



Commissioner for
Better Regulation
Red Tape Commissioner

GPO Box 4379
Melbourne Victoria 3001
Telephone 03 9092 5800

9 August 2019

Mr Lee Miezis
Deputy Secretary, Forests, Fire and Regions
Department of Environment, Land, Water and Planning
2 Nicholson Street
EAST MELBOURNE VIC 3002

Dear Mr Miezis

REGULATORY IMPACT STATEMENT FOR THE CODE OF PRACTICE FOR TIMBER PRODUCTION 2019

I would like to thank your staff at the Department of Environment, Land, Water and Planning (DELWP) for working with my team on the preparation of the Regulatory Impact Statement (RIS) for 2019 updates to the Code of Practice for Timber Production 2014 (the Code). The Code was first ratified by the Victorian Parliament in 1989, and revised in 1996, 2007 and 2014.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and be proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 8 August 2019 meets the adequacy requirements of the SLA.

Background

Timber harvesting in Victoria is governed by Commonwealth and State legislation, regulations, policies and codes. The Code addresses the legal obligations that timber harvesting managers, harvesting entities and operators must consider, in addition to existing relevant law. For each forest type (i.e. State forest, private native forest or plantation), the Code provides guidance on principles, operational goals and mandatory actions and the mechanisms by which they are to be achieved.

The RIS highlights that the Code is being updated in the context of numerous reviews of the management of native forests including the Independent Review of Timber Harvesting Regulations in Victoria in 2018. The RIS identifies the problems with the current Code – namely that it lacks clarity around regulatory authorities' roles and responsibilities; includes administrative errors that undermine the integrity of the code; some aspects of the Code are unenforceable due to poor drafting; and the Code is not contemporary with

Victorian Government commitments and strategies to protect environmental values, such as the Victorian Government commitment to protect Large Trees and strategies to protect the Large Brown Tree Frog.

The objectives of updating the Code is to resolve these problems whilst ensuring that the Code's objectives can still be met including the maintenance of biological diversity and the ecological characteristics of native flora and fauna within forests.

Analysis

As is required by the SLA, the RIS considers both regulatory and non-regulatory approaches to protecting these species and ecological communities. Non-regulatory approaches (such as education programs, communication and engagement and VicForests achieving Forest Stewardship Council certification) are canvassed in the RIS but the Department has rejected total reliance on these, due to its view that they either only partially address the problems identified above or will take too long to implement effectively. We note and accept that due to commercial in confidence arrangements between relevant parties some information, such as underlying pulp log supply levels, has been redacted.

DELWP explains why it considers regulatory amendments to the Code to be the most feasible approach to meet the Government's objectives, given the nature of the issues identified above. The RIS analyses the impacts of three regulatory options using many factors.

The RIS analyses the expected biodiversity benefit (change in suitable habitat) that would result from the threat mitigation of avoiding timber harvesting in key habitat areas. The change in suitable habitat was assessed for 66 forest dependent threatened species identified by expert biologists as part of the Victorian Environmental Assessment Council (VEAC) 2017 report 'Conservation values of State Forests'. The assessment of biodiversity benefits itemises the benefits that would be achieved for the Greater Glider, as this is a priority species for DELWP.

The RIS considers the cost-effectiveness of each option - measured by estimating the change in suitable habitat hectares that would be protected, compared to the cost impact on the timber industry to comply. It also considers regulatory impacts and broader ecosystem impacts such as water supply, and forest-based recreation and tourism.

Large Brown Tree Frogs

The RIS identifies one option for the protection of Large Brown Tree Frogs, which is consistent with DELWP Action Statement no. 255, which remains the scientifically accepted strategy for managing this species. The Action Statement recommends a regulatory action that if a Large Brown Tree Frog is detected in a State Forest, a 28-ha protected area is to be created around the detection site. No timber logging would be permitted in this protected area.

DELWP's analysis of the costs and benefits of this option show that it is anticipated it will have a cost-effectiveness of \$133,100 per suitable habitat hectare gained for all species except Greater Gliders, and \$12,200 per suitable habitat hectare for Greater Gliders. The costs to the forestry industry is estimated to be \$88 000 over 10 years. This low costs are based on the extremely limited geographic distribution of the species.

Large Trees

Two options are identified for protecting Large Trees. The first option requires VicForests to make all reasonable endeavours to protect Large Trees from the direct impacts of timber harvesting and regenerative burning in coupes where timber harvesting is conducted. Where practicable, Large Trees are to be incorporated into retained patches or within expanded harvesting exclusion areas. The second option is the same as the above but requires a mandatory 20-metre buffer around the Large Tree and VicForests to establish connectivity to existing reserves. The RIS' analysis of these options found that the first option (Large Trees with no buffer) is the most cost-effective option, as it imposes negligible regulatory burden, as it formalises measures that VicForests has already adopted.

The RIS notes that an estimate for the first option's cost-effectiveness cannot be provided due to the data available. Nonetheless, DELWP states that this option would provide significant long-term benefit for hollow-dependent mammals, as large trees are more likely to form hollows. The RIS estimates that the second option (Large Trees with a buffer) would impose \$39 million in costs to the forestry sector over 10 years due to the large geographic area that would be excluded from timber production by the habitat retention buffer.

The preferred option

Based on the analysis above, Large Brown Tree Frogs and Large Trees (no buffer) are the preferred options and would be implemented together. The implementation of these options is expected to achieve the direct protection of these forest values and protect important habitat characteristics that provide co-benefits for multiple threatened forest-dependant flora and fauna including the Greater Glider while imposing minimal regulatory burden on the forestry sector.

Together, these options are anticipated to contribute to the protection of important habitat characteristics and species, including Large Brown Tree Frogs and Greater Gliders and deliver greater regulatory certainty to the timber industry and community.

The RIS explains that the Code also makes several smaller or administrative changes, that were not subject to more formal analysis as they are expected to have minor or insignificant regulatory impacts.

Implementation and evaluation

DELWP notes in the RIS that implementing the proposed changes to the Code will be done in the context of broader regulatory reform processes underway within DELWP, including establishing the Office of the Conservation Regulator and the role of Chief Conservation Regulator. The Chief Conservation Regulator will oversee implementation of the proposed changes.

DELWP notes that a key consideration around implementation will be to clarify how compliance will be determined, and for VicForests to amend its operational procedures and internal compliance checks. These changes will be communicated to harvest and haulage contractors by VicForests.

A further scientific review of the Code is planned to commence in 2020 to identify other strategic interventions that could be implemented. The effectiveness of the 2019 Code variations will be evaluated ten years after implementation. In addition, DELWP will also include frequent monitoring due to relative uncertainty about expected benefits and costs of the preferred options.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin

Commissioner for Better Regulation