

Terms of Reference

Independent review of timber harvesting regulation

Background

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

The regulatory framework for timber harvesting exists to ensure that the environmental, cultural and economic values of our forests are protected and enhanced for current and future generations. As Victoria's timber harvesting regulator, it is the role of DELWP, and in particular its 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 the 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.