and
- approaches to achieving best-practice, fit-for-purpose regulation in relevant jurisdictions and sectors.

The advice may consider matters including, but not limited to:

- governance and institutional arrangements;
- resourcing models;
- the adequacy and enforceability of the existing regulatory framework; and
- the regulatory powers and tools required by a modern regulator.

This advice should include:

- i. identifying essential elements and priorities for reform;
- ii. the recommended process for reform, including public and stakeholder engagement; and
- iii. other relevant factors.

Timeline and reporting requirement

A report on the outcomes of the Review is to be provided to the Secretary, Department of Environment, Land, Water and Planning by October 24, 2018.

The recommendations of this investigation will be provided to the public.

Appendix 2: Legislation with compliance and enforcement obligations for which DELWP has direct responsibility

Alpine Resorts (Management) Act 1997

Catchment and Land Protection Act 1994

Climate Change Act 2010

Conservation, Forests and Lands Act 1987

Crown Land (Reserves) Act 1978

Environment Protection Act 1970

Flora and Fauna Guarantee Act 1988

Forests Act 1958

Heritage Act 2017

Land Act 1958

Land Conservation (Vehicle Control) Act 1972

Marine and Coastal Act 2018

National Parks Act 1975

Pipelines Act 2005

Planning and Environment Act 1987

Safety on Public Land Act 2004

Sustainable Forests (Timber) Act 2004

Victorian Plantations Corporations Act 1993

Water Act 1989

Wildlife Act 1975

Note:

DELWP officers are also currently authorised under the following legislation that is administered by other departments or agencies: *Domestic Animals Act 1994*; *Plant Biosecurity Act 2010*; *Fisheries Act 1995*; *Prevention of Cruelty to Animals Act 1986*; and *Historic Shipwrecks Act 1976 (Cth)*.

Appendix 3: Summary of actions and timelines

Action	Timing
Office of the Conservation Regulator	
Commence establishment of the Office of the Conservation Regulator	Complete
Commence recruitment of the Chief Conservation Regulator	Complete
Chief Conservation Regulator appointed	30 May 2019
Office of the Conservation Regulator formally commences	30 June 2019
Regulatory framework, policies and guidelines	
Publish Regulatory Framework document	30 May 2019
Develop guidance material for Authorised Officers on use and application of available tools across all relevant Acts	30 April 2019
Publish Compliance and Enforcement Policy	30 May 2019
Finalise updated Prosecutions Policy	30 May 2019
Publish state and regional Compliance Plans	30 June 2019 and annually
Develop additional internal guidance material to support effective compliance and enforcement activities	30 April 2019 (and ongoing)
Statement of Regulatory Intent	
Draft Statement of Regulatory Intent for Timber Harvesting for public consultation	30 March 2019
Publish final Statement of Regulatory Intent for timber harvesting	30 May 2019
Draft Statement of Regulatory Intent for other areas of environmental regulation that DELWP has direct responsibility for	30 June 2019
Publish Statement of Regulatory Intent for other areas of regulation	30 August 2019
Publicly report on performance against Statements of Intent	1 October 2019 and annually
Communications and engagement	
Publish Communications and Engagement Strategy	30 June 2019
Independent oversight	
Establish Regulation Sub-committee of the DELWP Senior Executive Team	30 April 2019
Establish an Independent Regulatory Assurance Panel	30 May 2019
Establish a Stakeholder Reference Group	30 May 2019
Action	Timing
Capability development	

Complete Regulatory Capability Assessment	30 May 2019
Finalise Capability Development Plan	30 June 2019
Community of Regulatory Practice established	30 April 2019
Review of the Code of Practice for Timber Production 2014 (the Code)	
Public consultation commences on proposed changes to the Code to correct administrative errors and ambiguities	1 May 2019
New Code tabled in Parliament	September 2019
Legislative changes	
Review sections 45, 46, 70 and 71 of the <i>Sustainable Forests (Timber) Act 2004</i>	To be considered following assessments by the department.
New powers and protections for Authorised Officers	
New tools that allow for a more graduated and proportionate response to non-compliance	
Shared data system	
System of shared data system for Victorian Government agencies, environmental non-government organisations and VicForests created	31 December 2019