Independent Review of Timber Harvesting Regulation

Panel Report to the Secretary of the Department of Environment, Land, Water and Planning

24 October 2018
Jane Brockington

Jane Brockington has over 25 years experience working with boards, governance bodies and executive teams. She is the Principal of Bridging Policy and Practice and is a non-executive director of the Transport Accident Commission and WorkSafe Victoria. Jane was Deputy Chair of the 2015 Independent Inquiry into the EPA Victoria, and previously the Chief Executive Officer of the Victorian Commission for Liquor and Gambling Regulation and of the 2009 Victorian Bushfires Royal Commission.

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Peter Rozen

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Aboriginal acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria’s land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices. The Independent Review Panel is committed to honouring Victoria’s Traditional Owners and Aboriginal communities in their protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

Independent Review of Timber Harvesting Regulation, 8 Nicholson Street, East Melbourne, VIC 3002
Foreword

As Victorians we all value our native forests – for the economic, biodiversity, recreational and cultural values they provide – and we permit a range of activities within our forests, including timber harvesting. There is an inherent tension and, at times, conflict between often competing interests. Balancing these values and activities presents significant challenges for policy-makers and regulators alike.

In this context, and in the wake of the failed Take Me Home prosecution, we were asked by the Secretary of the Department of Environment, Land, Water and Planning (DELWP) to undertake a five-week review. This was to examine the effectiveness of DELWP’s prosecutions and regulatory functions and outline a pathway to strengthen these now and for the future.

What is abundantly clear is that the system of policy, legislation and regulation is dated, complex, convoluted – indeed labyrinthine – and difficult to use, and DELWP is neither an effective or respected regulator. During our consultations, we found a highly polarised and contested environment, strained relationships between parties, a lack of trust and frustration. These features undermine the realisation of better outcomes from forest management and forest values for everyone.

Within DELWP we found that the regulatory functions would benefit from a more strategic approach that provides more clarity on roles, responsibilities and purpose. This would facilitate better regulatory outcomes and alignment of effort. Systems, structures and governance do not support regulatory effectiveness and outcomes. Regulatory practice and capability is weak.

DELWP is often criticised for being biased both pro-industry and pro-conservation. We did not find either to be true. We observed professional people within DELWP who seek to use their expertise and experience to achieve positive outcomes in challenging circumstances. Their work is done without access to the full suite of regulatory tools or access to regulatory expertise. Disappointingly and unfairly, DELWP staff are often caught in the cross-fire of competing interests and have become reactive and introspective.

This does not have to be the future. We firmly believe, and have experienced, that it is possible for a regulator to be re-energised, modernised and build capability and confidence. This is within DELWP’s reach if it can clearly define its regulatory role and purpose and build capability in regulatory practice and craft. It must also consolidate its regulatory functions to achieve a critical mass, align effort and adopt a confident, open and outward-facing regulatory posture. DELWP can step up and step out.

In undertaking this Review in the time available we have necessarily had to focus our effort and engagement to ensure we understood the frameworks, issues and different perspectives surrounding native timber harvesting. We do not presume to have examined in detail all aspects of forest management and timber harvesting in Victoria.

We do, however, believe that the insights and the recommendations we offer will make a material difference towards DELWP becoming a confident, capable, effective and respected regulator.

It has been our privilege to undertake this task. We thank all those who engaged with us and we particularly acknowledge and thank the Review Secretariat for their many long hours of work, professionalism and assistance.

Nial Finegan, Chair
24 October 2018

Peter Rozen

Jane Brockington
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Introduction

In September 2018, the Secretary of the Department of Environment, Land, Water and Planning (DELWP) commissioned an Independent Review into Timber Harvesting Regulation, at the request of the Minister for Energy, Environment and Climate Change. The Review follows the unsuccessful prosecution of VicForests, a state-owned enterprise that undertakes timber harvesting operations on behalf of the State, by DELWP for an alleged breach of the *Sustainable Forests (Timber) Act 2004* (Vic) (SFT Act). The case was struck out by a Magistrate on 30 August 2018, on the basis that the charge laid did not meet the requirements of the *Criminal Procedure Act 2009* (Vic).

The regulatory framework for native timber harvesting in state forests 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 DELWP’s role to act in the collective interests of the Victorian community in ensuring compliance with this framework.

It is critical that the public has confidence in the operations and conduct of Victoria’s timber harvesting regulator. Importantly, the community’s expectations of regulators change over time. In relation to timber harvesting in Victorian native forests, there has been a shift in recent years that has resulted in an expectation that DELWP will place greater emphasis on conservation values. The community expects that when a breach of the regulatory framework occurs it will be competently and thoroughly investigated and prosecuted as required. It is also important that DELWP takes up all opportunities to be a proactive and outward facing regulator, engaging in preventative activities earlier in the regulatory process and learning, as part of a continuous improvement approach, how to enhance its regulatory capability.

*Victoria’s state forests*

Victoria has 3.14 million hectares of state forests, approximately 3,500 hectares of which is harvested each year (Victoria’s State of the Forests Report 2013, p.9).

Forests provide the Victorian community with a broad range of values, including economic, ecological, recreational and spiritual. Forests contribute to biodiversity conservation, wood and non-wood products, recreation and tourism, water protection and carbon sequestration. Traditional Land Owners are deeply connected to Victoria’s forests through their cultural heritage and practices.

It is estimated that in 2013, 2284 (33.4 per cent) of Victorian forest workers were directly employed in the native forest sector, which is a reduction of 486 workers from 2009 (Parliamentary Inquiry 2013, p.51). This decline was partly attributed to sawmill closures and a reduction in harvest and haulage jobs.


The Victorian Government announced an investment of $110 million in the Victorian Budget 2017-2018 to establish more plantations and support the long-term sustainability of the timber harvesting industry.

*Report structure*

The report outlines the regulatory framework, Victorian Government roles and responsibilities in forest management and DELWP’s role as the timber harvesting regulator. It then describes better regulatory practice including principles and operating models. We then examine five case studies. An overarching analysis section is followed by findings. The recommendations are on page 9 for easy reference.

*Method and approach*

We were tasked with undertaking a review over five weeks from 20 September to 24 October 2018. Given the short timeframe and the specific focus of the Review, we sought to understand the issues through targeted engagement with relevant DELWP staff and a diverse range of key stakeholders including environmental non-
government organisations (ENGOs), other government departments and agencies including VicForests and industry (see Appendix 4). These consultations provided us with a range of different perspectives and valuable insights into the subject matter of the Review. We would like to thank all of those who gave their time to assist us and the Secretariat who supported our work.

We considered several unsolicited submissions, reviewed relevant reports, policies and procedures and visited the Plane Hill coupe in Healesville. We also approached this Review through the lens of several legal cases to examine DELWP’s approach to prosecutions, including Take Me Home, Brown Mountain and Scatterbrain.

Out of scope

This Review accepted the current government policy as given and we conducted the Review in the context of the current timber harvesting industry structure. We did not examine the strategic future of the native timber harvesting industry in Victoria. The Panel focussed primarily on the SFT Act and did not look in detail at the implementation of the *Forests Act 1958*. 
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 SFT Act, 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. Identification of the 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.
Recommendations

The Department of Environment, Land, Water and Planning (DELWP) is responsible for a range of regulatory schemes including for timber harvesting. There is both a need and opportunity to refocus and re-energise its regulatory efforts by articulating a clear, holistic view of the department’s regulatory purpose and objectives. To achieve this, DELWP will need to lift its regulatory practice and build its capability by ensuring it has the right people, processes, technology and infrastructure.

Our recommendations have been crafted to add value to the regulatory function in the current policy and legislative environment. The Panel believes that action is required now. We firmly believe that acting now will deliver better outcomes today and prepare DELWP to be a more effective regulator whatever the future requires.

Our recommendations to the Secretary of the Department of Environment, Land, Water and Planning outline a path for DELWP to be a better regulator. We recommend that DELWP should:

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.

2. Publish, and publicly report against a Statement of Regulatory Expectations including how it 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.

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.

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.

5. Review the governance and management reporting arrangements for the regulation of native timber harvesting to ensure:
   a. DELWP’s Senior Executive Team 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.

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.

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

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 (SFT Act) and a process for internal review of decisions.

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

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.

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.

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

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.

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.
Regulatory framework

There are multiple permissible uses of Victorian state forests and the forest management regulatory framework is complex. It comprises legislation, legislative instruments, Forest Management Plans (FMPs) and Regional Forest Agreements (RFAs) between the Commonwealth and Victorian Governments. The framework seeks to achieve a balance between environmental, social, cultural and economic values and uses of state forests.

The Victorian Parliament has expressed the basis and framework for striking the balance between different and often competing interests that are core to timber harvesting and the protection of forest values in section 5 of the SFT Act:

<table>
<thead>
<tr>
<th>Guiding principles of sustainable forest management</th>
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<tbody>
<tr>
<td><strong>Objectives</strong></td>
</tr>
<tr>
<td>(a) enhance individual and community wellbeing</td>
</tr>
<tr>
<td>(b) provide equity for all generations</td>
</tr>
<tr>
<td>(c) protect biodiversity and ecological processes</td>
</tr>
<tr>
<td><strong>Principles</strong></td>
</tr>
<tr>
<td>(a) effective decision-making that considers short and long-term outcomes</td>
</tr>
<tr>
<td>(b) respond to serious environmental threats even when there is a lack of scientific certainty</td>
</tr>
<tr>
<td>(c) consider how actions and policies impact environmental impacts on a global scale</td>
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<tr>
<td>(d) strong economy to support environmental protection capacity</td>
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<td>(e) enhance international competitiveness</td>
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<tr>
<td>(f) adopt cost effective and flexible policy instruments</td>
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<td>(g) facilitate community participation in decision making</td>
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</table>

Recent years have seen heightened concerns within the community about how DELWP is responding to the contest between different forest values, and how timber harvesting is regulated. It is in this context that we have been asked to conduct this Review.

The legislative and regulatory framework is depicted in Figure 1 below and is described in detail in Appendix 1.
Figure 1 Victorian forest management legislative and regulatory framework

- **National Forest Policy Statement** (1992, 1999)
- **Forests Act 1558** (Forests Act)
- **Sustainable Forests (Timber) Act 2004** (SFT Act)
- **Conservation, Forests and Land Act 1987** (CFL Act)
- **Flora and Fauna Guarantee Act 1988** (FFG Act)

**Regional Forest Agreements Act 2002 (Cth)**
- Comprehensive, Adequate and Representative (CAR) Reserve system and requirements
- Secretary prepares working plans for State forests (s 22)
- Minister for Agriculture may grant a licence/permit to harvest forest produce in reserved forest (s 52 and the General Order, power to issue licences/permits delegated to VicForests, DELWP and others)

**Environmental Protection and Biodiversity Act 1999 (Cth) (EPBC Act)**
- EPBC Act assessment and approval not required for forestry operations undertaken in accordance with an RFA
- Regional Forest Agreements (RFAs)
- 5 RFAs, made between 1997-2000, create a substitute regulatory regime for the protection of matters of national environmental significance; Commonwealth accredits Victoria’s forest management system; conditions preserved until 2020

**Australian Forestry Standard (PFC)**
- Forest Stewardship Council (1993) (FSC)
- 2 types of FSC certification
  - FSC forest management certification
  - FSC chain of custody certification
- Secretary must prepare action statements for threatened species and communities (s 19)
- Action Statements for threatened species and communities
  - Outline what has been done and what is intended to be done to conserve and manage threatened species and communities

**Forest Management Plans (FMPs)**
- 9 FMPs made 1995-2010 which are working plans under s 22; include forest management zones; informed the Code, MSPs and PSs
- Forest Management Zoning Scheme (FMZS)
- Collective form of forest management zones in FMPs; spatially represented known values that are managed in Victoria’s state forests
- Three zone types:
  - Special Protection Zone (timber harvesting not permitted)
  - Special Management Zone (modified harvesting permitted)
  - General Management Zone (timber harvesting permissible in accordance with the Code)

**Forest Management Plan (FMP)**
- Working plans under s 22 managed by VicForests under limited delegation; list VicForests’ planned harvesting and regeneration activities
- Forest Utilisation Plan (Wood Utilisation Plan)
- Required to be produced under the Code

**Sustainability Charter for Victoria’s State Forests** (2006)
- Criteria and Indicators for Sustainable Forest Management (2007)
- Assessed in SOR
- State of the Forests Reports (SOR)
- Produced every 5 years

**Code of Practice for Timber Production 2014 (the Code)**
- Contains ‘mandatory actions’ which must be complied with by timber harvesting managers, harvesting entities and operators
- VicForests must comply with Code (s 48)

**Allocation Order 2013**
- Requires VicForests to comply with the Code and the FMZS (cls 14 & 15)
- Timber Release Plans (TRPs)
- VicForests required to prepare TRPs showing location and areas scheduled for harvesting incl. road construction, harvesting, regeneration burning and ensure consistent with the Code (s 37 & 38)

**Wildlife Act 1975**
- Fauna-related offences are dealt with under this Act; VicForests required to comply with this Act

**Flora and Fauna Guarantee (Forest Produce Harvesting) Order 2004**
- Authorises the incidental taking of protected flora during THO
- FFG Act provides no direct offences regarding fauna

**Subordinate Legislation Act 1994**
- RIS, consultation, tabling requirements apply to the making and amendment of Codes of Practice

**Legislation**
- **Subordinate instruments**
- **Policy**
- **Others**

1. This diagram is not exhaustive; it only illustrates key aspects of the framework for the purpose of the Review. Some aspects of this diagram are relevant to subordinate legislation. ‘Secretary’ refers to DELWP’s Secretary.

Outcomes:
- Timber harvesting
- Forests and forest values protected
Victorian government roles and responsibilities in forest management

The regulatory framework establishes roles and responsibilities for multiple government agencies, statutory authorities and state-owned enterprises in managing forest values and services across Victoria’s public land, as depicted in Figure 2 on page 14 below.

The role of DELWP as the regulator of native forest timber harvesting

DELWP as a state government department plays several roles. It is a land manager and service provider, it supports the government in setting and determining policy, and it ensures compliance with the law in its role as a regulator.

Regulators can grant access, permit activities, educate and support compliance. They can also impose requirements, restrictions, conditions and set standards in relation to the regulated activities. Overall, the role of the regulator is to ensure compliance with the regulatory framework.

Within the current policy and legal settings that permit VicForests to harvest native forest timber from state forests, it is the role of DELWP, and its Timber Harvesting Compliance Unit (THCU) and the Forest Regulation Unit, to ensure VicForests’ harvesting (and associated works) is compliant. As such there is an unusual one-to-one regulator to regulated entity relationship between DELWP’s THCU and VicForests.

DELWP’s relationship with VicForests by necessity and in the public interest is broader than this one-to-one regulatory relationship. In many instances DELWP and VicForests are partners (for example, forest management including firefighting and controls) and have contractual/service provision relationships (for example, provision of ‘roading’ services).

In such a complex relationship, real care is needed to ensure there is no actual or perceived conflict of interest in DELWP’s role as the environmental regulator of VicForests’ activities.

Other key agencies

VicForests is a state-owned enterprise established in 2003 by Order in Council under the State-Owned Enterprises Act 1992 (Vic). In accordance with the Order in Council, the functions of VicForests are, among other things, to “operate in a framework consistent with Victorian Government policies and priorities”. VicForests is responsible for the sustainable harvest, regrowing and commercial sale of timber from Victoria’s state forests on behalf of the Victorian government. Sustainable harvest involves harvesting a sustainable yield of forest products in accordance with the Forest Management Zoning Scheme, based on the capacity of the forest to produce timber volume whilst maintaining the functioning of the forest. The VicForests’ Board reports to the Minister for Agriculture, as the responsible Minister.

The Department of Economic Development, Jobs, Transport and Resources (DEDJTR) has oversight of VicForests to ensure it is meeting all its corporate obligations. DEDJTR is also responsible for advising the Minister for Agriculture on the timber industry, timber industry policy and the management of timber resources. The Minister for Agriculture makes the Allocation Order, which in effect is the licence for VicForests to harvest timber and sets the overall forest area potentially available for harvesting.

The Department of Treasury and Finance (DTF) undertakes functions on behalf of the Treasurer, as the sole shareholder of VicForests. DTF monitors VicForests’ corporate governance with DEDJTR.

Environmental non-government organisations

As is common in many areas of public land use, a range of environmental non-government organisations (ENGOs) undertake monitoring and reporting functions. The contribution of ‘citizen science’ can be a key and valuable part of regulatory oversight.
**Figure 2 Victorian Government roles and responsibilities in timber harvesting**

<table>
<thead>
<tr>
<th>Minister for Energy, Environment and Climate Change</th>
<th>Minister for Water</th>
<th>Minister for Agriculture</th>
<th>Treasurer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Environment, Land, Water and Planning (DELWP)</td>
<td>Parks Victoria (PV)</td>
<td>Melbourne Water (MW)</td>
<td>Department of Economic Development, Jobs, Transport and Resources (DEDJTR)</td>
</tr>
<tr>
<td>Land and forest policy</td>
<td>Management of parks and reserves</td>
<td>Management of water catchments</td>
<td>Sole VicForests Shareholder</td>
</tr>
<tr>
<td>Management of state forests</td>
<td>Forest, biodiversity and fire monitoring</td>
<td>Catchment monitoring</td>
<td>Monitor VicForests’ corporate governance and performance</td>
</tr>
<tr>
<td>Management of access to forests</td>
<td></td>
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<td>Timber resource allocations and approvals</td>
</tr>
<tr>
<td>Development of new markets for ecosystem services</td>
<td>Park-based tourism activities</td>
<td>Realise commercial value from water catchments</td>
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<tr>
<td>Forest-based tourism activities</td>
<td></td>
<td></td>
<td>VicForests</td>
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<tr>
<td>Timber harvesting oversight</td>
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<td>Planning and undertaking sustainable timber harvesting operations in Victoria’s state forests</td>
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<tr>
<td>- Regulatory policy</td>
<td></td>
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<td>Long-term resource planning</td>
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<tr>
<td>- Receipt of Forest Reports</td>
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<td>Sustainable harvest and regeneration of timber</td>
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<td>- Compliance function</td>
<td></td>
<td></td>
<td>Commercial sale of timber</td>
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<tr>
<td>- Annual forest audit program</td>
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<td></td>
<td>Support for fire management</td>
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<tr>
<td>- Investigations and spot audits</td>
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<td>Support for fire management</td>
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<td>- Enforcement action</td>
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<td>Fire management</td>
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*Catchment Management Authorities (CMAs) have responsibility for issuing permits and approvals for work or activities on designated waterways.*
Timber harvesting regulatory functions within DELWP

DELWP’s Forest Regulation Unit, THCU and Prosecutions Unit together deliver Victoria’s native timber harvesting regulatory functions, as depicted in Figures 3, 4 and 5. The Forest Regulation Unit is supported by Forest and Fire Operations Division for forest zoning. The THCU oversees VicForests’ harvesting activities including coupe set-up and ancillary works to facilitate harvesting. The THCU is supported by regional Environmental Compliance Units for extra on-ground resources, the Intelligence and Investigations Unit (IIU) for compliance craft, and other parts of Environmental Compliance Branch for enabling functions such as capability development, standard operating procedures, strategy and planning.

Forest Regulation Unit is within Forest, Fire and Regions Group, Policy and Planning Division, Policy Branch. The THCU sits within Forest, Fire and Regions Group, Infrastructure and Resources Division in the Environmental Compliance Branch (see Figure 3). The Prosecutions Unit is in Corporate Services Group, Legal and Governance Division, Legal Branch (see Figure 4). See Appendix 3 for the responsibilities of each unit.

The role of the Forest Regulation Unit is to lead and continuously improve the regulatory framework for timber harvesting including amending regulations and other key documents such as the Code of Practice for Timber Production 2014 (the Code). The role of DELWP’s THCU is “to promote the sustainable use of timber resources through a risk-based, intelligence-led approach to environmental compliance” (Department of Environment, Land, Water and Planning 2018, p.31). Timber harvesting compliance is one of the many compliance functions within DELWP.

Figure 5 also depicts the relationship of the regulatory function with the sustainable forest management policy and planning function. The function requires many inputs (including those shown in green in the Figure 5, some of which are overseen by other government departments and portfolio agencies).

The Department administers 113 different Acts of Parliament, with 55 of these involving specific compliance responsibilities such as offences and penalties. The Forest, Fire and Regions Group enforces laws relating to the protection of land, forests and wildlife. This includes laws applying to timber harvesting, firewood collection, campfires and recreational vehicle use in Victorian forests. It also includes unauthorised use of Crown land; unauthorised trade in, theft of, and cruelty to native wildlife; threatened plants and fish; importation of introduced wildlife; and the removal of native vegetation.

Authorised Officers (AOs) with compliance responsibilities are in the Environmental Compliance Branch (THCU and IIU), Environmental Compliance Units in each Regional Directorate (Port Phillip, Barwon Southwest, Grampians, Loddon Mallee, Hume, Gippsland) and Forest and Fire Operations Division. There are 271 Authorised Officers in Forest, Fire and Regions Group. Some additional DELWP Authorised Officers with other responsibilities are in other groups of DELWP such as Heritage Victoria. There are eight positions within THCU and three of these are Authorised Officers. THCU has recently taken steps to second another two Authorised Officers to the Unit.

DELWP’s Tasking and Coordination Committee allocates resources to high priority investigations across Victoria’s environmental compliance responsibilities.

In the 2017 calendar year, DELWP took the following enforcement actions across its regulatory obligations:

- 55 prosecutions – matters where charges were filed and finalised in Court.
- 484 infringements – matters where an AO has issued a Penalty Infringement Notice (PIN).
- 91 warnings – matters where DELWP issued a warning letter.
- 60 internal reviews – matters where a person who received a PIN sought a review as per section 22 of the Infringements Act 2006 (Department of Environment, Land, Water and Planning unpublished data).

In the 2017 calendar year, DELWP received 86 forest reports detailing 178 threatened species and allegations of breaches of the Code (Department of Environment, Land, Water and Planning unpublished data).
Figure 3 DELWP’s Forest, Fire and Regions Group organisational chart
This figure shows the structure of the Legal and Governance Division, which is one division in the Corporate Services Group. The other five divisions in Corporate Services do not perform regulatory functions regarding timber harvesting.
Figure 5 Current timber harvesting functions within DELWP

This figure depicts the relationship of the timber harvesting regulatory function with the sustainable forest management policy and planning function. The function requires many inputs (including those shown in green, some of which are overseen by other departments and portfolio agencies).
Better regulatory practice

The implementation of these commonly accepted principles of better regulatory practice could improve DELWP’s regulatory performance. These principles are identified from academic texts and recent reviews of Victorian regulatory agencies including the Department of Health and Human Services (Vic) and the Environment Protection Authority (Vic).

Principles of better regulatory practice

• **Authoritative** – maintain an authoritative understanding of the regulatory environment and information on the level of compliance. Provide regulated bodies support to comply and to understand their obligations.
• **Accountable** – set clear standards and prepare to be judged on the decision-making process and outcomes. Report regulatory performance publicly.
• **Transparent** – open the regulator’s processes and outcomes to the public and regulated community. Document decisions appropriately, including the justification for decisions. This will aim to assist regulated parties to understand the decision-making processes, areas of focus and performance.
• **Inclusive** – develop regulation and support materials in partnership/consultation with community, business and government. Cooperate and engage with internal and external stakeholders, including interstate counterparts and those representing various interest groups within the Victorian community.
• **Consistent** – apply decision making processes consistently and predictably to different parties in similar situations. Regulatory responses will be predictable (meaning that, to the extent possible, regulators provide similar responses in similar circumstances - consistent with policy) and where possible standardised, following clear processes and delivering consistent results. This will ensure that individuals and organisations are treated fairly, and that the regulator is objective in its decision-making.
• **Risk based** – be proactive in identifying, assessing and responding to risk, prioritising and targeting resources toward specific groups or behaviours that pose the greatest risk to the regulator’s outcomes.
• **Targeted** – allocate effort to the areas of most serious harm. Analyse incoming intelligence and data to enable the regulator to be responsive and accurate when assessing risk and undertaking compliance activities.
• **Proportionate** – ensure regulatory responses are proportionate to the problem the regulator seeks to address. The principle of proportionality should guide a regulator’s decisions in relation to the level of resources assigned to manage a risk, the regulatory tools used, and the enforcement activities undertaken.
• **Effective** – judge risk accurately and introduce regulatory responses that seek to prevent harm or improve outcomes at the lowest cost or ‘lightest touch’ intervention necessary to achieve objectives.
• **Efficient** – allocate resources in a proportionate way that aims to achieve outcomes most efficiently, considering the direct and indirect impacts on the relevant sectors. This includes minimising unnecessary administrative burden and any adverse impact of regulatory actions on businesses to a level that is not justifiable to achieve regulatory outcomes.
• **Outcomes focused** – processes and decision-making will be driven by outcomes and clear regulatory objectives. Progress against outcomes will be measured and reported to ensure continuous improvement.

The fuller role of the regulator is well captured in the EPA (2018) operating model (Figure 6 below). This balanced risk-based regulatory approach uses a mix of support and deterrence to deliver improved outcomes. It involves several key elements: inform and educate, set standards, support to comply, monitor compliance, which together encourage higher performance. For non-compliances there should be a clear expectation that the regulator will appropriately enforce the law in a proportionate manner.
Applying this model to DELWP’s regulation of native timber harvesting:

- **Inform and educate**: DELWP’s emphasis should be to educate and raise awareness as an effective way of ensuring compliance starting with the assumption that VicForests accepts its responsibility for protecting the environmental values of forests and wants to comply with necessary laws and regulations.

- **Set standards**: DELWP should promote compliance by setting clear standards and raising awareness of risks and controls that are based on rigorous science, evidence, an understanding of the state of the environment and current and future risks. DELWP will be clear about what the law requires.

- **Support to comply**: One of DELWP’s key role as regulator is to help VicForests and its contractors understand how to comply with their obligations. DELWP should provide practical and constructive advice on how to comply with the law, interpret standards and, where necessary, provide support on how to remedy any non-compliance.

- **Monitor compliance**: DELWP’s primary focus should be on prevention to ensure that incidents of non-compliance and their impacts are avoided. When DELWP identifies or becomes aware of a problem or a risk, it should seek to resolve the issue before it has an undesired impact on the environment. Monitoring compliance and investigating non-compliance are therefore key regulatory activities. DELWP should consider how to better harness the monitoring activities of both ENGOs and VicForests.
• **Encourage higher performance**: DELWP and VicForests should work in partnership with industry and community to encourage higher performance, building the case for improving practices and influencing future standards of practice.

• **Enforce the law**: DELWP should address non-compliance with the law and standards by objectively and assertively requiring remedy and, where appropriate, applying appropriate sanctions to deter future offending or non-compliance.

Assessed against these principles, DELWP’s operating model and regulatory approach appear incoherent, inconsistent and incomplete, leading to differing regulatory approaches across the Department.
Case studies

The following case studies informed and illustrated our analysis and findings.

- Case study 1 considers the failed Take Me Home prosecution which was the precursor to our Review.
- Case study 2 describes the Greater Glider example which illustrates the inflexibility of the regulatory framework and DELWP’s lack of meaningful action to address the impact of timber harvesting through an action statement.
- Case study 3, the Brown Mountain case, highlights the complexity and difficult application of the timber harvesting regulatory framework, DELWP’s enforcement role and the role of third party ENGOs in timber harvesting regulation.
- Case study 4 on third party regulators describes the role of ENGOs as timber harvesting regulators.
- Case study 5 examines Department of Health and Human Services’ (DHHS) regulatory model and the key principles that informed its recent reforms to build better regulatory practice inside DHHS.
Case study 1 Take Me Home

The event that triggered this Review was the failure of a prosecution commenced by DELWP against VicForests. The prosecution, which concerned the Take Me Home coupe in East Gippsland, was commenced on 2 March 2018 under the SFT Act. The charge alleged that VicForests undertook timber harvesting operations in March 2016 without those operations being “authorised operations.” Although not stated in the charge, the allegation was that a VicForests contractor had harvested 0.23 hectares of required rainforest buffer in contravention of the Code of Practice for Timber Production 2014.

The investigation was conducted by an Authorised Officer from DELWP’s THCU. The investigation responded to reports that had been provided to DELWP by external environmental groups on 7 April 2016 and 8 July 2016.

A detailed brief of evidence was prepared and provided to the Legal and Governance Division (LGD) on 6 February 2018. Less than one month of the two-year limitation period was available to the LGD to analyse the complex and lengthy expert evidence, assess the prospects of success of any prosecution, evaluate whether bringing a prosecution is in the public interest, advise the Secretary of those matters, and if authorised, draft the charges. External advice from counsel was not sought.

The Prosecutions Unit in LGD carried out a thorough review of the brief and concluded that:
- the available evidence could prove the commission of the offence “however not without many risks”; and
- it may not be in the public interest to commence a prosecution.

A briefing note to the Secretary, approved by the Director, Environmental Compliance, recommended that the Secretary endorse the filing of a criminal charge, which the Secretary did.

VicForests challenged the validity of the charge. DELWP’s external legal counsel advised that the Magistrate was likely to strike out the case at this stage. The Deputy Secretary informed the prosecutor that, unless VicForests was prepared to agree to an enforceable undertaking, DELWP would proceed with the case.

VicForests’ solicitors informed DELWP that VicForests would not enter into an enforceable undertaking and the preliminary argument about the validity of the charge was heard on 24 August 2018. On 30 August 2018, a Magistrate upheld VicForests’ challenge to the validity of the charge and struck out the charge. The Magistrate ordered DELWP to pay VicForests’ costs.
Case study 2 Greater Glider

The Greater Glider is a gliding marsupial found in Eastern Australia. In the 1990s it was considered common in the eucalypt forests in East Gippsland and the Central Highlands in eastern Victoria. Research shows that while the species is represented in several conservation reserves, the bulk of its distribution remains in forest available for timber harvesting (Menkhorst 1995). The Greater Glider’s primary diet is eucalypt leaves, buds and flowers.

The Greater Glider population has been declining in eastern Victoria for at least five years, in both state forests and national parks. In early 2017, the Scientific Advisory Committee (the Committee) established under the Flora and Fauna Guarantee Act 1998 (FFG Act), made a final recommendation that the Greater Glider be supported for listing under the FFG Act.

The Committee’s Final Recommendation on a Nomination for Listing cited evidence showing that the species was “in a demonstrable state of decline which is likely to result in extinction.” It included several possible factors for the Greater Glider’s decline: fire, drought, timber harvesting, hyper-predation and habitat fragmentation. The Committee’s recommendation states that: “major bushfires in 2003, 2006-2007 and 2009 burnt much of the Greater Glider’s range in the state, and further fragmented its distribution as evidenced by surveys and species records”.

In addition: “timber harvesting in Greater Glider habitat has been proven to cause declines and/or local extinctions of Greater Glider populations.” The Committee observed that: “conservation of the species is utterly dependent on sympathetic forest management which retains buffer strips of old forest between coupes and preserves old habitat trees.”

In June 2017, the Victorian Minister for Energy, Environment and Climate Change listed the Greater Glider as a threatened species under section 16 of the FFG Act.

When a species is listed as threatened, section 19(1) of the FFG Act states that: “the [DELWP] Secretary must prepare an action statement for any listed taxon or community of flora or fauna or potentially threatening process as soon as possible after that taxon, community or process is listed.”

Section 19(2) provides: “the action statement must set out what has been done to conserve and manage that taxon or community or process and what is intended to be done.”

On its own, an action statement is not enforceable and plays no direct regulatory role under state law. It nevertheless generates expectations regarding policy, regulation and investment. Any timber harvesting prescriptions proposed to be introduced for the protection of the Greater Glider as part of the action statement must be incorporated into the Code of Practice for Timber Production 2014 to become enforceable (mandatory). Because of the potential economic impact, any changes to the Code require a regulatory impact statement, and any amendment to the Code must be tabled in Victoria’s parliament.

The department has identified potential timber harvesting prescriptions and risk management strategies for the Greater Glider that could be included in an action statement and enforced in regulation. However, agreement across government has not yet been reached on timber harvesting prescriptions.

Stakeholders noted that a draft action statement could conceivably be released by the Secretary for public consultation without prescriptions that apply to timber harvesting. However, the absence of meaningful action addressing the impact of timber harvesting would result in an action statement that fails to adequately address the significant extinction risk to the species.

As a result, despite being listed as a threatened species since June 2017, the lack of prescriptions means that the Greater Glider has still not received any further protections in state forests.
Case study 3 Brown Mountain

[Environment East Gippsland v VicForests [2010] VSC 335 (liability) and [2010] VSC 416 (orders and costs)]

This Review has been informed by previous litigation in relation to forest harvesting, including the Brown Mountain case in 2010. This case was heard in a different context; the framework included a previous iteration of the Code of Practice for Timber Production, a different Allocation Order vesting timber resources to VicForests with different conditions relating to action statements, and a previous version of the SFT Act that gave more powers to the Secretary of DELWP. However, it highlights the complex nature of the Victorian timber harvesting regulatory framework and difficulties in applying a framework with competing values, the enforcement role of DELWP, and the role of ENGOs in timber harvesting regulation.

In Brown Mountain, the Supreme Court of Victoria described the framework in terms with which we concur: “The relevant statutory framework is labyrinthine and comprises a network of interrelated provisions” ([2010] VSC 335 at [89]) … “the requirements of the relevant legislative framework are to some extent repetitive and its structure is layered rather than formed by reference to a strict internal logic” ([2010] VSC 335 at [303]).

Justice Osborn made the following pertinent observations about the combined effect of the statutory framework for timber harvesting: “The balance struck by that framework includes explicit recognition that harvesting planned by reference to a range of competing considerations (including conservation matters) will nevertheless be subject to overriding and ongoing obligations relating to the protection of endangered species. The nature of such obligations falls principally to be determined by the specific provisions of the framework relating to each species to which I shall turn, but also by the ongoing application of the precautionary principle.” ([2010] VSC 335 at [300]).

The Court held that VicForests’ rights to harvest timber under the SFT Act were “subject to overriding and ongoing obligations relating to the protection of endangered species.” The Court held that the Secretary’s approval of the Timber Release Plans (a power conferred on the Secretary under the previous iteration of the Act that no longer applies) did not demonstrate “final or continuing compliance” by VicForests with its statutory obligations. This indicated the scope of the need for VicForests to comply with obligations relating to the protection of endangered species.

Brown Mountain also discussed the requirement to give legal effect to the issue of the “precautionary principle.” Section 5(1) of the SFT Act provides that “regard is to be had to the principles of ecologically sustainable development” in “undertaking sustainable forest management” in accordance with the Act. Section 5(4)(b) then states that one “guiding principle” of “ecologically sustainable development” is that: “If there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

The Supreme Court in Brown Mountain noted decisions of the Supreme Court of Victoria and the Federal Court of Australia involving the SFT Act and the Code, which have determined that the precautionary principle “may apply where it is probable or seriously possible that there is a significant threat” to an endangered species and “the scientific evidence is now that the evaluation of that threat will be materially assisted by further specific survey investigations…” ([2010] VSC 335 at [183]; see generally [2010] VSC 335 at [176]-[217]).

The result in the Brown Mountain case was that VicForests was restrained by injunction from logging identified coupes until steps were taken to protect certain species of fauna “to the satisfaction of [DSE]” ([2010] VSC 416 at [2] and [11] final injunction).
In the Brown Mountain case, the Supreme Court accepted that EEG had a “special interest” in the implementation of the applicable Forest Management Plan and “the enforcement of the statutory framework governing logging at Brown Mountain Creek”. It thus had “standing” to bring the case and obtain the injunctive relief. Although this decision was limited to EEG and the facts of that case, it is likely that other ENGOs similarly have standing to enforce the law and it recognises the role of ENGOs in the regulatory system in some situations.

The Federal Court implicitly reached a similar conclusion concerning the standing of the applicant in *Friends of Leadbetter's Possum Inc v VicForests* (No 3) [2018] FCA 652 as did the Supreme Court of Victoria (and the Court of Appeal) in respect of the plaintiff in *MyEnvironment Inc v VicForests* (2013) 42 VR 456.

DELWP must therefore cooperate with the ENGOs in its administration and enforcement of the statutory scheme.

In the Brown Mountain case, DSE [DELWP] was, in effect, forced by the Court (at the request of EEG) to perform its regulatory role under the SFT Act. What could have been achieved directly by DSE exercising its statutory compliance powers, was instead achieved indirectly by a private ENGO obtaining orders from the Supreme Court of Victoria. The Secretary could have secured the same injunctive relief as that obtained by EEG from the Supreme Court pursuant to section 89(1) of the *Conservation, Forests and Lands Act 1987* (CFL Act).

During consultations with ENGOs they offered the perspective that DELWP’s failure to enforce the law was the impetus for ENGOs to do so privately at significant expense (to the ENGOs, the Department, VicForests and ultimately the broader community). ENGOs feel uninformed about the work of the regulator and disenfranchised from the regulatory process yet are increasingly involved in co-regulating timber harvesting in Victoria. They do so through intelligence monitoring, preparing forest reports and bringing civil litigation.

The possibility to shift the conversation about how DELWP regulates timber harvesting and look at co-regulation is discussed in the Analysis section below.
Case study 5 Building regulatory practice inside DHHS

Over the past two years, Department of Health and Human Services (DHHS) has undertaken a significant reform and repositioning of its regulatory functions. It has brought together eleven previously disparate regulators and developed a holistic view of its regulatory functions and purpose.

This was, at least in part, a response to the challenges often faced by regulators that sit within larger departments or entities including:

- regulatory units are typically small and lack scale (sometimes a single person)
- they are often dispersed throughout and get ‘lost’ within the greater portfolio entity and its myriad functions and activities
- difficulty in attracting and retaining experienced and capable regulatory practitioners with expertise in the regulatory craft
- difficulty in building a common understanding of the regulatory function and a culture of better practice and
- individual regulatory risks rarely bubble up to the senior executive table unless there is a ‘crisis.’

DHHS developed the Better Regulatory Practice Framework (DHHS 2018) to bring a clear focus on regulatory outcomes, demonstrate a risk-based approach to regulation, inform organisational improvement and improve engagement with stakeholders. It provides an overarching framework and process for regulators to implement risk-based and accountable regulatory practice and improve regulatory performance and consistency.

There are several parallels between the DELWP and DHHS regulatory arrangements and experiences. There are lessons for DELWP in the DHHS experience that could apply at the environmental regulation or whole-of-department level. These include:

- appoint the right leader – the key was to appoint a Deputy Secretary with deep regulatory experience to lead the work and to bring the regulatory units together organisationally under the Deputy Secretary
- get the right expertise - recruit expert regulatory practitioners to lead better regulatory policy, practice and reform
- define the regulatory approach and outcomes – define the regulatory posture, understand risks and apply appropriate tools and interventions, set expectations and measure performance
- support internal capacity and capability – achieve scale and scope across the collective regulatory effort rather than within each individual regulator
- get the culture right – be a proactive and engaged regulator reinforced by a culture of learning and continuous improvement
- enable the regulators – establish the right governance and organisational structures and
- communicate clearly and engage consistently – with internal and external stakeholders about the regulatory purpose and approach, build awareness and engage consistently over time.

By its own assessment, DHHS still has a way to go to realise its ambition and further mature its capability and practice. However, the journey of examining and defining the regulatory purpose and approach over the past two years has been important in repositioning, prioritising and professionalising its regulators. It is also providing greater assurance and confidence to internal and external stakeholders that regulatory risk is effectively managed, and responsibilities discharged.
Elements of an effective timber harvesting regulatory system

A regulator’s ability to deliver public value (Figure 8) is underpinned by its culture and supported by strong leadership and fit-for-purpose of organisational capabilities (people, technology, process and infrastructure). The collective efforts of individual staff, teams and units are guided by a clear strategy, well-defined roles and responsibilities and informed work plans.

We acknowledge that DELWP is working toward its preferred culture, through continuous improvement informed by the Human Synergistics Organisational Culture Index. DELWP developing a Regulatory Strategy, a Compliance and Enforcement Policy and a Regulatory Work Program will help it to further achieve its desired constructive and self-actualising styles and behaviours.

Figure 8 Delivering public value through leadership, culture and capability

A variety of features must be present for the timber harvesting regulatory system to function effectively as a whole. Clear policy and objectives together with an appropriate regulatory model must underpin the entire system. The roles and operating models of the regulator, VicForests, industry and third parties, including ENGOs, need to be clear and understood. The regulatory approach must align with community expectations and must be transparent, fair, accountable and consistent.

If all the elements operate effectively, the community and the industry are more likely to trust the regulator. A well-regulated and compliant industry is more likely to maintain its social licence to operate over time. Figure 9 below outlines the elements of an effective timber harvesting regulatory system.
Figure 9 Elements of an effective timber harvesting regulatory system

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**Clear policy & objectives**
- Articulates the desired outcomes for forest management
- Establishes basis for balancing different permissible values and uses having regard to community expectations

**Legislation**
- Gives effect to policy intent
- Establishes the framework for giving practical effect to a variety of permissible uses
- Sets regulatory scheme

**Appropriate regulatory scheme**
- Clear and fit for purpose
- Efficient, effective and enforceable
- Aligned to policy objectives and regulatory outcomes
- Defined jurisdictions, scope, authority and powers
- Defined regulatory roles, relationships and expectations
- Defined permissible/prohibited/restricted activities

**VicForests**
- Is fully accredited
- Sees self as part of achieving policy outcomes
- Vested to be beyond compliant
- Consistent interpretation and application of rules
- Is open and transparent with community and industry
- Constructive regulatory partner
- Provides effective oversight of industry participants

**Operating model within regulator**
- Clear regulatory statement of intent
- Clear roles and responsibilities
- Enabling structures
- Supportive relationships

**Regulatory approach**
- Sets expectations for regulated entities
- Risk-based, focus on preventing harms
- Builds trust and credibility
- Independent regulatory decision maker
- Effective, timely, responsive and proportionate
- Transparent, fair, accountable, consistent
- Natural justice
- Educate and support to comply, seeks meaningful engagement and communication

**Industry**
- Seeks to be compliant
- Transparent with community, VicForests and regulator
- Sufficient training and accreditation
- Understands and respects regulatory requirements and regulator’s role

**Capacity, capabilities & culture**
- Confident and capable
- Impartial
- Outward-facing
- Skilled and experienced
- Forest management expertise
- Recognised as knowledgeable and authoritative

**Internal procedures & practices**
- Simple, direct and effective
- Support transparent decision-making
- Confident exercise of judgement

**Appropriate tools & powers**
- Use full suite of regulatory tools
- Allow proportionate and graduated actions and decisions

**Data for decision-making**
- Authoritative source of knowledge and insights
- Intelligence-led
- Monitoring and improvement
- Access to own and third-party data
- Share information wherever possible

**Community**
- Trust and are willing to engage with the regulator and respects role
- Accepts decisions as fair and impartial within regulatory scheme and policy objectives

Note: This is a desired state. The current system contains some elements, but not all or not to an appropriate level.
Analysis

The Terms of Reference asked us to review the following matters: the adequacy of DELWP’s prosecutions policies, procedures and practices, DELWP’s current capability and capacity to effectively regulate timber harvesting on public land in Victoria; and an initial assessment of whether further regulatory or legislative reform is required to ensure modern, best practice regulation of timber harvesting in Victoria.

DELWP’s prosecution policies, procedures and practices

The failed Take Me Home (TMH) prosecution was the precursor to the Review, and the Panel began its examination of DELWP’s policies, procedures and practices through the prism of that case. We then looked deeper into the capacity, role and structure of DELWP as the native timber harvesting regulator and the complex and contested operating context. It is important to note that the TMH case may not be typical of the DELWP’s prosecutions and may not reflect its general policies, procedures and practices.

Typically, DELWP’s prosecutions are authorised by the Prosecutions Unit in the Legal and Governance Division (LGD). However, the TMH prosecution was authorised by the Secretary, as was an earlier prosecution under the SFT Act concerning the ‘Scatterbrain’ coupe.

Neither the Take Me Home or Scatterbrain case reached the point where any evidence was called. We are concerned that neither of these two prosecutions commenced under the SFT Act has succeeded. Our review of TMH shows that the case was likely to fail even if the charge was properly drafted. Apart from the technical problem with the charge, there were problems with both the evidence and the provision under which the case was commenced.

Unfortunately, the internal legal advice provided to the Secretary about the case was somewhat equivocal. The advice questioned whether it was in the public interest to file the charge but ultimately recommended that it be filed. There was strong support to prosecute from the THCU. External legal advice was obtained from a highly experienced senior barrister but only after the charge was filed. He advised that the case was beset with many problems and should not proceed further. That advice was not followed. It appears that considerable momentum had built up within DELWP behind the case and this momentum overwhelmed both the internal and external legal advice. In future, greater heed should be paid to the legal advice.

DELWP’s prosecution policy dated March 2016 notes the importance of the timely provision of investigation reports to LGD. In a complex case such as TMH, clause 11 of the policy required the investigator and LGD to convene a case management meeting and agree adequate timelines at the earliest opportunity. This did not occur. As a result, LGD had less than one month to carry out what was a very difficult and time-consuming review of the case.

We were informed that a new prosecutions procedure has been introduced that provides better guidance on applicable timelines for completion of investigations and the provision of briefs to LGD. However, our discussions with officers in the LGD and the THCU revealed some differences of understanding about the current procedure. Common understanding of these procedures is very important. Equally importantly, as the TMH case reveals, is that any such procedures must be implemented fully and effectively.

TMH also highlights the importance of DELWP’s lawyers developing links with other prosecuting agencies. These relationships would allow DELWP to access formal and informal communities of practice to stay up to date with contemporary law and practice, and access to insights across prosecuting agencies and the VGSO.

As noted in the section above, elements of an effective timber harvesting regulatory system, one of the hallmarks of a competent regulator is that it is respected by those it regulates and the public generally. The failure of the TMH case, which is publicly known, had a negative impact on DELWP’s regulatory reputation at a time when there are already concerns about its ability to regulate the industry. All stakeholders, no matter their role, expressed the view that a stronger, more effective DELWP timber harvesting regulator was desirable.
DELWP’s current capability and capacity to effectively regulate timber harvesting on public land in Victoria

In assessing DELWP’s current capacity and capability, we have considered the regulatory ‘tools’ available to DELWP as well as the current administrative arrangements within DELWP. We note that the regulation of timber harvesting is but one part of DELWP’s overall regulatory responsibilities.

We benchmarked DELWPs current operating model against the characteristics of a better practice regulator (see Better regulatory practice).

Organisational capability is the overall outcome of people applying their skills and experience, and leveraging technology, processes and infrastructure to deliver common outputs that serve strategic goals and outcomes.

The four critical inputs to a regulator’s capability are:

- People: including the skills, experience and knowledge required to exercise judgement in decision-making.
- Technology: including the systems, applications and technology assets including computers and sensors that enable DELWP to collect, store and analyse data.
- Processes: including the procedures, policies, frameworks and structures that enable decision-making, provide role clarity and guide performance.
- Infrastructure: including the physical spaces (e.g. buildings) and vehicles used when executing organisational capabilities.

Organisational capabilities are broader than individual competencies, which are the observable and measurable knowledge, skills, abilities and personal attributes that contribute to enhance employee performance. This Review has not looked at the performance of individual DELWP officers nor has it considered technology or infrastructure issues.

Operating context

Sustainable timber harvesting needs to balance a range of different values, evident in the range of legislation and their different purposes that make up the regulatory framework. There is no clear statement about how DELWP as the regulator sees the balance between the competing values or how it is going to achieve that balance.

Significant regulatory challenges exist in managing conflicts between forest conservation, protection of threatened and endangered species, rainforest and habitat, and the timber harvesting industry. Each party’s use of the timber resource, for particular ‘values’, may impinge on the way each other party uses it. This includes the regulator’s use and decisions about forests. As we learnt through our consultations, these competing purposes are often difficult to reconcile in practice.

Biodiversity is in decline due to a range of different factors including commercial harvesting, fire, climate change, road construction, and native vegetation clearing (Victorian Environmental Assessment Council 2017). This is the day-to-day reality that confronts DELWP staff, timber harvesters and the broader public.

Managing trade-offs between these activities and values, intrinsic to forest management and timber harvesting regulation, is made more difficult, ironically, by the reality that the key parties involved are part of the same entity – the Victorian Government.

The reality of legislation seeking to achieve multiple purposes may be contrasted with that faced by a regulator such as WorkSafe Victoria in relation to its administration of the Occupational Health and Safety Act 2004 (Vic) (OHS Act). The objects of that Act are singularly concerned with advancing the safety of employees and others and WorkSafe is not expressly required to balance those interests against others in enforcing the law. The same can be said for the EPA’s administration of the Environment Protection Act 1970 (Vic) (EP Act).

Even if it is accepted that the multiplicity of purposes is a given in the regulatory framework, the mechanisms for balancing these values are not working effectively. Rather they are creating conflict and not resulting in
better outcomes for anyone. DELWP as the timber harvesting regulator is regulating a small part of this scheme. Depending on the perspective of the stakeholder, DELWP is seen as either pro-industry or pro-biodiversity. But all stakeholders want a stronger and more effective timber harvesting regulator. That the system is not effective compounds this, but DELWP as the regulator cannot solve the lack of an effective regulatory regime in the way it regulates.

The role of DELWP in regulating timber harvesting is based on the idea that the harm caused by timber harvesting to the environment can be reduced to a satisfactory level. It is not the regulator’s role to ‘fix’ the conflict between competing values, priorities or views about what a satisfactory level is. It is, however, the regulator’s role to use its expertise and the regulatory scheme to exercise mature judgement and make sound decisions. This will give confidence to the community and regulated entities that the competing values will be satisfactorily balanced.

Clarity of DELWP’s role

DELWP’s role as a regulator is to ensure compliance with the regulatory framework. Given the nature of VicForests as a state-owned enterprise and a series of machinery of government changes over 15 years, DELWP has evolved a bespoke regulatory response. As a result, THCU has a one-to-one relationship with VicForests, unlike DELWP’s other regulatory roles in areas such as wildlife regulation where the department oversees hundreds of businesses and individuals.

There is a lack of clarity about what DELWP is trying to achieve by regulating native timber harvesting. The regulator needs to build trust between itself and the various parties in the regulatory system and most importantly in its own performance. To do this, it is critical that there is a common view of expectations about what the regulator needs to do and will do. The regulator has an obligation to ensure the community and the regulated parties are provided with sufficient information and guidance about its role and functions.

To be effective, the role of a regulator must go beyond compliance activities alone. There is an undue and unrealistic expectation on the THC and its performance of the regulatory function to fully regulate the activities of VicForests. The appropriate regulator is DELWP as an organisation, encompassing the work undertaken across several areas and units.

As stakeholder expectations regarding what the role of the regulator have changed and diverged over time, trust in DELWP as the timber harvesting regulator has decreased.

Stakeholder satisfaction and confidence with DELWP’s perceived performance may be reflective, at least in part, of broader issues with government policy around native timber harvesting. While this may be beyond the regulator’s mandate or indeed somewhat unfair, there is much the regulator can do to improve confidence in its performance and the current regulatory scheme.

As is the case with many other regulators (such as the Environment Protection Authority and WorkSafe Victoria), there is a diversity of views among the community about the role DELWP should be playing as the regulator. A regulator cannot, will not and should not seek or expect to satisfy all stakeholders at all times. Each stakeholder has their own interests and perspective. DELWP must strike an appropriate balance between the competing interests and demands of different values, stakeholders and uses of state forests, while being impartial.

The current timber harvesting regulatory system can be compared with the OHS regulatory system. WorkSafe has confidence in Health and Safety Representatives overseeing safety requirements in the workplace. Similarly, the Forest Practices Authority (FPA) in Tasmania trains and authorises Forest Practice Officers to plan, supervise and monitor forestry practices. DELWP’s Authorised Officers cannot be at every coupe, overseeing every operation. There is an opportunity to draw on the experience of other regulators in considering how the timber harvesting regulatory model can function more effectively.

The key role of the Secretary and the DHHS model
The Secretary of DELWP is a body corporate established by section 6 of the CFL Act. The Secretary has a wide range of functions conferred by the laws listed in Schedule 1 of the CFL Act and, subject to the CFL Act “has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions” (s 10(1)). We note that the Secretary to the Department of Health and Human Services (DHHS) is similarly constituted as a body corporate under section 16 of the Public Health and Wellbeing Act 2008 (Vic).

Like DELWP, DHHS performs regulatory roles within a broader range of non-regulatory responsibilities. To publicly articulate DHHS’s approach to the performance of its functions, it recently published a ‘Better Regulatory Practice Framework’ (the Framework). The purpose of the Framework is to “provide a clear focus on regulatory outcomes, demonstrate a risk-based approach to regulation, inform organisational improvement and improve engagement with stakeholders” (p.5).

Our consultations with DHHS have led us to the view that the development of this framework has assisted DHHS generally and the Secretary specifically to better understand and discharge their regulatory roles and manage regulatory risks. By contrast, our consultations with a mix of stakeholders including DELWP officers at all levels have left us with the distinct impression that the role of regulator would be more effective and strengthened through improved strategic planning and communications. We consider that the Secretary of DELWP could benefit from a discussion with the Secretary of DHHS about the process that led to the publication of the Framework.

Stakeholder relationships and their role in the regulatory system

DELWP is perceived by industry as too pro-environment and by the ENGOs as too close to industry. In our experience these polarised views are not justified. However, these perceptions are a barrier to effective regulation and trust. We understand that there is ongoing consultation associated with the RFA modernisation. There is also a need to regularly engage with stakeholders on the role and performance of the regulator. Some form of stakeholder perception survey may be of value.

There is a one-to-one relationship between the parts of DELWP’s THCU that perform the regulatory functions and VicForests. Whilst understandable given the industry structure, this is not ideal in that it gives rise to claims of regulatory capture from the community and it can also lead to a belligerent relationship between the regulator and industry. In addition, the small size of THCU has in the past led to an over personalisation of issues and complaints. In short, everyone is displeased with the current arrangements.

For many ENGOs and other community stakeholders, there is no acceptable level of timber harvesting: the harm cannot be sufficiently minimised and instead, balancing values adequately would involve a transition out of forests and into plantations. For these ENGOs, their lack of trust in the regulator comes down to a lack of information, poor performance in terms of timeliness and responsiveness, and an absence of feedback. The use and frequency of forest reports by ENGOs are symptomatic of a lack of confidence in DELWP and its weaknesses in terms of transparency and accountability.

Building a Better Relationship with the ENGOs

Our consultations with ENGOs demonstrated their knowledge, energy and passion. However, the relationship between them and DELWP is characterised by a lack of trust that borders on outright hostility. They have a lack of respect for the regulator whom they see as far too close and therefore too sympathetic to the interests of VicForests.

Two issues were raised by the ENGOs with us in support of this view that there is an overly familiar relationship between regulator and regulated. The first is a concern that there are too many employees of DELWP with forestry backgrounds, including a number who formerly worked for VicForests. In a relatively small industry like timber harvesting, it is inevitable that some of the people with the expertise and experience in forestry that DELWP needs to perform its regulatory role will have worked in the timber harvesting industry.
The second issue that was raised with us on more than one occasion was the co-location of DELWP and VicForests staff in regional areas. This closeness of working relationships was said to be antithetical to the arm’s length relationship that is needed for DELWP to perform its regulatory role.

We consider that there is some merit to this observation but, in our view, it is unavoidable that there will be a close working relationship between DELWP as a land manager and VicForests. For example, under Part 8 of the SFT Act there is a clear expectation that the Secretary and VicForests will co-operate to reduce the risks of fire. This is clearly in the public interest. This co-operative relationship also extends to regeneration burns in coupes. The key issue is to ensure regulatory actions and decisions are made objectively, irrespective of the physical location of the regulator.

**The possibility of a stand-alone regulator**

All the ENGOs that we consulted were highly critical of DELWP’s role as timber harvesting regulator. They thought that DELWP was too close to VicForests. Some of the ENGOs submitted to us that the role of timber harvesting regulator should be taken out of DELWP and conferred on an independent stand-alone statutory body to address this.

The institutional arrangements of regulators in Australia are many and varied (Freiberg 2017, p.74). Freiberg’s analysis would suggest that creating an independent stand-alone authority would achieve little in itself.

It is noted that NSW and Tasmania have adopted different models for regulating timber harvesting. In NSW the task is undertaken by the EPA (there are significant differences in the role of EPA Vic and EPA NSW) whilst in Tasmania there is a single purpose stand-alone timber harvesting regulator, the Tasmanian FPA.

The FPA was established in 1985. Its regulatory role extends to both public and private land. It has the following statutory functions:

- advising the Minister on forest practices policy;
- issuing and maintaining the Forest Practices Code;
- training and accrediting Forest Practices Officers to prepare forest practices plans;
- assessing the implementation and effectiveness of forest practices plans;
- monitoring compliance and taking appropriate enforcement action;
- producing a state of the forests report every five years; and
- providing reports to parliament on the above.

Our consultations with the FPA left us with the impression that it carries out its role professionally. However, we are not convinced that the establishment of a similar body in Victoria can be justified given that the regulatory function is concerned with only one state-owned corporation operating in state forests. Were that to change, there may be merit in further investigation of the FPA model and its application in Victoria.

DELWP could improve the effectiveness and accountability of its timber harvesting regulatory role, while maintaining the role within the department. There are benefits of having a critical mass of regulatory staff working together across a range of environmental outcomes. The in-house model also creates opportunities of scale that could increase capability and capacity.

**Self-regulation by VicForests**

Our consultations have led us to the view that, VicForests is in a practical sense acting as self-regulator. The day-to-day supervision of logging coupes is carried out by foresters employed by VicForests. We viewed their work at a live coupe in Healesville. It is the VicForests’ employees who mark out the coupes and supervise the on-site compliance of logging contractors. We were informed that DELWP officers have little interaction with the day-to-day operation of live coupes.

The community looks to external certification of VicForests for confidence in the sustainability of timber harvesting, namely Forest Stewardship Council certification. This includes companies that look to the Forest Stewardship Council to provide them with confidence to use the timber harvested by VicForests.
Adequacy and use of regulatory tools

The complexity of the regulatory framework makes it vital that those charged with its enforcement have available to them an appropriate range of regulatory methods and tools. This is one of the hallmarks of modern better practice regulators (Armytage et al. 2016). Our examination of the relevant statutes and our consultations have illustrated that the existing tools available to the timber harvesting regulator are inadequate, those that are available are not used to their full extent and there is an unrealistic expectation about the use of prosecutions both internally and externally. There are also inadequacies in the powers and protections of Authorised Officers that can be used in timber harvesting regulation (see Appendix 2 for further analysis).

Our discussions with the Forest Regulation Unit, THCU and LGD have left us with the impression that insufficient consideration has been given to the exercise of the powers in the various Acts that DELWP administers as part of a comprehensive approach to the regulation of timber harvesting. The focus tends to be on the powers in the SFT Act, which are generally acknowledged within DELWP to be inadequate. While the complexity of the regulatory scheme makes criminal charges under the SFT Act difficult to sustain, it should not inhibit DELWP taking other regulatory action both under that Act and under others. In addition, certain aspects of the current regulatory framework and practice are not adequately utilised.

Access to quality data

It is important for DELWP to use all the tools available to it, both statutory and administrative, and to develop capability in regulatory craft and practice. Examples of other available tools include section 57 of the FFG Act and section 89 of the CFL Act.

There is an expectation that the regulator plays a role in describing what is happening in the forests, but the current investment in staff knowledge and contemporary information about the forest is perceived to be inadequate. Further, VicForests is not as open with information regarding coupe logging schedules as it could be. VicForests is required to consult on Timber Release Plans and DELWP comments on these plans, but neither DELWP nor the community is aware of when logging will take place; the coupe logging schedules are not publicised.

This lack of information and knowledge about both the current state of the forest and proposed timber harvesting leads to reduced confidence from the public, including ENGOs. There is a lack of confidence about who understands the forest sufficiently to effectively balance inputs, the protection of forest values with timber harvesting. We were repeatedly advised that VicForests and the Arthur Rylah Institute are likely to have the best understanding of the forest. There would be a clear advantage for all parties in creating a system of shared data.
Findings

We acknowledge the Victorian Government’s response to Victorian Environmental Assessment Council’s (VEAC) Statewide Assessment of Public Land, the extensive public consultation VEAC conducted and the government’s commitment to reforming Victoria’s Crown land legislation over the next five years. We acknowledge the direction of the RFA modernisation process and its investment in community engagement, new scientific knowledge and understanding of the forest. However, our recommendations are not reliant on it. Regardless of any RFA reform, DELWP still needs to regulate using the current framework.

A lack of internal guidance, policies and procedures on regulation and compliance leads to delays and inconsistencies in use of regulatory tools and decision-making.

- While noting that DELWP has work in progress to improve its prosecutions policy, procedures and practice, we found many to be outdated, unclear, too high-level and/or inconsistently applied.
- We recognise that DELWP has worked over the last two years to improve internal processes for managing forest reports. However, the processes, including timeliness, transparency and providing reasons why cases were closed, need further and ongoing improvement. These processes should be publicly documented and regularly reviewed.
- It is difficult to see the same progress in procedures and practices in timber harvesting compliance investigations. The policies and procedures that guide investigations through to possible enforcement actions are limited and are inadequately implemented. The authorisation and approval required at each point in the process is also unclear, including who is authorised to close investigations. While some operational documents provide guidance to Authorised Officers, better guidance is needed, and officers should be trained in their implementation.
- DELWP lacks a clear Compliance and Enforcement Policy. All effective regulators are backed by clear-cut policies regarding the two basic regulatory functions of compliance and enforcement. Such a Policy provides the framework to be able to say to business and the community when DELWP will and will not act – it is essentially a rulebook on how DELWP will exercise its judgement and discretion around compliance and enforcement.

The prosecutions policy needs to be endorsed and implemented as soon as possible.

- There are different views within DELWP on the prosecutions policy, and when prosecutions should be used. DELWP’s draft prosecution policy seeks to formalise requirements between investigators and prosecutors. Its success will depend upon communication, refinements and cultural acceptance. This policy is important to mitigate the challenges faced by prosecutors working in-house.
- We found that there was uncertainty in where the decision/delegation to prosecute sits; whether with the prosecutor or with the Secretary or other parts of DELWP. The Take Me Home case highlighted that prosecutors in DELWP do not have full authority and autonomy to decide to prosecute and it is not clear when escalation is required.
- DELWP would benefit from taking a broader view of its regulator role. For example, in regulating timber harvesting there is an undue reliance and unrealistic expectation (both internal and external) on prosecutions as the only appropriate regulatory response and action. Prosecutions are only one of several regulatory tools and strategies available, and typically prosecution is the ‘last resort’ when other approaches have not achieved compliance, or the alleged breach or harm is serious. Criminal law tools also have limited value when the defence of ‘honest and reasonable mistake,’ available to VicForests under section 45 of the SFT Act could apply in many cases involving timber harvesting operations. Therefore, reliance on prosecutions is of limited utility, evidenced in both recent prosecutions by DELWP under the SFT Act.
- There is room for improvement in the areas of governance around decision-making, including when to bring a prosecution. Despite statements that the relevant prosecution lawyer is responsible for deciding to bring a prosecution, the decision was approved at the Secretary level in both the Scatterbrain matter and Take Me Home. Within DELWP and across the regulatory system, there are different interpretations on who decides about enforcement actions and what “deciding” means. Sound regulatory practice requires clear decision-making authority and delegations to avoid actual or perceived undue external influence.
DELWP’s current governance and organisational arrangements require strengthening. The process of authorisation of enforcement activities is also unclear.

- Strong governance and organisational arrangements improve transparency and can protect decisions and officers from actual or perceived bias or wrong doing.

The timber harvesting regulator has maintained its impartiality and is not captured by either industry or conservation interests, despite external perceptions running both ways.

- DELWP is perceived by industry as too pro-environment and by parts of the community as too close to industry. In our view neither is correct. However, these perceptions are an impediment to effective regulation. Increased transparency and engagement by DELWP will assist in reducing perceptions of conflicts of interest.
- We found the staff at DELWP and VicForests to be professional and proud of their work. Similarly, we found the ENGOs were engaged and knowledgeable about biodiversity values. Harnessing these attributes and capabilities, including allowing a respectful contest of ideas, is necessary to overcome the current oppositional impasses and realise better outcomes.

While DELWP has made significant improvements to its regulatory approach, it has more to do to improve timeliness, responsiveness and transparency.

- Some ENGOs do not have confidence in the regulator’s independence and transparency. There is a perception of inaction, lack of enforcement and lack of communication about investigation outcomes. Genuine and open engagement with stakeholders, the timber industry, other regulators, and other prosecutors could be significantly improved.
- DELWP has put considerable effort into improving its regulatory approach over the last two years, as exemplified in the draft Compliance Policy and draft Compliance Strategy. The policy outlines how DELWP will use a risk-based approach to achieve outcomes. The strategy specifies how the compliance program will improve its governance, increase its timeliness, transparency and engagement, and ensure impartiality.
- Significant improvements have been made over the last year to improve the forest reports submission process and publicly describe the status of each of these reports. Continued focus and effort is required.
- DELWP needs to publicly share more information about forest management, the regulatory scheme, its regulatory approach, how it undertakes its role and the reasons for its decisions regarding compliance investigations.
- It could also take a more proactive stance by putting information into the public domain in a timely way without the need for Freedom of Information requests. This would enhance its credibility and build trust.

DELWP’s compliance activity is overly reactive and is primarily focussed on post-harm, rather than prevention. It should target its role earlier in the planning process.

- DELWP’s role in the timeline from Allocation Order to harvesting is very small. It provides comments on the Timber Release Plan and performs its regulatory functions at the point of harvesting. This limits DELWP’s ability to be an effective regulator.

DELWP’s role as the regulator is not well understood.

- DELWP is unclear about its role and purpose as regulator and regulatory practice is underdeveloped.
- Community and industry would benefit from more clarity about DELWP’s regulatory role, responsibilities and purpose with regard to timber harvesting.
- VicForests does not have a clear understanding of DELWP’s role as the native timber harvesting regulator.
- The community perceives DELWP’s regulatory powers as more significant than they are, and therefore its expectations are not consistent with DELWP’s regulatory functions.

There is no single and identifiable ‘regulator’ within DELWP. This leads to inefficiencies, breakdown in communication and poor accountability. However, this is not a sufficient reason to move the timber harvesting regulator to a stand-alone statutory authority.

- The current organisational structure is opaque, disjointed and ineffective in discharging the regulatory function. We cannot see the regulatory focus. The regulator is structurally split across both DELWP
Timber harvesting regulators in Victoria, Tasmania and New South Wales all take different forms reflective of local legislation, institutional arrangements and industry history. Having the right capabilities and capacity to deliver are essential, regardless of the organisational form. Given the complexity of timber harvesting and the broader support provided by DELWP, the Panel does not support creating a standalone, statutory timber harvesting regulatory authority.

**DELWP would benefit from a deliberate strategy to build a broad organisational regulatory capability.**

- We recognise that there has been high turnover within the timber harvesting compliance functions of DELWP. Similarly, the lack of career pathways and opportunities has resulted in a scarcity of staff with the desired mix of competencies and experience.
- Many staff are highly qualified and experienced in forest management and ecological sciences. However, there is a lack of regulatory, enforcement and investigation experience in the timber harvesting regulator.
- THCU currently has neither the capability or capacity to achieve its objectives.

**The regulatory framework governing timber harvesting is not fit-for-purpose and is difficult to apply, however this is not an excuse for inaction.**

- The legislative framework that establishes DELWP’s regulatory roles and powers is too prescriptive, incomplete and out-dated. It hinders DELWP’s ability to effectively regulate timber harvesting in state forests in a way that aligns with the multifaceted goal of sustainable timber harvesting.
- The Code needs to be reviewed. We were repeatedly told that it does not represent an up-to-date, best practice set of timber harvesting rules.
- There is also a lack of dialogue between VicForests and DELWP as to common interpretation of the rules.
- There are two different regimes for timber harvesting management (nominally divided between the west and east of the state). Several parties are involved in regulated licences and permits to harvest forest produce under the Forests Act and governance arrangements are unclear.

**The regulatory tools and sanctions are not fit-for-purpose and are inadequate. They do not allow the regulator to be proportionate and graduated in its response to non-compliance.**

- The existing tools for timber harvesting regulation are difficult to identify and inadequate. The SFT Act has very limited powers for Authorised Officers to conduct enforcement work (see Part 9 of the Act). Investigation and compliance tools are also limited. There is also confusion about who has what powers and which offences apply. Section 70 of the SFT Act is available to Authorised Officers to achieve compliance on the ground, but the section is unhelpfully drafted.
- Authorised Officers lack the ability to obtain information and documents in their compliance role and sufficient powers to do so. They also lack appropriate protections when performing these activities.
- The timber harvesting regulator has a limited range of criminal, civil or administrative sanctions. This hinders it in taking appropriate and proportionate regulatory action.
- There are fundamental issues with the regulatory instruments (such as action statements) and whether they can be implemented.

**Investigation and compliance tools in the legislation are not sufficiently utilised.**

- Some existing powers and tools are not being used, including section 70 of the SFT Act, relevant provisions of the FFG Act and section 89 of the CFL Act. These tools have the potential to assist.
- The existing regulatory framework is also not being fully implemented. DELWP has insufficiently acted to protect the Greater Glider by using an action statement under the FFG Act (see the Greater Glider case study on page 22).
- The failure to use the full range of existing powers is partly because of a lack of guidance for Authorised Officers, a lack of regulatory imagination and a tendency to look for reasons not to act.
DELWP lacks information about the forest and timber harvesting plans.

- DELWP faces issues of information asymmetry, which limit its effectiveness as a regulator. This could be addressed in several ways including Memoranda of Understanding or via coercive powers.
- It currently lacks data to better inform regulatory and compliance activities. There is little current investment in accurately understanding the forest and no single source of truth about values that are present.

The lack of a clear policy position articulating the trade-offs between environmental and native timber harvesting uses and values makes it difficult to set the rules.

- There is no common whole-of-government view about the balance of forest values and uses, or agreement about how and where trade-offs are to be made.
- The various aspects of the regulatory framework have different, competing purposes. The legislation gives little direction to hierarchy or priority in application. This means the regulator is left to do the heavy lifting.
Appendix 1: Victorian forest management legislative and regulatory framework

The Victorian forest management regulatory framework is complex. It comprises Commonwealth and State legislation, legislative instruments, plans and agreements between the Commonwealth and Victorian Governments. It seeks to achieve a balance between environmental, social, cultural and economic values and uses in Victoria’s state forests.

National Framework

- The management of Australia’s forests is guided by the 1992 National Forest Policy Statement (NFPS), the Environmental Protection and Biodiversity Act 1999 (Cth) (EPBC Act), the Regional Forest Agreements Act 2002 (Cth) (RFA Act), Regional Forest Agreements (RFA) themselves and the Export Control Act 1982, which but for the operation of the RFA Act would regulate the export of wood.

Legislation

- The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. EPBC Act assessment and approval is not required for forestry operations undertaken in accordance with an RFA (with some exceptions) (s 38).
- The RFA Act gives effect to aspects of the NFPS and to certain obligations of the Commonwealth under RFAs. It includes exemptions from certain Commonwealth Acts and limitations around the Commonwealth’s ability to terminate, compensation, publication and tabling. The Act does not give effect to any State obligations.

Regional Forest Agreements

- The RFAs are a key outcome of the NFPS through which the Australian, state and territory governments committed to the sustainable management and conservation of Australia’s native forests.
- The RFAs are regional agreements between the State of Victoria and the Commonwealth that establish targets and commitments for the conservation and use of native forests. Under the five RFAs, signed between 1997 and 2000, the Commonwealth accredited Victoria’s forest management system for each respective region as amended by the RFA. The RFAs operate to create a substitute regulatory regime for the protection of matters of national environmental significance. In Friends of Leadbeater’s Possum Inc v VicForests [2018] FCA 178, her Honour said that the substitute regime was found in the RFA itself. The conditions of all five agreements, such as the Central Highlands RFA, have been preserved until 2020.
- The RFAs establish the comprehensive, adequate and representative (the CAR) reserve system, consisting of Dedicated Reserves, Informal Reserves and Values protection by Prescription, that protect forests and forest values (for example, see clause 39 and Attachment 1 of the Central Highlands RFA). RFAs are required to do this by statute under the RFA Act. The CAR reserve system includes parks, reserves, and other protected or excluded zones provided through the Forest Management Zoning Scheme (FMZS), in accordance with the Code. The RFAs also provide for the complementary ecologically sustainable management and use of forests in each RFA region outside the CAR reserve system and provide for secure access to forests and the long-term stability of forest industries (Australian Government 2018).

Victorian Legislation


Forests Act

- The Forests Act provides for the management of state forests, including the development of forest management plans and the sale of forest produce. All forest produce in state forests is the property of the Crown, unless passed to another person in accordance with the Act.
Section 22 of the Forests Act requires the Secretary to the DELWP to prepare working plans for state forests. Forest Management Plans (FMP) are working plans for the purposes of section 22. Victoria has 15 forest management areas (FMA) for planning and managing state forest. The FMAs do not align with the RFA boundaries and different areas of FMAs are subject to different FMPs and RFAs.

Under section 52, the Minister may grant a licence or permit to harvest forest produce in reserved forest. This power is delegated to DELWP and VicForests amongst others. This means that VicForests issues licences to harvest forest produce. This system of licences is largely used in western Victoria while the Allocation Order to VicForests applies to eastern Victoria for authorising harvesting of forest produce. Wood Utilisation Plans are also working plans under section 22. VicForests prepares Wood Utilisation Plans (which they refer to as Timber Utilisation Plans) under a limited delegation. These Plans are similar to Timber Release Plans in that they list VicForests’ planned harvesting and regeneration activities, but they involve areas of the state covered by a licence rather than the Allocation Order.

**CFL Act**

The CFL Act is an umbrella land management statute which establishes the body corporate and outlines its functions and responsibilities. In section 31, it provides for the Minister’s power to make Codes of Practice regarding the standards and procedures for carrying out the objects and purposes of relevant law. Compliance with a Code of Practice is only required if it is incorporated in or adopted by a relevant law or a condition specific in an authority given under a relevant law (s 31). A Code of Practice can also be incorporated in regulations made under the CFL Act or relevant law (s 40). Section 3 defines ‘relevant law’ as the legislation listed in Schedule 1 to the Act, that includes the SFT Act, the FFG Act and the Forests Act.

The Code of Practice for Timber Production 2014 (the Code) was made under section 31 of the CFL Act. It has legal effect because it is adopted by the SFT Act, as a ‘relevant law’, in section 46 of that Act.

The CFL Act also confers functions on the Secretary (s 10) and allows the Secretary to apply to a court for an injunction to restrain a person contravening a relevant law (s 89).

**SFT Act**

The SFT Act provides a framework for sustainable forest management and sustainable timber harvesting in state forests. The Act provides for the allocation of Victoria’s timber resources to VicForests through an Allocation Order (a regulatory instrument for vesting timber resources in VicForests) (s 13).

The Act also provides for the development of a sustainability charter for Victoria’s state forests (Sustainability Charter for Victoria’s state forests, 2006), and determines sustainability criteria and indicators and reporting requirements (Criteria and indicators for sustainable forest management in Victoria, 2007).

Key provisions include:

a) section 12A which provides that all timber resources in Victoria are property of the Crown

b) section 13 which empowers the Minister for Agriculture to make an allocation order to pass resources to VicForests

c) section 45 which makes it an offence for VicForests to undertake unauthorised timber harvesting operations, that is timber harvesting operations that does not comply with an Allocation Order or Timber Release Plan

d) section 46 which requires VicForests to comply with Codes of Practice, and

e) Part 8A which provides for the Secretary to enter enforceable undertakings.
s.45 of SFT Act: Offence to undertake unauthorised timber harvesting operations

(1) A person must not undertake timber harvesting operations in any part of a State forest unless those operations are authorised operations.
Penalty: 60 penalty units, in the case of a natural person;
240 penalty units, in the case of a body corporate.

(2) For the purposes of this section, authorised operations means—
(a) in the case of vested timber resources—
(i) timber harvesting operations undertaken by, or on behalf of, VicForests in accordance with an allocation order and a timber release plan that relates to that allocation order; or
(ii) timber harvesting operations undertaken by, or on behalf of, a person who has entered into an agreement with VicForests for the harvesting and sale of timber resources, or the harvesting or sale of timber resources; or
(iii) timber harvesting operations undertaken by, or on behalf of, a person in accordance with a managed licence;
(b) in any other case, timber harvesting operations undertaken by, or on behalf of, a person in accordance with
(i) this Act; or
(ii) a licence or permit granted under section 52 of the Forests Act 1958.

FFG Act

- The FFG Act provides for the conservation of threatened species and communities, and the management of potentially threatening processes. Section 8 provides for the establishment of a Scientific Advisory Committee that advises the Minister on the listing of taxa or communities of flora and fauna and potentially threatening processes. Other provisions relate to compliance and place responsibilities on the Secretary:
  o Section 7(1) requires the Secretary to administer the FFG Act in a way that promotes the flora and fauna conservation and management objectives.
  o Section 7(2) gives the Secretary the discretion to require a ‘public authority’ to consult with the Secretary regarding actions that are likely to threaten the survival of a listed taxon or community of flora or fauna or a critical habitat.
- Among others, Part 3 of the Act relates to the listing of threatened species and communities, Part 4 provides for management processes including action statements and management plans, and Part 5 provides for conservation and control measures including interim conservation orders.
- The FFG Act does not provide for direct offences regarding fauna under the FFG Act; these offences are dealt with under the Wildlife Act. VicForests is required to comply with the Wildlife Act. This means that section 57 of the FFG Act is not relevant for regulating offences regarding fauna. However, the FFG Act does have offences in relation to flora and fish. The Flora and Fauna Guarantee (Forest Produce Harvesting) Order No-2 2004 (the Order) authorises the incidental take of protected flora during timber harvesting operations subject to the terms and conditions set out in the Order. Section 57 of the Act may still be relevant in relation to compliance with the Order.

Forest Management Plans and Zoning Scheme

- The conservation, management and uses of state forest are informed by Forest Management Plans (FMP), published by the State of Victoria between 1995 to 2011. The Plans are made under section 22 of the Forests Act and the Secretary may amend a Plan from time to time. For example, the relevant FMP for the East Gippsland FMA is the Forest Management Plan for the East Gippsland Forest Management Area 1995 in conjunction with the East Gippsland Forest Management Plan Amendment 1997 (the amendment made following the making of the East Gippsland Regional Forest Agreement in 1997).
In general, the purpose of a FMP is to establish strategies for integrating the use of state forest for timber production and other purposes with the conservation of natural, aesthetic and cultural values. FMPs are an output of long-term (strategic) forest management planning undertaken in accordance with legislation and processes such as RFAs.

FMPs establish a scheme of Forest Management Zoning Scheme (FMZS). The FMZS is a long-term planning tool that spatially represents all the known values that are managed in Victoria’s state forests. It assists the protection of Victorian forests and forest values by outlining where timber harvesting can be undertaken and divides state forest into three zones:

- Special Protection (SPZ) (managed for conservation to minimise disturbances or process which threaten conservation values, and timber harvesting is excluded),
- Special Management (SMZ) (managed to conserve specific features while catering for timber production under certain conditions), and
- General Management (GMZ) (managed for a range of uses, but timber production will have a high priority, and includes unproductive forest).

The Code

The Code is the key regulatory document guiding sustainable timber harvesting. The Code is a prescribed legislative instrument and outlines the environmental standards for planning and conducting commercial timber harvesting operations.

The Code is made for the purposes of a relevant law under section 31 of the CFL Act. Compliance with a code is not mandatory unless it is incorporated or adopted by a relevant law. The Code is adopted by the SFT Act and compliance is required under section 46 of the SFT Act and by the Allocation Order. The SFT Act requires compliance by VicForests and persons who have an agreement with VicForests.

The Management Standards and Procedures for timber harvesting operations in Victoria’s state forests 2014 (MSPs) and Planning Standards for timber harvesting operations in Victoria’s state forests (Planning Standards) are incorporated into, and form part of, the Code. They provide more detailed operational prescriptions for timber harvesting operations in Victoria’s state forests, based on the standards outlined in the FMPs.

Allocation Order

The Minister for Agriculture allocates timber resources through allocation orders, which provide for the allocation of timber resources in state forest for harvesting and sale.

Allocation orders are published in the Victorian Government Gazette and may be varied or reviewed by the Minister consistent with sections 17 and 18 of the SFT Act. The orders authorise harvesting, provide for the passing of property in vested timber resources and specify the maximum area of State forest available to VicForests for harvesting, the activities that VicForests is authorised to undertake, and the conditions and standards that apply to VicForests in undertaking these activities.

When an Allocation Order is made, VicForests is required to prepare a Timber Release Plan in respect of any area that it proposes to undertake management activities within. VicForests may only harvest and/or sell vested timber resources in accordance with the Allocation Order 2013 (as amended).

Action Statements

The FFG Act requires the Secretary to prepare Action Statements for listed species, ecological communities or potentially threatening processes (s 19). These statements outline what has been done and what is intended to be done to conserve and manage threatened species, communities and processes.

Prescriptions regarding timber harvesting in Action Statements in existence at the time of making the Code of Practice for Timber Production 2014 were incorporated into the Code. Previously, the Allocation Order required VicForests to comply with Action Statements made under the FFG Act (as at the time of the Brown Mountain case). Under the Allocation Order 2013, VicForests is no longer expressly required to
comply with Action Statements. Under the Code the operational prescriptions for Action Statements which existed at the time of its making were incorporated into the MSPs and Planning Standards. There have however been Action Statements made since 2014 for which there is no prescriptive requirement incorporated into the Code.
Appendix 2: Inadequacies in the powers and protections of Authorised Officers

Power to obtain information

- The ability to obtain information and documents is vital to most investigations. Investigations into timber harvesting compliance are no exception. There is no general power to obtain documents in either the CFL Act or the SFT Act. We were informed that, because of this, in the TMH investigation, the investigating officer purported to use clause 20 of the Allocation Order 2013 (as amended) to require VicForests to provide him with certain documents. We do not consider it appropriate to use a provision of a subordinate statutory instrument prepared for another purpose to assist in an investigation. Use of clause 20 in this way was only necessary because of the lack of an appropriate statutory power.
- In addition, the power in section 84 of the SFT Act to require a person to state their name and address is very narrow. It may only be exercised in respect of a person who an authorized officer believes, on reasonable grounds, has committed or is committing an offence against the Act or regulations. It cannot be used, for example, to obtain contact details of a potential witness (as in section 119 of the OHS Act).
- We were informed by the THCU that their inability to obtain such details has hindered their ability to investigate compliance with the SFT Act.

Misleading and obstructing Authorised Officers

- It is an offence against the CFL Act for a person to give an Authorised Officer information that is false or misleading (s 95(1)) and applies to their work in respect of all Acts under which the officer is authorised. However, the maximum penalty for the offence is 10 penalty units presenting approximately $1611. For reasons that are not clear to us, despite the comprehensive scope of section 95 of the CFL Act, there are separate offence provisions in the FFG Act (s 58(1)) and the SFT Act (s 87) dealing with the same subject matter. These attract maximum penalties of 20 penalty units and 60 penalty units respectively.
- Such provisions are very important as they protect the integrity of the work of Authorised Officers. It is for this reason that, in modern regulatory schemes, the provision of false or misleading information to a regulator is a resinous offence which attracts significant penalties. For example, under section 153 of the OHS Act, it is an indictable offence to knowingly give false or misleading information to an inspector. The maximum penalty is 240 penalty units for an individual or 1200 penalty units for a body corporate.
- Section 86 of the SFT Act creates the summary offences of hindering or obstructing an Authorised Officer. Section 87 creates the summary offences of threatening or abusing an Authorised Officer. In each case, the maximum penalty is 60 penalty units. The equivalent offences to the section 87 offences in the OHS Act are in section 125(2). They attract a maximum penalty of two years’ imprisonment.
- These penalties are inadequate and out of date with other legislative frameworks. A suite of more contemporary powers and protections would support DELWP officers in undertaking their compliance functions and duties.

Section 70 of the SFT Act

- The limited nature of compliance tools available to DELWP, particularly in the SFT Act, has been highlighted in key cases like Take Me Home and Brown Mountain. Section 70 of the SFT Act illustrates the inadequacy and complexity of applying of these tools.
- Section 70 is the key administrative compliance tool in the Act. It is an offence to fail to comply with such a direction (s 70(2)). Further, non-compliance with such a direction triggers a power to suspend any timber harvesting operation (s 71). Section 70 relies on a concept that is central to the operation of the SFT Act; a “timber harvesting operation”. Section 45, which was the subject of the TMH prosecution, creates the offence of undertaking an unauthorized “timber harvesting operation”.
- According to section 3 of the SFT Act, “timber harvesting operations” relevantly means any of the following kinds of activities carried out by VicForests or by any other person or body—
(a) for the primary purpose of the sale, or the processing and sale—
   (i) felling or cutting trees or parts of trees;
   (ii) taking or removing timber;
   (iii) delivering timber to a buyer or transporting to a place for collection by a buyer or sale to a buyer;
   (iv) any works, including road works, ancillary to any of the activities referred to in subparagraphs (i) to (iii);

- This is a complex definition. It means that an Authorised Officer wanting to exercise the section 70 power must first assess if the activity that is to be the subject of a direction falls within the definition. This includes an assessment of the “primary purpose” of the activity and whether the activity is “ancillary to” an identified activity. Unfortunately, this complexity is exacerbated by the Code. The Code contains its own definition of “timber harvesting operations” which differs in a material sense from the one in the SFT Act. The description of “ancillary” activities is broader in the Code as it includes “site preparation, planting and regeneration” in addition to “road works” (p.18). This is an example of entirely unnecessary complexity which, in our view, detracts from DELWP’s ability to be an effective regulator of timber harvesting.

- The provisions in sections 70 and 71 are clearly modelled on the improvement and prohibition notices powers found in many Victorian statutes (for example, sections 111 and 112 of the OHS Act). Inspectors appointed under such statutes make frequent use of these ‘bread and butter’ compliance powers to achieve speedy compliance without the associated cost and complexity of court proceedings. We expected to find that section 70 of the SFT Act is used in a similar manner.

- However, DELWP offices told us they rarely use the power. They have pointed to what they understand to be limitations inherent in the section 70 power. As noted, one such limitation is that the power is confined to circumstances where a person is undertaking “timber harvesting operations.” We were informed that the DELWP’s legal advice is that the power is unable to be exercised during the planning phase that occurs prior to the commencement of logging. As a result, the power is rarely used. The advice may be thought to place too little reliance on paragraph (iv) of the definition of “timber harvesting operations”: “any works, including road works, ancillary to any of the [specified] activities”. The reference to “road works” allows for the possibility that planning activities are within the scope of the definition. However, planning of itself (such as the long-term forest management planning referred to in the Code involving Forest Coupe Plans) may be difficult to fit within this definition.
Appendix 3: DELWP organisational structure – timber harvesting regulation

DELWP’s Forest Regulation Unit, Prosecutions Unit and Timber Harvesting Compliance Unit (with the support of regional Environmental Compliance Units) form Victoria’s timber harvesting regulator.

DELWP is organised into six portfolio groups:

- The Forest, Fire and Regions Group
- Energy, Environment and Climate Change Group
- Water and Catchments Group
- Planning Group
- Local Infrastructure Group
- Corporate Services Group
  - Legal and Governance Division (LGD)
  - Prosecutions Unit

Forest, Fire and Regions Group (FFRG)

FFRG is led by the Deputy Secretary, Forest, Fire and Regions. The group comprises:

- The Office of the Deputy Secretary
- Regional Directorates: Port Phillip, Barwon Southwest, Grampians, Loddon Mallee, Hume, Gippsland
  - Environmental Compliance Units
- Forest and Fire Operations Division
  - Regional Forest and Fire Planning Units
- Infrastructure and Resources Division
  - Environmental Compliance Branch
    - Policy, Strategy and Capability Unit
    - Intelligence and Investigations Unit
    - Timber Harvesting Compliance Unit
- Policy and Planning Division
  - Policy Branch
    - Forest Policy Unit
    - Forest Regulation Unit

Prosecutions Unit

Role: The Prosecutions team in Legal Services is responsible for preparing and prosecuting criminal offences under legislation administered by DELWP and Parks Victoria.

Key responsibilities:

- Prosecutors assess briefs of evidence prepared by investigators. Where appropriate, prosecutors will file criminal charges or issue warning letters for offences under legislation including:
  - Wildlife Act 1975
  - Forests Act 1958
  - Flora and Fauna Guarantee Act 1988
  - Crown Land (Reserves) Act 1978
  - National Parks Act 1975
  - Sustainable Forests (Timber) Act 2004
- The team is responsible for determining whether criminal charges will be laid against an accused, have care and conduct of the prosecution and appear and/or manage court appearances.
• Prosecutors will only commence proceedings where there is a reasonable prospect of conviction, and the public interest requires a prosecution.
• Prosecutors also routinely provide legal advice.

Timber Harvesting Compliance Unit
Role: To promote the sustainable use of timber resources through a risk-based, intelligence led approach to environmental compliance

Key responsibilities:
• Improve application of the Code of Practice for Timber Production through the development of appropriate policies, standards and procedures, and through education, audits and enforcement.
• Undertake audits and proactive assessment of timber harvesting plans and operations to ensure standards in the Code of Practice for Timber Production are being met, and operational improvement occurs.
• Manage and oversight forest reports and case management processes to ensure efficient and timely actions, including threatened species assessments and initial forest management zoning changes, reporting and communications.
• Undertake investigations and enforcement into breaches of the Code of Practice for Timber Production and other relevant laws, ensuring timely and efficient case management processes.
• Work with VicForests to achieve voluntary improvements in operational performance and oversee the implementation of mandatory requirements.
• Provide expert advice and support to improve the regulatory framework for timber harvesting planning and operations.
• Establish partnerships across DELWP, with delivery partners and relevant regulatory and enforcement agencies and stakeholders.
• Community and stakeholder engagement.

Forest Regulation Unit
Role: To lead and continuously improve the regulatory framework for timber harvesting, including forest management zoning.

Key responsibilities:
• Develop, review and amend subordinate legislation such as regulations and other key documents such the Code of Practice for Timber Production.
• Provide authoritative advice on the Code of Practice for Timber Production and implement improvements to enable best practice regulation of timber harvesting operations.
• Work across the DELWP portfolio, DEDJTR, VicForests and others to enable best practice regulation of timber harvesting operations for biodiversity and other environmental outcomes.
• Work with the Environmental Compliance Branch, Forest and Fire Operations Division and Regional Directorates to ensure the consistent, integrated and efficient forest regulation.
• Maintain forest management zoning and data to ensure it is up to date, decision relevant and complies with required standards.
• Ensure timber harvesting planning processes are managed to consistent standards.
• Community and stakeholder engagement.
Appendix 4: Compliance investigation process initiated by forest reports

Figure 10 Compliance investigation process initiated by forest reports

Note: case management meetings happen throughout case management and these involve the CO, members of the FRAP and Legal as relevant.
Appendix 5: List of stakeholders consulted

In the relatively narrow focus of the Review, we sought to understand the issues through targeted engagement with relevant DELWP employees and key external stakeholders. These consultations provided us with a range of different perspectives and valuable insights into the subject matter of the Review. Most engagement was face-to-face, but we considered several unsolicited submissions and visited the Plane Hill coupe in Healesville. We would like to thank all of those who gave their time to assist us.

We invited all legally recognised Traditional Owner groups to provide their input into the Review. We also approached the Construction, Forestry, Maritime, Mining and Energy Union.

**Government stakeholders**

- Department of Environment, Land, Water and Planning (DELWP)
  - Forest, Fire and Regions – Office of the Deputy Secretary
  - Forest, Fire and Regions – Environmental Compliance
  - Forest, Fire and Regions – Environmental Compliance – Timber Harvesting
  - Forest, Fire and Regions – Policy and Planning
  - Corporate Services – Legal and Governance
  - Corporate Services – Legal and Governance – Prosecutions
  - Energy, Environment and Climate change - Biodiversity Division
  - Energy, Environment and Climate change – Land Management Policy Division
- Department of Economic Development, Jobs, Transport and Resources (DEDTJR)
  - Forest Industries, Fisheries & Game Branch
- Department of Treasury and Finance (DTF)
  - Economic Division
  - Commercial Division
- Department of Health and Human Services (DHHS)
  - Regulation Health Protection and Emergency Management division
- Goulburn Broken Catchment Management Authority
- Melbourne Water
- VicForests
- Victorian Government Solicitor’s Office

**External Stakeholders**

- Environment East Gippsland
- Environmental Justice Australia
- Flora and Fauna Research Collective
- Friends of the Earth/Goongerah Environment Centre
- Institute of Foresters Australia
- My Environment
- Rubicon Forest Protection Group
- Strathbogie Sustainable Forest Group
- The Wilderness Society
- Victorian Apiarists’ Association
- Victorian Association of Forest Industries
- Wildlife of the Central Highlands

**Other timber harvesting regulators**

- Environment Protection Authority, NSW
- Forestry Practices Authority, Tasmania
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AO</td>
<td>Authorised Officer</td>
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<tr>
<td>AFS</td>
<td>Australian Forestry Standard</td>
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<td>AS</td>
<td>Action Statements for threatened species and communities made under the FFG Act</td>
</tr>
<tr>
<td>CAR</td>
<td>Comprehensive, Adequate and Representative (reserve system)</td>
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<td>CFL Act</td>
<td>Conservation, Forests and Lands Act 1987 (Vic)</td>
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<td>CMA</td>
<td>Catchment Management Authority</td>
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<tr>
<td>DEDJTR</td>
<td>Department of Economic Development, Jobs, Transport and Resources</td>
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<td>DELWP</td>
<td>Department of Environment, Land, Water and Planning (Victoria)</td>
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<tr>
<td>DHHS</td>
<td>Department of Health and Human Services</td>
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<tr>
<td>DSE</td>
<td>Department of Sustainability and Environment (Now DELWP)</td>
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<tr>
<td>DTF</td>
<td>Department of Treasury and Finance</td>
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<tr>
<td>EEG</td>
<td>Environment East Gippsland</td>
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<tr>
<td>EPA Vic</td>
<td>Environment Protection Authority Victoria</td>
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<td>EPBC Act</td>
<td>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</td>
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<td>ENGO</td>
<td>Environmental non-government organisation</td>
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<td>Forests Act</td>
<td>Forests Act 1958</td>
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<td>FFG Act</td>
<td>Flora and Fauna Guarantee Act 1998 (Vic)</td>
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<td>FMA</td>
<td>Forest Management Area</td>
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<td>FMP</td>
<td>Forest Management Plan</td>
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<td>FMZS</td>
<td>Forest Management Zoning Scheme</td>
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<td>FPA</td>
<td>Forest Practices Authority</td>
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<td>FSC</td>
<td>Forest Stewardship Council</td>
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<td>GMZ</td>
<td>General Management Zone</td>
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<td>IIU</td>
<td>Investigations and Intelligence Unit</td>
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<td>LGD</td>
<td>Legal and Governance Division, Corporate Services Group, DELWP (previously LSD)</td>
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<td>LSD</td>
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<td>MSPs</td>
<td>Management Standards and Procedures for timber harvesting operations in Victoria’s state forests 2014</td>
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<td>MW</td>
<td>Melbourne Water</td>
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<td>NFPS</td>
<td>National Forest Policy Statement 1992</td>
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<td>OHS Act</td>
<td>Occupational Health and Safety Act 2004 (Vic)</td>
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<td>PIN</td>
<td>Penalty Infringement Notice</td>
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<td>PV</td>
<td>Parks Victoria</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>PSs</td>
<td>Planning Standards for timber harvesting operations in Victoria’s state forests</td>
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<td>RFA</td>
<td>Regional Forest Agreement</td>
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<td>Special Management Zone</td>
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<td>Special Protection Zone</td>
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<td>SOFR</td>
<td>State of Forests Reports</td>
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<td>SFT Act</td>
<td>Sustainable Forests (Timber) Act 2004 (Vic)</td>
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<td>TMH</td>
<td>Take Me Home</td>
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<td>THC</td>
<td>Timber Harvesting Compliance</td>
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<td>Timber harvesting operations</td>
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<td>THCU</td>
<td>Timber Harvesting Compliance Unit</td>
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<td>TOR</td>
<td>Terms of Reference</td>
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<td>TRP</td>
<td>Timber Release Plans</td>
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<td>VAGO</td>
<td>Victorian Auditor General’s Office</td>
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<td>VEAC</td>
<td>Victorian Environmental Assessment Council</td>
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<td>VFMP</td>
<td>Victorian Forest Monitoring Program</td>
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<td>VWA</td>
<td>Victorian WorkCover Authority (trading as and known as WorkSafe Victoria)</td>
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<tr>
<td>Wildlife Act</td>
<td>Wildlife Act 1975 (Vic)</td>
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References


Paganis (DELWP) v VicForests (Take Me Home) [2018] MMC (30 August 2018)


