

Introduction

The Goulburn Broken Local Government Biodiversity Reference Group (GBLGBRG) welcomes the State Government's initiative to review native vegetation clearing regulations and appreciates the opportunity to provide further comment on proposed changes.

The GBLGBRG has considerable experience and interest in implementation of native vegetation regulations. It has operated in the Goulburn Broken Catchment for over ten years with the purpose of fostering continuous improvement in local government and agency responses to native vegetation and biodiversity responsibilities and issues. Partners include environment and planning practitioners from eight LGAs, Goulburn Broken CMA, North-East Region CFA, VicRoads and others.

The GBLGBRG provided a detailed submission on the review's consultation paper including examples of cases highlighting specific issues experienced with modelled mapping and appropriateness of offsets. The matters raised and comments made then remain relevant to the current proposed changes.



Vic. 3643



This submission consists of general comments and responses to proposed improvements.

The GBLGBRG is a strong advocate for improving native vegetation regulations; therefore the proposed improvements are generally welcomed. However this should not be misconstrued as general support for the objectives, methodology and implementation of post 2013 changes to native vegetation regulation.

The post 2013 mix-up of biodiversity and native vegetation regulation causes much confusion and continues to provoke questions about equity and effectiveness. The over reliance on mapping and modelled scoring remain major concerns. Especially given our experience of poor accuracy and unreliability of the mapping, inadequate species based information and issues with modelled scoring consistency and adequacy.

Overall the proposed improvements do not provide confidence that ongoing problems will be adequately addressed such as the lack of resourcing and inadequate recording, reporting, compliance and enforcement regimes.

Proposed changes to the Victorian Planning Provisions and implementation approach do indicate awareness of many issues raised in our previous submission. For example, the need for a focus on avoidance of clearing where possible, recognition of the importance of old trees and scattered trees and EVC conservation status.

Comments in response to proposed improvements are provided below.

Proposed improvement	GBLGBRG response
<p>1. Clarify that the primary focus of the regulations is to ensure avoidance of native vegetation removal where possible</p>	<p>Support the three step approach proposed for the purpose of 52.16 and 52.17</p> <p>However the purpose and usefulness of this approach is complicated and weakened by not requiring it to be genuinely applied to basic pathway applications i.e. the only requirement is to provide a statement that no steps were taken to avoid and minimise impacts on biodiversity value of native vegetation but consideration of other values may be required. This is a duplicitous approach to implementation that will be difficult to implement and ensure compliance.</p> <p>The three step approach must be genuinely applied to all native vegetation clearing proposals.</p>
<p>2. Consolidate comprehensive policy guidance for native vegetation removal</p>	<p>Better policy guidance would be useful but to have any weight it should be incorporated into the SPPF. Then reflected in other following policy and controls including zone purpose and decision guidelines.</p> <p>The assessment guidelines need to be consistent with policy and clear. They must use clear, well defined descriptions and avoid using ambiguous descriptions and terms such as high, appropriate, 'values maintained into the future'.</p> <p>Policy guidance should cover all impacts on native vegetation related to the regulations including all exemptions and compliance.</p>
<p>4. Improve monitoring to determine if the regulations are achieving their objective and make this information publicly available</p>	<p>There have been previous commitments such as the current proposal however research by the GBLGBRG shows that there is no across-the-board system/s to track and or report losses from permitted clearing in Victoria despite many attempts such as such as NVPT, NVAT, NVT but none of these became fully functional</p> <p>The problem has been identified by numerous inquiries and reports e.g. SoE 2008, 2013, VAGO 2013</p> <p>The proposed implementation approach is weak and lacking sound policy support. It is not likely to provide the level of transparency and accountability required to build confidence in native vegetation policy and regulations.</p> <p>The GBLGBRG strongly recommends the development and implementation of a comprehensive monitoring and reporting policy that includes a mandatory monitoring and reporting regime.</p>

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5. Reduce the low risk-based pathway threshold	Supported
6. Replace the Native vegetation location risk map with an updated map of highly localised habitats	<p>Due to problems experienced, low confidence in the mapping and modelling remains. Same goes for the knowledge behind identification of threatened species and localised habitats.</p> <p>There must be a process whereby the mapping can be challenged and other sources of information can be considered.</p>
7. Require an avoid and minimisation statement for all applications, and consider this in decision making.	<p>The implementation approach as proposed is not supported (see also comments PI 1).</p> <p>The three step approach must be genuinely applied to all native vegetation clearing proposals. This requirement should be included in the NVIM process and on-line assessment report.</p> <p>It is not an onerous requirement which worked previously to improve understanding and develop a better attitude to native vegetation.</p>
8. Require an offset strategy for all applications and consider this in decision making	<p>Do not discourage proponents from providing first party offsets where they can demonstrate capability.</p> <p>Capability to address this requirement should also be included in the NVIM on-line assessment process.</p>
9. Change to two pathways	Continued use and values of 3 pathway system remains to be seen.
10. Provide clearer guidance on when to refuse an application to remove native vegetation	<p>Generally support this as guidance to inform all parties of the factors which may constitute a refusal. It would be useful for pre-application planning.</p> <p>Guidance must be clear and refusals supported by DELWP if required.</p> <p>This proposed improvement should not increase LGA responsibility.</p>
11. Include a decision guideline that allows councils to consider locally important biodiversity when assessing applications	<p>Support subject to further detail.</p> <p>State and local planning policy must enable development and incorporation of regional guidelines into planning schemes. These should be developed and implemented through a partnership between DELWP, LGAs and CMAs. For this to be effective, the regulations must provide for and enable consideration of matters such as bio-regional conservation status and other regional priorities.</p>

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12. Allow habitat characteristic information collected at the site to be used to supplement the maps of a species habitat in the permit application process and for offset sites	<p>Proposed implementation approach and assessment guidelines provided lack detail and are not sufficient as is.</p> <p>The use of reliable site assessments and other information such as records must be able to be used for all applications to supplement and verify modelled mapping.</p> <p>Reliance on the modelled mapping and limited systems such as the VBA as decision tools in most cases is a fundamental flaw in the current system and a frustration for practitioners and developers.</p> <p>The source and provision of 'other information' should not be restricted to ecological consultants and individual site assessments. There must be a process to consider other reliable records.</p>
13. Increase the information available about the maps used in the regulations and improve their accessibility	Should also acknowledge limitations.
15. Differentiate between the biodiversity value of scattered trees for use in decision making and offset requirement determination.	<p>Supported in principle however it does not address the issue of unmapped scattered trees getting a very low default score.</p> <p>We have previously provided evidence that default score offset values (costs) are less than firewood value. The default values must be increased.</p> <p>Currently large old trees are being lost with negligible reparation in many cases e.g. GBEU of 0.002 = an offset value of \$260 (ex GST and fees). What do you get in an offset for \$260? Even with slightly higher GBEUs the offset value can be less than firewood value.</p> <p>Goulburn Broken Regional Native Vegetation Guidelines previously addressed this matter well.</p>
16. Increase the use and functionality of the Credit Register	<p>Supported in principle</p> <p>Costs and other requirements for registration seem excessive.</p> <p>All offset site locations and details should be available to LGAs in their area on request.</p>
17. Support the development of the market for low availability offsets	Support actions to increase the spread and diversity of all offset types (not only low availability). Regional conservation priorities should also be targeted.

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<p>18. Require that all third party offsets are registered on the Credit Register and meet its standards, including standards for securing the offset.</p>	<p>Costs and other requirements for registration of first party offsets must be minimal and the process simple.</p> <p>This requirement must not act as a disincentive for establishing first party offsets where there are clear benefits and capability.</p> <p>Current costs for registration are high and likely to be a disincentive. A recent estimate received by a land owner from consultants was in excess of \$30,000 for preparation of a compliant management plan and registration costs.</p>
<p>19. Redesign the revegetation standards to ensure desirable revegetation can occur</p>	<p>Revegetation standards in the current regulations are not necessarily realistic and practical to implement or cost effective. Landholder feedback indicates that the DELWP imposed standards discourage first party offsets and revegetation even when there is clear benefits and capacity to undertake the work in priority areas.</p> <p>Redesign should include emphasis on remnant and landscape enhancement. Standards should be developed at local/regional level with guidelines based on priorities experience and expertise.</p> <p>For example, GBCMA has had practical revegetation guidelines based on EVC types for some time and there is a lot of revegetation/rehabilitation experience and ownership in the community. It is important that practical revegetation/rehabilitation options for offsetting are available.</p>
<p>20. Create a framework for offsetting on Crown land</p>	<p>Crown land should only be used to offset clearing on Crown land.</p> <p>Crown land offsets should be subject to the same requirements, criteria and registration on the credit register as private offsets. Creating a separate system would appear as unequitable.</p> <p>The framework must ensure transparency and accountability and any offsetting available for public scrutiny.</p>
<p>21. Formalise a set of exemption purposes and principles</p>	<p>GBLGBRG practitioners have had considerable experience in the use and effects of exemptions. Native vegetation losses resulting from the use of exemptions is significant and almost certain to substantially exceed losses from permitted clearing. Experience shows that poor controls on the use of exemptions promote excessive clearing and lessened regard for native vegetation values.</p> <p>The extensive range and increasing use of exemptions agreements proposed for authorities, utilities et al will only compound current problems without the development and implementation of an effective process to deal with issues.</p> <p>Just formalising purposes and principles is not a sufficient response to the broad range of matters relating to exemptions needing urgent attention.</p> <p>GBLGBRG supports establishment of a formal process to develop</p>

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	<p>comprehensive measures to deal with issues relating to development and use of exemptions. The primary objective must be an overall and verifiable achievement of 'no net loss.'</p> <p>Matters to address include:</p> <ul style="list-style-type: none"> • Establishment of process with independent oversight to develop the purpose, principles, procedures, guidance, review and appeal process etc. • Development of a request and approval process to use an exemption. • Further development and use of the NVIM tool or similar to identify and seek approval for application of exemptions. • Third party responsibility for approvals to mitigate conflicts of interest to ensure the proponent of clearing does not solely determine when and how an exemption applies (includes private proponents and authorities). • Requirement for relevant experience, qualification and training for those approving exemption use and losses. • Definitions and processes (including evidence) to ensure application of the requirement 'to the minimum extent necessary'. • Mandatory recording and reporting of losses • A monitoring, compliance and enforcement regime.
<p>22. Clarify wording of exemptions</p>	<p>Development must be linked to PI 21.</p> <p>All wording and definitions must ensure that compliance is enforceable.</p> <p>Intent and purpose must be clear and avoid use of non-specific terms to avoid misinterpretation. For example what is encompassed by the term 'planned burning'? Stubble burning is usually planned but it can result in destruction of native vegetation. This is a problem that is often raised by concerned community members but very difficult to deal with.</p> <p>Definitions must be clear about requirements for secondary consents such as the need for written consent because verbal consents are usually not reliable or enforceable. For example clearing on roads often occurs without the written consent of road authorities (see fence exemption).</p>
<p>23. Provide guidance on the intent and application of exemptions</p>	<p>Development should be included in and independent review and implementation process. See also comments for PI 21.</p> <p>Many LGAs do not have the resources including available skills to achieve appropriate and consistent application. There is a role for DELWP to provide skilled support and share responsibility especially in regional areas.</p>

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<p>24. Adopt a consistent approach to agreements referenced in the exemptions</p>	<p>Should be included in independent review and implementation process (see comments for PI 21 as relevant here).</p> <p>Primary objective and outcome must be an overall and verifiable achievement of 'no net loss.'</p> <p>Must ensure transparency and accountability and be available for public scrutiny.</p> <p>Exemptions must be suited to intent and purpose and open to appeal.</p> <p>Exemptions should only apply to land owned or managed by the proponent unless there is written agreement from other affected land owner/managers.</p> <p>Third party oversight is essential in this area given the increasing and comprehensive use of exemptions by public authorities, and competing interests, the almost certain likelihood of significant consequences from losses in high value areas (e.g. roadsides, water storage and delivery systems, formal reserves and other public land).</p> <p>It must be clearly noted that the comments made above are not aimed at reducing or trading off public and road safety, access to water etc. as is sometimes implied when reform and transparency in this area is called for.</p>
<p>25. Develop a compliance and enforcement strategy</p>	<p>A comprehensive compliance and enforcement policy and adequate support for implementation is a basic requirement to ensure the purpose and objectives of the regulations are achieved.</p> <p>This issue was raised with senior DELWP officials during a consultation session. They expressed dismay at the poor situation regarding compliance and enforcement policy as well as the lack of direct involvement and support from DELWP. Unfortunately that does not appear to have led to a meaningful improvement proposal.</p> <p>The proposed improvement implementation approach is feeble and lacks intent to ensure an effective solution. It hardly differs from what is already happening</p> <p>The State Government have gradually reduced their role and continue to shift responsibilities and expectations to LGAs. For compliance and enforcement to improve markedly, the State Government and its agencies must take on far more responsibility and the primary role for ensuring compliance and enforcement.</p> <p>The circumstances and problems related to compliance and enforcement provide compelling reason for establishment of a properly resourced independent watchdog to be involved.</p>

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26. Provide guidance and support materials for compliance and enforcement activities	See previous comments. Regional and rural LGAs generally do not have the capacity to undertake effective compliance and enforcement. This situation is only likely to be marginally improved by guidance and support materials.
27. Improve information gathering for compliance and enforcement	See comments above in PI 25 & 26
28. Promote co-regulatory support	See comments above in PI 25, 26 & 27
29. Review the overarching compliance and enforcement framework	Proposed approach reinforces previous comments and lack of commitment.