



MCA VICTORIA

REVIEW OF NATIVE VEGETATION CLEARING REGULATIONS

MARCH 2017

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1. EXECUTIVE SUMMARY

Recognising that native vegetation management is an important part of biodiversity conservation, the Victorian minerals industry has supported the intention of Victoria's native vegetation permitted clearing regulations – achieving no net loss – since their development in 2002.

However various incarnations of the regulations sought to pass responsibility for achieving the state's broader biodiversity objectives onto a small number of regulated industries. This is despite gains from native vegetation offsets outweighing losses from permitted clearing.¹

MCA Victoria welcomes the Victorian Government's confirmation in the *Outcomes Report – Review of the native vegetation clearing regulations* that the regulatory objective is 'no net loss'.²

The review's proposed system changes and actions go part way towards improving the workability of the regulations for minerals industry proponents. MCA Victoria strongly supports the government's commitments to develop a framework for offsets on Crown Land, review the function of the state's offset market and develop low availability offsets.

MCA Victoria supports the adoption of a co-regulatory approach with a commitment to 'more formal or organised arrangements' between federal, state and local government agencies with responsibilities for native vegetation management. Formal arrangements must include a commitment to work with the Commonwealth to restart the bilateral approvals process.

The range of offset tools available to proponents should also be broadened. The introduction of financial-based offsets would enhance the workability of the regulations and encourage targeted support for strategic and community-identified biodiversity conservation projects in host communities. Financial-based offsets are already available in some Victorian urban growth areas under the Melbourne strategic assessment. There is no reason why this option should not be available for regional industries.

Together, a framework for offsets on Crown Land and availability of financial-based offsets, would better enable proponents to contribute to biodiversity conservation activities within a project's host community. Communities could help identify and deliver such activities, supporting community ownership and capacity.

Significant additional work is required to improve the workability of the regulations for industry. Key outstanding issues include a lack of consistency and fairness in application of regulations by decision-makers and difficulties obtaining timely and accurate advice from relevant government agencies. An efficient and balanced process is also needed to support proponents transitioning a reserve from past to current arrangements.

Without resolution of these issues the proposed policy changes cannot deliver the intended improvements and reduce the high cost and delays resulting from the current framework.

Additional work is needed to fulfil the commitments outlined in the government's response. This will include detailed policy development and implementation. To ensure workable outcomes, it is important that the government engages with key stakeholders, including the minerals industry, throughout the development and implementation process.

MCA Victoria recommendations:

1. Native vegetation policy and decision making;

- Ensure that relevant clauses of the state planning policy framework reflect that the objective of the regulations is not net loss with avoidance one step in the supporting methodology
- Mitigation (such as revegetation) should also form part of the vegetation management (offset) hierarchy
- No net loss should be a long term and overarching policy objective and care needs to be taken in interpreting this at the local or project level
- Clearing activities should not automatically trigger a requirement to offset. Only significant residual impacts should be considered. The ability to mitigate impacts and natural regeneration should be taken

¹ State of Victoria, *Protecting Victoria's Environment – Biodiversity 2036*, Department of Environment, Land, Water and Planning, 2016, p. 6.

² State of Victoria, *Outcomes report: Review of the native vegetation clearing regulations*, Department of Environment, Land, Water and Planning, 2016, p. 7.

into account. The sustainability/trajectory of the vegetation, its biodiversity value and whether the clearing is trivial or short term should also be considered

- Consultation with the minerals industry when developing new policy guidance material is crucial to ensuring it is practical and appropriate for minerals projects
- A DELWP officer should be designated to work directly with referral authorities to ensure consistent and timely review of permit applications
- A consistent case manager and a single point of contact for proponents throughout the life of a development would improve efficiency and consistency.

2. Biodiversity information tools

- Utilise the experience and expertise of regulated industries regarding site-based habitat survey requirements
- Where long-term studies are possible, proponents should be able to undertake biodiversity studies to determine the presence or absence of particular species
- Develop a central portal for biodiversity information, regularly updated in line with site based survey data
- Introduce a process for regular independent review of the method used to manage biodiversity information tools
- Align with relevant Commonwealth biodiversity data, noting moves towards a single harmonised threatened species list.

3. Offset delivery

- Consistent with the state planning policy framework, access to alternate offset arrangements must be available for all projects
- A DELWP officer designated to manage the credit register and coordinate directly with local government and other relevant stakeholders
- Ensure likely future demand for specific offsets is considered during work to develop low availability offsets
- Develop a flexible, effective and transparent framework for offsets on Crown Land, in consultation with the minerals industry
- Broaden the range of offset tools to include financial-based offsets structured to support outcomes-focused state and regional/strategic biodiversity targets. Financial-based offsets are already available in Victorian urban growth areas.
- Introduce an efficient and balanced process to support proponents to transition a reserve from past to current arrangements.

4. Other considerations

- Limit membership of the proposed native vegetation advisory groups to members that regulate, use or support the regulations
- Recognise and credit site rehabilitation as part of a site's offsets package to remove duplication between various legislation
- Focus the monitoring and reporting plan on increasing public understanding of the intent and operation of the regulations.

2. POLICY INTENT AND DECISION-MAKING

- New policy guidance should address inconsistencies in the current permit application review process
- Adoption of a co-regulatory or streamlined approach must include progression of an approval bilateral agreement with the Commonwealth and ongoing support for referral agencies
- Consistent with the state planning policy framework access to alternate offset arrangements must be available for all projects, where appropriate.

A clear regulatory intent

MCA Victoria welcomes confirmation that the objective is for the 'regulation of native vegetation permitted clearing should lead to no loss to biodiversity, through application of the three step approach – avoid, minimise and offset.'³

Importantly, no net loss should be considered a strategic and long-term regulatory objective. Care should be taken when interpreting 'no net loss' at the local or project level. Clearing activities should not automatically trigger a requirement to offset. Only significant residual impacts should be considered.

For example, if applied rigidly at a local scale, no clearing would be permitted, regardless of scale or timeframe for the impact. This is particularly important for mining which is a temporary user of land. Consideration should be given to biodiversity value, latent condition of the vegetation (fragmented, in decline or otherwise), mitigation and the ability to regenerate naturally.

Mitigation (such as revegetation) should also form part of the vegetation management (offset) hierarchy. This will encourage development proponents to rehabilitate cleared land where practical.

All changes to the state planning policy framework (SPPF) must reflect that the objective is 'no net loss' with the application of the three step approach a means of achieving this objective.

Comprehensive policy guidance

MCA Victoria agrees that new evidence-based and practical guidance is necessary to ensure consistent and appropriate application of the policy by responsible and referral authorities, including local government (proposed improvements 2 and 14).

Guidance should be specific as to how the regulations are to be applied, including their interaction with other approvals processes (including work plan and project approvals processes). Working collaboratively with industry to develop this guidance (for example *Assessment handbook – native vegetation clearing* and permit application guidance) will ensure it is practical, appropriate and assists to address serious and ongoing concerns with inconsistent application of the regulations.

However further action is needed to address current significant delays and inconsistency in review of permit applications. The MCA Victoria recommends the following reforms to address these delays:

- Ensure that adoption of a co-regulatory approach includes ongoing training and support for referral authorities in the assessment process, rather than simply prior to the changes
- Designate a DELWP officer to work with referral authorities on an ongoing basis
- Appoint a case manager and single point of contact for proponents throughout the life of a development, where possible
- Improve the transparency of the review process, including by consideration of statutory timeframes for review of permit applications.

Development of a planning practice note to support local government strategic native vegetation planning should be undertaken in consultation with a wider range of stakeholders including the minerals industry. This would ensure consideration of all potential future land uses and prevent the arbitrary removal of areas that could contribute to social and economic development in a region resulting in the unproductive use of land.

³ State of Victoria, *Outcomes report: Review of the native vegetation clearing regulations*, Department of Environment, Land, Water and Planning, 2016, p. 7.

Adoption of a co-regulatory approach

MCA Victoria supports the streamlining of regulation wherever possible. Cumbersome, duplicative and poorly coordinated processes delay projects, often at significant cost to industry.

Minerals projects in Victoria may also trigger the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

Where this occurs, clearing of the certain native vegetation types may require assessment and approval by both the Victorian and Commonwealth governments. Given the ongoing harmonisation of threatened species listing processes, this duplication is set to increase.

There is a compelling case for harmonising state and federal environmental approval regimes, through the use of bilateral agreements under the *EPBC Act*.

Unfortunately the Victorian Government has indicated that it does not support progression of an environmental approvals bilateral agreement to improve administrative efficiency. MCA Victoria recommends that the Victorian Government reconsider its position and recommence negotiations of an approvals bilateral agreement.

Identification and consideration of sensitive native vegetation

Consideration of sensitive native vegetation must be undertaken with respect to its health, location and specific characteristics. Specific requirements for large trees – including the presence of a single large tree pushing an application into the intermediate pathway – without consideration of its specific characteristics and location is contrary to this approach and places onerous requirements on regulated industries.

The availability of alternative offset arrangements

In its current form the availability of alternative arrangements appears to be limited to 'major strategic projects with complex requirements'.⁴ This definition must be expanded to ensure that alternative arrangements are available for all projects where it can be demonstrated that the use of such mechanisms is appropriate and accounting for environmental, social and economic factors.

Such a change is particularly important for the minerals industry, where geology determines the location of a particular deposit and the potential for a mining operation.

This aligns with the objectives of the SPPF which seek 'integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.'

MCA Victoria supports the development of a handbook. The handbook should include;

- An equitable approach to alternative arrangements for all industries
- The availability of financial-based as well as well as direct offsets. This may include contribution to a centralised offset fund or government endorsed third party program. It should enable both direct (land based) and indirect (research) to be considered
- Accounting for voluntary conservation initiatives
- The role of community expectations regarding the biodiversity value/s.

Engagement with regulated industries during development of the handbook would ensure its practicality.

⁴ State of Victoria, *Native vegetation clearing – Assessment guidelines*, Department of Environment, Land, Water and Planning, 2016, p. 24.

3. BIODIVERSITY INFORMATION TOOLS

- The MCA Victoria supports the inclusion of site-based habitat surveys to improve the accuracy and confidence in information tools used to inform decision-makers. Where long-term investigations are possible, studies should be able to confirm the presence or absence of a particular species in addition to habitat characteristics
- Working with industry to develop requirements for site-based surveys will ensure they are fit for purpose
- Periodic independent review of tools used for decision-making will further improve confidence and transparency.

Providing accurate and current information for decision making

Inaccuracies in biodiversity information tools, including maps used to inform decision-making, has eroded confidence in the native vegetation regulations. Enabling site-based habitat characteristics surveys supplement mapped habitat assessment is an important step towards improving the accuracy and transparency of these tools.

To be effective this improvement must be supported by specific requirements for:

- Detail as to how and when site-based habitat characteristic surveys can be undertaken to be undertaken in consultation with industry to ensure fit-for-purpose requirements
- Utilisation of site-based habitat characteristic surveys to progressively enhance the location map, including with regards to dispersed species (links to proposed improvement 14)
- Responsible and referral authorities to base decisions on data collected from site-based surveys rather than modelled information
- Introduction of a periodic independent review of the methods used to manage biodiversity information tools, including maps (links to proposed improvement 13)
- Development of a central portal for environmental information including spatial biodiversity data
- Alignment with relevant Commonwealth biodiversity data, noting moves towards a single harmonised threatened species list.

Site-based surveys

Unlike other industries minerals projects often have long-lead times. This provides the opportunity for a proponent to undertake additional, verified studies over longer periods.

Given this, there is a compelling case for minerals projects proponents to be able to undertake additional surveys to determine the absence or presence of particular species. Doing so would enable a decision-maker to have access to all relevant information about a particular area when determining offset requirements.

4. OFFSET DELIVERY

- Early consultation with regulated industries will ensure that future demand is considered in development of low availability offsets
- The MCA Victoria supports development of framework for offsets on Crown Land
- Financial offsets are a valuable tool that could be used to strategically contribute to the Victoria's biodiversity goals.

Use and functionality of the credit register

The basic changes proposed to improve use and functionality of the credit register are necessary and long overdue (proposed improvements 16 and 18). A designated officer should be appointed to undertake a thorough review and update of existing credit register information and implement an ongoing system to maintain currency and accuracy.

Development of low availability offsets

MCA Victoria supports focused action to identify potential providers of low availability offsets. This will be an important step towards addressing the significant challenges presented by lack of liquidity in Victoria's offset market (proposed action 17).

For example, limited availability of particular specific offsets in certain areas may require a user to obtain offsets away from the site of the permitted clearing. This can add to incorrect perceptions that clearing is being undertaken without an associated 'gain'.

Limited supply of certain offsets also increases their cost. Minerals projects are constrained by the geological location of deposits. For some projects this may mean clearing is unavoidable and in some cases that a large number of offsets are required. Unreasonably high offset costs unnecessarily risk the viability of some mining projects.

Any action to identify potential offset providers should be undertaken in consultation with the minerals and other regulated industries to ensure that likely future demand, in terms of vegetation type and extent is considered. This will help ensure that this work results in a pipeline of new offsets of appropriate type and location.

Offset market review

Proposed improvement 17 includes provision for a review of the native vegetation offset market in conjunction with the Department of Treasury and Finance and the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) and other stakeholders. This should be undertaken as a priority given that various impediments in existing market arrangements.

For efficiency, the review process should consider the MCA Victoria's submission to the recent DEDJTR review of the cost of Victoria's native vegetation regulations on industry.

Framework for offsets on crown land

MCA Victoria strongly supports the Victorian Government's commitment to a new framework for offsets on crown land. Once developed, the framework will enable regulated industries to contribute to improvements to public land for public benefit.

The following principles would form the basis for a workable framework for offsets on crown land:

- Offsets should be secured within the same the same region where feasible
- 'Additionally' is determined based on the categorisation of the public land, the proposed offset area's current environmental characteristics and enhancement opportunities based on best available scientific evidence
- Offsets are secured for the duration of the permitted clearing or to when the offset commitment has been met
- Delivery of offsets may be by the proponent, public land manager and/or third-party

- Transparent and efficient governance arrangements support the delivery of offsets on crown land, supported by clearly articulated responsibilities for the proponent and public land manager.

Credits for rehabilitation

At present, minerals projects must comply with requirements under the *Minerals Resources (Sustainable Development) Act 1990* and permitted clearing regulations.

As the regulations do not recognise temporary land uses, this conflict results in a minerals project proponents being required to provide an offset for permitted clearing of native vegetation and undertake rehabilitation of the same area.

A measured approach to addressing this duplication is to recognise and credit site rehabilitation as part of a proponent's offsets package.

Financial-based offsets

MCA Victoria recommends that the Victorian Government broaden the range of offset tools available to include financial-based offsets. Financial-based offsets can be used to achieve strategic environmental actions through targeted action and provide a new opportunity to encourage community involvement in biodiversity conservation.

Financial based offsets are already available in Victoria, although limited to growth areas identified in the Melbourne Strategic Assessment. Here habitat compensation is used to manage conservation areas established to 'balance any potential impacts of urban development in the growth corridors'. Fee prices are calculated per hectare of different habitat types.

Landowners pay an agreed amount into a central fund used to deliver to deliver the biodiversity conservation strategy.⁵ For example, a payment of \$95,075 is made per hectare of native vegetation lost.⁶

Unfortunately this option is not available to regional industries such as the mining.

In other states, provisions for financial-based offsets are more widely and equitably available.

Queensland's offset policy provides for a financial settlement offset or a combination of a proponent-driven offset (land-based offset) and a financial settlement offset on a prescribed environmental matter. Similar to habitat compensation, the policy requires the financial settlement to be paid to the state or relevant local government for strategic biodiversity conservation activities.⁷

In New South Wales, the *Biodiversity Offsets Policy For Major Projects* provides for supplementary measures 'that benefit biodiversity but do not specifically involve protecting and managing a site' where offsets are not available.⁸

From a Commonwealth perspective, the *EPBC Offsets Policy* provides for use of other compensatory measures 'anticipated to lead to benefits for the impacted protect matter, for example funding for research or educational programs.'⁹

Financial-based offsets framework for Victoria

The Victorian Government has the opportunity develop the mechanism in a way that achieves the regulation's net loss objective, contributes to the state's broader biodiversity priorities and encourages community involvement.

The MCA Victoria recommends that a financial based offset mechanism be based on the following principles:

- Financial contributions are to be used to support achievement of regional biodiversity targets
- Offsets could include a package of physical and financial-based offsets. For example, an offsets package may include a portion of specific offsets and a financial-based offset contribution towards fencing of an identified area of high biodiversity value
- Financial-based offsets could be delivered by the proponent or in agreement with a third party, such as local government or a local conservation group (such as Landcare)

⁵ State of Victoria, [Habitat Compensation](#), Department of Environment, Land, Water and Planning, 2016.

⁶ Ibid.

⁷ Department of Environment and Heritage Protection, , [Queensland Environmental Offsets Policy](#), State of Queensland, 2016, p.1-13.

⁸ Office of Environment and Heritage, NSW Biodiversity Offsets Policy for Major Projects, State of New South Wales, 2014, p. 13.

⁹ Department of Sustainability, Environment, Water, Population and Communities, 2012, [Environment Protection and Biodiversity Conservation Act 1999 – Environmental Offsets Policy](#)

- Implementation, monitoring and reporting requirements would be developed at the outset and managed in a similar way to physical offsets
- Delivery of value for money biodiversity outcomes based on an agreed schedule of fees. Such an approach is taken with the habitat compensation.

Based on these principles, financial based offsets could be used for a range of conservation initiatives.

This could include fencing of an area of high biodiversity value to protect from degradation by native or feral wildlife, funding to support quality research into an impacted biodiversity value or support for the establishment of an Indigenous 'Caring for Country' program. Importantly it could also enable a local conservation group to be involved in delivering the offsets, building community capacity and encouraging ownership of conservation outcomes.

As a user of offsets, it is important the minerals industry is engaged in the development of financial based offset mechanisms and offsets policy more generally.

5. OTHER CONSIDERATIONS

- Appropriate terms of reference and targeted membership would position the native vegetation advisory group to address inefficiencies within the regulatory framework
- Recognition and crediting of site rehabilitation as part of an offsets package is a measured approach to addressing duplication requirements for minerals projects.

Establishment of a native vegetation advisory group

Established with the right terms of reference and membership, an ongoing native vegetation advisory group could provide a means for addressing regulatory inefficiencies and limitations.

Composition of the group must align with its purpose to work within the existing policy and regulatory framework. Membership should therefore be limited to representatives of responsible and referral authorities, regulated industries and organisations with a role in the provision of offsets.

Exemptions

MCA Victoria supports the maintenance of exemptions for minerals exploration. The exemption recognises the low impact nature of most exploration activity.

Monitoring, reporting and compliance

Submissions to the review process confirm limited public understanding of the regulations, particularly offset provisions. This understanding is further affected by clearing outside of the regulatory system, limited availability of suitable offsets near permitted clearing and significant clearing activities by the state government (enabled through exemptions under the regulations).¹⁰

The clear role for the proposed monitoring and reporting plan, therefore, is to increase public understanding of the intent and operation of the regulations and delivery of biodiversity gains through offsets. In this capacity, the plan should include:

- Information about the permitted clearing, offsets and the proportion of gains to losses
- A mechanism for promoting leading practice
- Utilisation of existing available data where possible, to avoid duplicating existing reporting requirements
- Alignment with the reporting approaches proposed in the Victorian draft biodiversity strategy.

¹⁰ Department of Environment, Land, Water and Planning, 2016, *Biodiversity 2036*