

**The Wilderness Society and Goongerah Environment Centre and Friends of the Earth
18/01/2019**

Media Backgrounder - Independent Review of Timber Harvesting Regulation

Summary

The Independent Review identified several deeply problematic issues within DELWP's approach to regulation of logging.

It found that DELWP does not see itself as a regulator, it is an ineffective regulator, and that VicForests is essentially self-regulating.

The independent panel's findings highlight need for government to set policy and take decisive action.

GECO and the Wilderness Society warn that strengthened regulation of the logging industry will not ensure environmental, cultural and economic values of forests are protected and enhanced.

Wider policy change from government is required to ensure best use and value of forests, and protection of these values—including climate and water values—for future generations. Improved industry compliance and a strengthened regulator sits within this broader context.

The government must act to place the logging industry on a sustainable footing by reducing timber volumes, transitioning jobs, protecting high environmental value forests.

Any efforts to reform regulation through the creation of new roles and offices or through streamlined processes—without fundamental reform of the logging industry—will face an uphill battle.

Context

On Friday March 15th the Department of Environment Land Water and Planning (DELWP) released the independent review of timber harvesting regulation report.¹

The review was commissioned by the secretary of the DELWP at the request of the Minister for Energy, Environment and Climate Change Lily D'Ambrosio.

The review followed the regulator's unsuccessful prosecution of VicForests, a state-owned enterprise that undertakes timber harvesting operations on behalf of the State. As regulator,

¹ Available at:

<https://www.forestsandreserves.vic.gov.au/forest-management/environmental-regulation-of-timber-harvesting>

DELWP had alleged VicForests breached the Sustainable Forests (Timber) Act 2004 (Vic) (SFT Act). However the case was struck out by Magistrate Hayes on 30 August 2018, on the basis that the charge laid did not meet the requirements of the Criminal Procedure Act 2009 (Vic).

Over many years environment groups have heavily criticised DELWP's approach to regulation of logging carried out by government agency VicForests. Despite dozens of serious breaches of the code of practice for timber production since VicForests was established in 2003, just two prosecutions of VicForests have been made by the regulator, neither of which succeeded or reached the point where any evidence was called.

Independent Review findings: vindication of ENGO concerns and indictment on DELWP's regulatory practices

The Independent Review identified several deeply problematic issues within DELWP's approach to regulation of logging that confirm long-standing concerns about the willingness and capability of the department to effectively regulate native forest logging.

- VicForests is in a practical sense acting as a self regulator (Page 34)
- DELWP's regulatory practice and capability is weak (Foreword)
- DELWP is neither a respected or effective regulator (Foreword)
- Real care is needed to ensure there is no actual or perceived conflict of interest between DELWP as regulator and VicForests as agency (Page 13)
- It is not clear what DELWP is trying to achieve through regulation of timber harvesting (Page 32)
- DELWP does not have clear prosecution procedures and those that do exist are outdated, unclear and inconsistently applied (Page 36)
- DELWP lacks clear compliance and enforcement policy (Page 36)
- DELWP does not make full use of the regulatory tools and strategies available to it (Page 36)
- DELWP is unclear about its role and purpose as a regulator and its regulatory practice is underdeveloped (Page 37)
- DELWP's regulatory activity is responsive, and not preventative (Page 37)
- VicForests does not have clear understanding of DELWP's role as a regulator (Page 37)
- There is no single identifiable 'regulator' within DELWP—this leads to inefficiencies, breakdown in communication and poor accountability (Page 37)
- DELWP does not see itself as a regulator (Page 38)
- There is a lack of enforcement and investigation expertise and experience (Page 38)
- The Timber Harvesting Compliance Unit within DELWP has neither the capability nor capacity to achieve its objectives (Page 38)
- Investigation and compliance tools in legislation are not being sufficiently utilised (Page 38)

- There are broader, unresolved issues with government policy around native forest timber harvesting (Page 33)

Improved regulatory practices no solution to unsustainable logging

In its response to the review, DELWP re-confirms that the purpose of the regulatory framework for timber harvesting is “to ensure 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 to enforce compliance with this framework on behalf of the Victorian community.”

GECO and the Wilderness Society warn that strengthened regulation of the logging industry will not ensure environmental, cultural and economic values of forests are protected and enhanced.

Wider policy change from government is required to ensure best use and value of forests, and protection of these values—including climate and water values—for future generations. Improved industry compliance and a strengthened regulator sits within this broader context.

The myriad of issues the review has unearthed highlights the need for the government to complete reform of the logging industry. Completing transition of the industry out of high environmental value native forests and into plantations and recycled fibre, with fair processes for workers, is urgently needed.

After decades of mismanagement Victoria’s forests are badly overlogged. Today, almost all logging in what is left of Victoria’s forests is occurring in environmentally sensitive areas.

All changes DELWP makes in light of the review recommendations must be evaluated against the social, economic and environmental cost of continued logging in high environmental value native forests.

Ed Hill Forest campaigner Goongerah Environment Centre / Friends of the Earth said:

“We welcome Environment Minister Lily D’Ambrosio’s commitment to strengthen DELWP’s regulatory capability and capacity however the strictest regulation and enforcement does not offer a solution to solve the ongoing environmental crisis in our forests caused by unsustainable logging, said Ed Hill”

“The absence of policy certainty for industry and conservation must be resolved before any more effort is directed to working out how to better regulate an industry that is already on a pathway to inevitable change”

Amelia Young, Campaigns manager Wilderness Society Victoria said:

“This review is another clarion call to Premier Andrews for clear and decisive action to complete the industry’s transition out of native forests and into plantations, create fair and just pathways for workers, and to protect forests and threatened wildlife. He must clear up the confusion.”

“For almost five years now Premier Andrews has abrogated his responsibility as leader to clear up this mess. The result is an ongoing crisis in our forests, deeply uncertain industry workers, a community disappointed that special forests still aren’t protected and dismayed that VicForests continues to log illegally.”

Ed Hill Forest campaigner Goongerah Environment Centre / Friends of the Earth said:

“Regulatory enhancement is only part of the solution here. Decisive action to get the logging industry onto a sustainable footing, and to protect forests, is also required from government and must be prioritised.”

“The review found that VicForests’ secretiveness about logging hampers DELWP’s ability to regulate effectively. Yet again, VicForests’ conduct is found wanting.”

Amelia Young, Campaigns manager Wilderness Society Victoria said:

“It is positive that DELWP has accepted all 14 recommendations made by the independent review panel. However while important, these reforms are not a solution, as even improved regulation cannot make an inherently unsustainable logging industry sustainable.”

“While the independent review makes some sound assessments, and DELWP’s responses to them are fairly credible, neither the review, the recommendations made, nor the response from DELWP deal with the elephant in the room: the massive volumes of wood committed to Nippon-owned Australian Paper through the state legislated wood pulp agreement. So long as hundreds of thousands of tonnes of forest is dedicated for paper pulp, it will be impossible for DELWP to properly regulate logging in ever-diminishing forests to anything near acceptable standards.”

“We have called for a truly independent logging regulator, which enforces the code without fear or favour. The extent to which VicForests continues to log high environmental value forests in breach of the law will be a key test of whether DELWP transforms into a regulator that protects the environment, rather than turns a blind eye to its destruction.”

ENGO responses to some of the review recommendations

Recommendation 4, to change the focus from the point of harvesting, to the point of planning, is welcome as it should mean earlier intervention is possible to prevent harm.

This will require exerting greater control over where and when VicForests can and cannot go into certain coupes. The DELWP pre-logging survey program is experiencing challenges with VicForests rushing to go into logging coupes and then DELWP has to rush to complete a survey. This is a reactive not a proactive approach that focuses on the planning stage. In order to do this DELWP will need to work more closely with the Department of Jobs, Precincts and

Regions (DJPR) to exert greater control over VicForests. Urgency to log in order to meet wood supply obligations should not come at the expense of proper and thorough planning that makes sure all required regulatory processes are fulfilled.

Recommendation 8, to write a prosecution policy, is welcome as departmental unfamiliarity with the regulatory requirements has hampered a willingness and ability to act. However we note that the review panel identified that DELWP does not utilise the full range of regulatory tools and strategies available to it, and that this ought to be improved (Recommendation 9).

ENGO responses to some of DELWP's proposed actions

Chief Conservation Regulator / Office of Conservation Regulator

Establishing a Chief Conservation Regulator with a stand alone office combining all parts of the department with regulatory responsibilities is a step in the right direction.

This concept will in theory lead to more independent oversight and a stronger regulatory culture within DELWP, however without government action to reform the logging industry the new office will struggle to be effective. Additionally, it is not clear how the Chief Conservation Regulator of the Office of Conservation Regulator will ensure assessment, in addition to community and industry engagement, at the planning stages.

The government must act to place the logging industry on a sustainable footing by reducing timber volumes, transitioning jobs, protecting high environmental value forests at the same time as establishing the new office of conservation regulation. Any efforts to reform regulation through the creation of new roles and offices, without fundamental reform of the logging industry, will face an uphill battle.

The statement of regulatory intent for timber harvesting

The draft statement of regulatory intent highlights the inherent contradiction in managing forests for multiple values. It includes an admission that it is not possible to avoid impacting environmental, social, cultural values of native forests when logging them, but goes on to say that the regulatory framework for timber harvesting exists to ensure (in vain) logging is conducted in a way that is compatible with the conservation of these values, including so that they are protected and enhanced for current and future generations.

For government to expect the department to effectively regulate whilst in denial of this inherent contradiction is to risk failure and likely perpetuate many of the problems that beset industry and its regulator.

Environment groups will provide further comment about the draft statement of regulatory intent and appreciate the invitation to do so.

Greater Glider example:

The review makes an explosive revelation that DELWP has in fact completed its work to identify logging prescriptions and risk management strategies for the Greater Glider.² However, agreement across government has not yet been reached on timber harvesting prescriptions (Page 24).

This examples highlights the highly politicised environment that DELWP and regulation of logging operates within. It is the responsibility of the Minister and DELWP to implement protections for the Greater Glider, agreement from the whole of government is not required. However in this case it is the whole of government that are delaying action to better protect the Glider. As a result logging in continuing in high quality habitat that may be required to be protected under DELWP's proposed prescriptions.

This highlights the urgent need for the government to take decisive action to address the protection of the greater glider, and indeed many other species, and reform the logging industry so that it can be appropriately regulated.

² The Independent Review highlighted the example of the threatened forest species the Greater Glider as illustrative of the inflexibility of the regulatory framework and DELWP's lack of meaningful action to address the impact of logging on the species through an action statement (Page 24).

The Greater Glider is a forest dependent threatened species that has been listed as vulnerable to extinction under state legislation (Flora and Fauna Guarantee Act) since July 2019. Despite clear scientific evidence that logging is a driver of the species' decline, no protections have been implemented for the species and logging continues in high quality habitat.

The required action statement, that sets out guidance for what protections should be applied and enforced by DELWP, has not been released and communication about the progress of the action statement, from government and DELWP to stakeholders, has been highly guarded.