

Overview of some issues regarding DELWP's capacity, capability and demonstrated track record regulating logging in Victoria's state forests

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Introduction

Over many years we have experienced an entrenched culture within the Department of Environment Land Water and Planning (DELWP) that favours the interests of the logging industry.

This culture is at odds with DELWP's responsibility to protect the environment, enforce regulations and act as fair, transparent and accountable land managers. This culture also means that when it comes to forest management, the community is not at the centre of what DELWP is doing (as per the DELWP 2020 vision), but rather that the interests of the logging agency that DELWP is meant to regulate are at the centre of what DELWP is doing.

In our experience, the culture within DELWP that favours logging interests runs deep. It manifests throughout the Forest Fire and Regions group, in the Forest Policy and Planning Unit, the Biodiversity Unit, and the Timber Harvesting Compliance Unit. This culture—as manifested in capabilities and behaviours—in particular directly compromises DELWP's public value outcomes of achieving a healthy, resilient and biodiverse environment, and productive and effective land management.

The Department presents itself as an independent regulator, but it is far from it. Why is that? We believe there are problems arising from a close relationship with VicForests, staffing issues (including tenure and a revolving door with industry), but above all cultural issues arising from vested interests influencing decision-making within DELWP, which occur as a result of the aforementioned problems and issues.

We want to see a Department that is not captured; a Department that conducts its regulatory activities with greater independence and rigour, and that prioritises the protection of the environment. DELWP needs to undergo a cultural change that supports the application of appropriate expertise, in order to build public confidence in their land management responsibilities and regulatory activities.

This document sets out a series of long-standing concerns regarding the close relationship between DELWP (and its predecessors) and VicForests, and provides examples of how this manifests, and what some of the consequences are for effective forest management.

We describe the ways in which the forest management and species protections designed by DELWP and VicForests are consistently skewed away from conservation values, and in particular provide detail about some Kuark forest maps, and the large old tree concept.

We provide examples of the inconsistent application of the scientific evidence, including DELWP's outright rejection of the scientific advice provided by the Scientific Advisory Committee (SAC).

We believe there are a range of structural issues, and workforce practices, that accommodate and perpetuate a culture of poor- or non-response and a lack of will to properly and effectively regulate VicForests' logging operations.

There are persistent problems with timeliness, transparency, provision of information, and communication and relationships with stakeholders.

We provide some examples about the highly guarded nature of Departmental investigations, and the extremely unusual responses or statements made by Departmental staff, including denial of what the regulatory prescriptions say, and claims that the application of the Code Practice for Timber Production 2014¹ (the Code) is at the department's discretion.

1. DELWP and VicForests

It is our experience that a close relationship between DELWP and VicForests undermines DELWP's independence as an effective, transparent and fair regulator.

Prior to the creation of VicForests in 2004, the then department conducted logging activities.

When VicForests was created, some public servants who previously worked for the then department moved over to VicForests. Other public servants remained in DELWP who perhaps should have gone over to VicForests. Public servants with backgrounds in forestry, who studied forestry and who, importantly, identify as foresters, became responsible for the regulation of logging activities and for enforcing environmental laws and regulations that foresters are required to adhere to.

It is therefore unsurprising that there is a pro-forestry and anti-environment culture within DELWP.

¹ Available at https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0016/29311/Code-of-Practice-for-Timber-Production-2014.pdf

Some examples of close relationship between VicForests and DELWP

1. A) Shared offices

In regional areas DELWP and VicForests share offices. Forestry planners sit in close proximity to DELWP biodiversity officers who are responsible for signing off on the designs of protection zones for threatened species that may impact on logging.

This arrangement is inappropriate and significantly weakens DELWP's independence as a regulator. We believe this proximity influences the design of protection zones, which almost always favours the interests of VicForests and does not reflect species' requirements as informed by conservation science.

Solution: Establish completely separate offices for all DELWP and VicForests staff.

Employ new biodiversity and compliance staff, who do not have long and well established relationships with VicForests staff and who are unaligned and carry an attitude of strong independence, to support capabilities and behaviours where VicForests' operations are scrutinised and kept at arm's length at all times, and where regulations are properly enforced.

1. B) Appointment of VicForests staff

The recent appointment of VicForests staff into positions such as the Manager of Forest Regulation, Policy and Planning is worrying and a clear example of the close relationship between DELWP and VicForests.

Staff with a long tenure at VicForests bring particular capabilities and behaviours as a result of being responsible for managing development of timber harvesting plans and development of environmental management prescriptions by and for VicForests to meet harvesting needs and requirements.

Direct responsibility for the regulatory and compliance framework in VicForests would have completely different drivers at odds with those of the regulator, including the way in which external regulatory, stakeholder and legal disputes regarding environment compliance are (or are not) responded to.

Switching from providing advice and making decisions in relation to legal cases against VicForests, to now doing the same for DELWP in relation to legal challenges means there is little wonder there is a lack of action, including effective prosecution of VicForests.

DELWP decisions about and actions for the environment need to be based on science and what is in the best interests of the environment. Having ex-VicForests staff designing protection zones and influencing policy decisions that will impact VicForests' logging operations unsurprisingly results in an absence of effective action for the environment, as under the influence and direction of ex-VicForests staff, DELWP decisions and actions are skewed towards the interests of VicForests.

Having staff who have spent the majority of their professional life embedded in the logging agency that they are now responsible for regulating is not appropriate and it is leading to poor environmental outcomes, ineffective regulation, a lack of clear accountability and the prevention of public trust in the regulator.

Staffing arrangements such as these provide clear and unequivocal examples of just how close VicForests and DELWP are and show the complete lack of independence of DELWP as a regulator.

Solution: Foresters with the interests of logging in mind do not belong in a department that is supposed to be protecting and managing the environment. Appoint only appropriately credentialed and values-aligned staff to DELWP for the purposes of regulating the logging in state forests.

Where existing staff do have the interest or capability to properly regulate logging activities in line with the Code and other relevant instruments and mechanisms, cultural and structural adjustments will be required.

2. Problems arising from the close relationship between VicForests and DELWP

Two examples of problems arising from the close relationship between VicForests and DELWP

2. A) Protections designed by DELWP Forest Policy and Planning Unit and VicForests

Goongerah Environment Centre (GECO) and The Wilderness Society are very concerned about the map produced for the Kuark forest 'protections' announced in March 2018. This map did not include some known key forest areas for protection, some that were included in the Fauna and Flora Research Collective Inc Vs Secretary to DELWP Supreme Court case.² The map was designed (by DELWP) to minimise impacts on VicForests and the area of state forest available for logging. As a consequence, the result was that the conservation outcomes were limited.

In addition, the final map shows protection for just half of the 'Princess Cut' logging coupe. Instead of protecting the forest that was at the centre of a public outcry over logging of old growth,³ DELWP produced a map which instead protected a logged area to the north that has very little environmental value. Additionally, it appears to us that the process and outcome surrounding the production of this map by DELWP may be inconsistent with Ministerial intentions.

² Fauna and Flora Research Collective Inc Vs Secretary to the Department of Environment Land Water and Planning, VicForests, Amended Statement of Claim, filed pursuant to the orders of the Honourable Justice Keogh, 7 March 2018

<https://faunaandfloraresearchcollective.files.wordpress.com/2018/05/amended-statement-of-claim-20-3-18.pdf>

³ Over the course of one week, six thousand people contacted Minister D'Ambrosio about the logging of forest in the Princess Cut coupe and asked for protection for it. Please see:

http://www.geco.org.au/kuark_forest_old_growth_about_to_be_logged

Numerous examples exist of protection zones being designed by the Forest Policy and Planning Unit in ways that are obviously prioritising the interests of the logging industry, rather than basing protections on science and what species require.

Detection based zoning measures require protection zones for species that have prescriptions, however more often than not protections are placed away from areas where species are found in order to facilitate logging and not impact on the size or design of VicForests' logging coupes.

To give one example, in the last six years almost every single protection zone for the endangered Long Footed Potoroo in East Gippsland has allowed logging at the precise location where the species was detected.

The required 50 hectares of 'retained habitat' is usually placed in a linear strip along a watercourse, often only 30-40 metres wide and often hundreds of metres away from the location where the Endangered animal was detected. Linear strips of vegetation along watercourses are required to be retained under separate Code obligations for watercourse protection, however they are routinely combined with habitat retention obligations in order to minimise the area of forest set aside for conservation values and to maximise the areas of forest that remain available to VicForests. These areas are usually lined with dense stands of tree ferns, rather than Eucalyptus species, and often do not provide optimal habitat for Long Footed Potoroo which depends on areas of Eucalyptus forest that provide their main food source, truffles.

The inadequacy of Long Footed Potoroo Zones in East Gippsland has been documented by the Fauna and Flora Research Collective in their review of Long Footed Potoroo.⁴

It is our experience that protection zones are often designed by VicForests themselves and then signed off on by DELWP. This is an absurd situation highlighting DELWP's lack of independence as regulators. In several cases where detection based zoning rules require the establishment of protection zones, VicForests instead produce what they call a 'Special Management Plan' that is then signed off by DELWP and implemented to fulfil statutory requirements for detection based zoning. 'Special Management Plans' are not adequate because they are designed by a logging entity with a vested interest in logging. This results in habitat protections having a minimal impact on the area available for logging which is often at odds with species' requirements.

A logging entity being allowed to design their own protection for threatened species is akin to a tobacco company writing their own health warnings on cigarette packets.

⁴ FFRC, 'Review of Long Footed Potoroo (Potorous longipes) ("LFP") detection locations and the adequacy of Department of Environment and Primary Industries (DEPI) and/or VicForests "Special Management Zones" ("SMZ") within VicForests scheduled logging coupes'
<https://faunaandfloraresearchcollective.wordpress.com/reviews-and-investigations/lfp-smz-review/>

The close relationship between VicForests and DELWP when designing protection zones for threatened species is further evidenced in a transcript of a cross examination of a VicForests employee by barristers acting for Environment East Gippsland (EEG) in the EEG Vs VicForests (Brown Mountain) Supreme Court case.⁵ Court transcripts show a senior public servant working for the department consults with VicForests on the design of a possible Special Protection Zone and specifically “wants to hear your (Vicforests) [*sic*] thoughts before going back to BES (biodiversity and ecological services unit) to discuss”, despite a requirement that threatened species zones be designed and endorsed by the Department’s Biodiversity staff, (please see court transcripts of Day 11, pages 844-846).⁶

DELWP published a revised version of the Management Procedures in 2014 which *removed* the requirement for biodiversity staff to design or approve threatened species protection zones. This may have been a response to the department’s internal processes being exposed during the Brown Mountain litigation, manifesting in an effort to re-align the requirements with the existing practice in the department whereby forestry staff with close relationships to VicForests—rather than biodiversity staff with appropriate training and expertise—are heavily involved in decisions about threatened species protection.

In the Brown Mountain litigation, the emails and meetings about the design of the protection zone that took place between VicForests and senior figures within DELWP prior to the BES unit having input into the zone highlights the way in which the department operates and the culture that prioritises the interests of VicForests and seeks outcomes that are in their best interest. Please read pages 844-846 of the transcript for further detail. We also note that the senior public servant who was consulting VicForests about the design of the Special Protection Zone is a forester with no formal training or qualifications in zoology, biology or ecology, this is brought to light in the court transcripts.⁷

2. B) Large old trees concept

Another recent example is the new ‘protection’ concept for large old trees greater than 2.5m diameter.

This concept was announced by Minister D’Ambrosio in March 2018, after the previous Minister Lisa Neville had established a review into large old tree protection in October 2015.

Two and half years after the review commenced there was no evidence that DELWP had created any protections.

DELWP did not respond to several stakeholder requests by phone and by email for information about the review and what protections were being considered. A Freedom of Information (Fol) request for documents relating to the review and correspondence between the Minister, DELWP and the SAC was

⁵ Judgements are available here: <http://www.eastgippsland.net.au/brown-mt-judgements>

⁶ Please see transcripts for Day 11; court transcripts are available at: <http://www.eastgippsland.net.au/eeg-v-vicforests-transcripts>

⁷ Environment East Gippsland Inc Vs VicForests (Brown Mountain) Supreme Court case transcript for day 12, p 967, accessed via this link <http://www.eastgippsland.net.au/eeg-v-vicforests-transcripts>

rejected on the basis that the information would take 20 hours to compile and that there were over 700 pages of documents associated with the review.

In March 2018 Minister D'Ambrosio announced the new protection concept, however there has still not been any information from either DELWP or from the Minister describing what the protection concept actually means, how it will be implemented and enforced, and whether large trees that satisfy the new size threshold will be afforded protective buffers.

Recently forest campaigners identified several trees larger than 2.5m diameter in the 'Puerile' logging coupe on Mt. Baw Baw. A coupe plan for the 'Puerile' logging coupe was provided to conservation groups by the Minister's office showing the locations of these trees. This couple plan clearly showed that trees this size would not be afforded buffer zones and logging and burning would be allowed to take place up within very close proximity to them, or even right up to their base. One tree greater than the 2.5m size flagged for protection was cut down, as it was deemed to be 'hazardous'. If it was afforded a buffer (as could be reasonably expected under the proposed large old tree concept) that was at least equal the height of the tree, it would have posed no hazard, as if it fell, it would have fallen into the buffer and not impacted on the work site.

On the basis of the little information available, and on the evidence of the application of the new large tree concept as it was perhaps applied in the 'Puerile' logging coupe, the new large tree protection concepts provide no protection whatsoever.

Large old trees are left exposed to edge effects, drying out and collapsing after the post logging burns. Before the creation of this so-called new large old tree protection, VicForests has routinely left in place very large old trees during logging, after which they are destroyed by the industrial logging burn and then collapse from exposure. Essentially the new large old tree protection concepts amount to little or nothing because DELWP has designed them in a way that will not impact on VicForests' logging operations.

Leading scientists recommend 100m buffers on all large old trees and old growth forest areas.⁸ The protection concepts should be based on peer-reviewed science, but instead they are based on VicForests' interests and, it would appear, amount to no actual protection of large old trees.

Solution for 2. A) and 2. B): Build capability into DELWP to design required protection zones and policies that achieve better outcomes for biodiversity.

This could be done by utilising the expertise of scientists from Arthur Rylah Institute (ARI) to work with DELWP to design any new protections for values and map required special protection zones for threatened species. Leading scientific experts for relevant species should provide final approval of

⁸ Lindenmayer, D., Blair, D., McBurney, L., Banks, S., Stein, J., Hobbs, R., Likens, G. and Franklin, J., 2013. Principles and practices for biodiversity conservation and restoration forestry: a 30 year case study on the Victorian montane ash forests and the critically endangered Leadbeater's Possum. *Australian Zoologist*, 36(4), pp.441-460. <http://publications.rzsnsw.org.au/doi/pdf/10.7882/AZ.2013.007?code=RZSW-site>

detection based zoning amendments. Each detection based zoning amendment must only be approved once a published expert on that species approves the design of the zone. In addition the expertise of ARI should be used to design any proposed expansions of reserve system. ARI staff have expertise and knowledge that is based upon science and the needs of the the environment and are less captured by logging interests.

3. Lack of capability and/or application of expertise and scientific evidence

3. A) Rejection of Scientific Advice

In November 2016, the SAC wrote to Minister Lily D’Ambrosio regarding protection of the Greater Glider. The SAC called for the Minister to use her powers under the Flora and Fauna Guarantee Act (FFG Act) to issue an interim conservation order over areas of important Greater Glider habitat that are threatened by logging. Specifically the SAC called for cessation of logging in the Strathbogie ranges, a known important stronghold for Greater Gliders.⁹

Documents obtained under FoI reveal DELWP rejected this advice and instead recommended implementation of “feasible low impact zoning changes in consultation with VicForests.”¹⁰

Instead of following the advice of the SAC, DELWP urged the Minister to develop protections for the Greater Glider that would be ‘low impact’ on VicForests and which would be designed in consultation with VicForests. Again, protection zones should be based on species requirements and science, not on the interests of VicForests. In a short article, Environmental Justice Australia set out the options and powers available to the Secretary and Minister regarding Greater Gliders.¹¹

Further evidence of the pro-logging culture within the Department is highlighted in the documents released under FoI that relate to DELWP’s advice to the Minister about Greater Gliders. For example point 9 in the Ministerial briefing states “It is uncertain what factors are contributing to the decline of Greater Gliders in Victoria.” This statement is entirely inconsistent with the SAC’s clear and unequivocal advice to the Minister.

In their letter to the Minister dated November 24th 2016, the SAC state:

“Fire and direct loss of habitat (timber harvesting and clearing) are major causes of declines, but other factors may be involved as declines are also recorded in unburnt national parks. Potential factors may variously include direct loss of habitat, wild and planned fires, extreme

⁹Documents release under FoI, accessed here https://d3n8a8pro7vhm.cloudfront.net/gecoforests/pages/2232/attachments/original/1537792245/FOI-DELWP_SAC_Greater_Glider.pdf?1537792245

¹⁰ Ibid.

¹¹ Available at: <https://www.envirojustice.org.au/projects/sorry-state-for-threatened-gliders-in-victoria/>

heat events, foliage nutrient changes, climate shifts, hyper predation by owls, and/or declines in the number of live old growth trees (and their hollows).”

DELWP’s advice to the Minister is also inconsistent with the SAC’s advice in their final recommendation to list the Greater Glider as a threatened species under the FFG Act¹²:

"Timber harvesting in greater glider habitat has been proven to cause declines and or local extinctions of greater glider populations. Timber harvesting practices reduces the number of hollow bearing trees available for denning by tree removal or as a result of regeneration burns after logging.

In addition the species does not cope well with habitat change. Although the animals may not die from the initial impact they will die shortly afterwards. This is due to life history traits: affinity with home range, small home ranges, attachment to hollow bearing trees they use for denning and their specialist diet.

In Victoria timber harvesting is widespread in the eastern and central parts of the state. This is also the main distribution and habitat of the greater glider. Considering the known impacts of timber harvesting on greater gliders, it is likely that other local extinctions of the species have already occurred and will continue to occur in the future."

Adam Morton, writing in *The Age* newspaper, reported on this issue in June 2017.¹³

Solution: There is clearly a great need for a strong and independent regulator.

It is critical that clear scientific advice provided to the Minister is not contaminated by the Department, especially where it is provided directly to the Minister, and that it is provided to the Minister in a timely fashion.

There may be a number of ways of achieving this through structural and cultural changes. The necessity of continuing to regulate logging, including through establishing greater independent regulatory oversight, ought to be considered in light of the substantial and ongoing economic and wood supply realities the industry is experiencing. The historic and contemporary failure of VicForests to comply with

¹² The SAC’s advice to list the Greater Glider as a threatneed species is available at: http://www.eastgippsland.net.au/files/documents/Greater-Glider-final-recommendation-FFGA_listing.pdf

¹³ News story available at: <https://www.theage.com.au/national/victoria/scientists-warn-greater-glider-faces-extinction-and-want-it-protected-from-logging-20170602-gwjbbf.html>

existing (weak) logging regulations, and the ongoing challenge of VicForests' ability to meet wood supply obligations whilst perhaps complying with existing (weak) logging regulations should also be considered alongside any proposals to establish greater independent regulatory oversight.

At a minimum, DELWP should be required to mandatorily report against scientific advice provided to it and / or to the Minister by the SAC, especially regarding threatened species, habitat requirements, and logging operations, within a specific timeframe. This mandatory reporting should set out how DELWP proposes it will act in response to scientific advice, and how it recommends the Minister act, in relation to advice from the SAC, including by directly responding to each component of that advice, and making that report publicly available.

We suggest that DELWP be required to obtain advice from ARI about how DELWP and or the Minister might best implement advice from the SAC, and that that advice is also made publicly available within a specified timeframe. It could be that the Minister might consider obtaining advice from both ARI, as well as from DELWP, regarding threatened species, habitat requirements, and logging operations.

4. Structural, workforce and cultural constraints and poor responsiveness

4. A) Constant changing of roles of compliance officers

There is a major problem with compliance officers not staying in roles long enough to sufficiently learn them and carry out their responsibilities. The ongoing shuffling around of officers has resulted in new officers having to constantly learn the ropes and then often, after a reasonably short time in their role, they are moved elsewhere. This results in a lack of ability and aptitude as officers lack experience, skills and ability, including an apparent unfamiliarity with the Code and related documents and instruments. This results in a lack of confidence held by stakeholders, as departmental staff appear unskilled, inexperienced and perhaps even careless, in their understanding and application of their responsibilities and duties. Breach report re-writing (where reports recommend prosecution of VicForests), secondments, and failure to promote experienced officers suggest there is a very a low incentive for effective staff action to properly regulate VicForests.

We are aware of staff who do hold a thorough understanding of the Code, applying for managerial roles within their respective unit, but being overlooked for these more senior roles, despite high levels of expertise and experience, as proven by the fact that in one instance, the unsuccessful candidate was required to train the appointee. This is a powerful example of ongoing efforts to apparently minimise effectiveness within DELWP and to maintain a degree of incompetence, particularly within the Timber Harvesting Compliance Unit.

It appears that DELWP would perhaps prefer to have unskilled people in senior roles? This perpetuates what is experienced by stakeholders as a persistently incompetent approach from DELWP regarding its activities, and additionally reduces, perhaps entirely, activities that result in regulatory action, including prosecutions, which itself favours the interests of VicForests.

Solution: Create fixed positions of at least two years for compliance officers and ensure people with appropriate experience, aptitude and capability are appointed to officer, managerial and other roles.

4. B) Lack of will to swiftly stop logging that may be in breach of regulatory framework

Numerous examples of logging that has allegedly occurred in breach of regulations and has been reported to DELWP by the community have not been stopped by DELWP in a timely manner.

In April 2018, GECO reported a high density of Greater Gliders in the East Gippsland logging coupe 'Squirrel's Paw' in the Bendoc state forest. GECO recorded 11 Greater Gliders within a distance of 1km and provided clear evidence in a detailed report with attached video files of each individual Greater Glider. In East Gippsland regulations require a 100 hectare Special Protection Zone be established where more more than 10 Greater Gliders are recorded over a distance of 1km.

After receiving the report, DELWP were very slow to respond and stop the logging operation whilst they deliberated over whether regulatory action and a zoning amendment was required.

After submission of the report documenting a protected population of Greater Gliders in the area being logged, two full days of logging occurred at the site, undoubtedly impacting the population of Greater Gliders (as per the SAC's advice on logging impacts on the species). In particular, during this time at least two locations and home range areas of Greater Gliders that were reported to DELWP were logged, likely resulting in the death of those gliders.

After repeated calls to the Minister's office, the offices of DELWP and hundreds of Victorians contacting relevant Ministers about the situation, DELWP stopped the logging and arranged a 'verification' survey to be done to verify the findings of GECO and the Fauna and Flora Research Collective (FFRC).

This survey located 10 Greater Gliders in a distance of approximately 1km, one glider short of the threshold required for protection. Despite coming very close to the protection threshold—and logging having meanwhile impacted on areas of glider habitat during the two days that logging occurred after the submission of the GECO and FFRC report—DELWP immediately closed the case and allowed logging to resume.

GECO and the FFRC expected DELWP to conduct a second verification survey, as it has done in the past when the threshold for protection has been narrowly missed. However DELWP were unwilling to do this in this instance and allowed logging to recommence. This was an outrageous situation as the species had been listed on the FFG Act for approximately 12 months at the time and no new protections had been developed and implemented, despite its new listing.

In this instance, even after two days of some logging in the Greater Glider's forest habitat, DELWP's survey came very close to reaching the protection threshold of more than 10 gliders in 1km, a rule that

was created over 20 years ago when the species was common. Greater Gliders have declined in East Gippsland by 55% in the last 20 years, according to DELWP's own data.¹⁴

It was later revealed that this logging operation was part of an 'experiment' by VicForests that involves logging Greater Gliders to see how many die.¹⁵ The experiment is known by VicForests as 'The Greater Glider Project'. It is unclear if necessary permits, licenses or authorisations granted to VicForests pursuant to the Wildlife Act 1975 or the Wildlife Regulations 2013 which have application to 'The Greater Glider Project' have been granted to VicForests by DELWP. A recent FOI request for copies of these permits, authorisations and licenses was rejected by DELWP, providing yet another example of a lack of transparency and poor engagement with stakeholders.

Numerous other examples exist where DELWP has gone out of its way to not stop logging when a breach has occurred. For other examples refer to the Lawless Logging report published by GECO, Friends of the Earth and the FFRC in 2017.¹⁶

Separately, and of equal concern, in November 2015, a member of GECO (Ed Hill) asked a DELWP compliance officer about existing powers available to authorised officers to issue directions to stop logging operations under section 70 of the Sustainable Forests (Timber) Act (SFTA Act).¹⁷ The officer told Mr Hill that those powers do indeed exist but said "I have been told not to use them."

This instance highlights the poor culture within DELWP and provides evidence of the lack of interest, will, and capability to enforce regulations.

There appears to be few staff in the Timber Harvesting Compliance Unit who thoroughly understand the Code and the relevant legislative documents and instruments. There are numerous examples of DELWP staff not understanding, or arguing about the meaning of the regulatory system that governs logging in public native forests in Victoria.

¹⁴ Bluff, L, Department of Environment Land Water and Planning, Unpublished data referred to in Greater Glider Technical Workshop - 26 July 2017 - Summary Notes, P. 6
https://d3n8a8pro7vhm.cloudfront.net/gecoforests/pages/2232/attachments/original/1532873655/Greater_Glider_workshop_26_July_2017_Notes.pdf?1532873655

¹⁵ Slezak, M, VicForests says experiment very likely to kill greater glider, ABC news, July 29, 2018
<http://www.abc.net.au/news/2018-07-29/vicforests-says-experiment-very-likely-to-kill-greater-glider/10025588>

¹⁶ Hill, E, GECO, FoE, FFRC, *Lawless logging - an investigation into breaches of the regulatory framework governing logging operations in the state forest of Victoria*, September 2017
https://d3n8a8pro7vhm.cloudfront.net/friendsofearthmelbourne/pages/2525/attachments/original/1504694616/Lawless_Logging_Report_Digital%281%29-compressed.pdf?1504694616

¹⁷ Available at:
[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/6B9D5CDECF418E7CA257E8B0082AF2C/\\$FILE/04-48aa024%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobjst9.nsf/DDE300B846EED9C7CA257616000A3571/6B9D5CDECF418E7CA257E8B0082AF2C/$FILE/04-48aa024%20authorised.pdf)

One example is a conversation in March 2016, with the then Manager of the Timber Harvesting Compliance Unit. The discussion related to protections for rainforest detailed in 4.6.4.1 of the Planning Standards for Timber Harvesting Operations in Victoria's State Forests 2014.¹⁸

The protections detailed in 4.6.4.1 relate to stands of rainforest that coincide with linear reserves. The protections clearly state that a 100m buffer on rainforest stands that coincide with linear reserves is required. DELWP argued against allegations by GECO that logging in the 'Football' logging coupe, within 100m of the rainforest coinciding with a linear reserve, was a breach. Through the then Manager of Timber Harvesting Compliance, DELWP denied that they are obligated to apply a 100m buffer on stands of rainforest coinciding with linear reserves. During the conversation the precise wording of the protections in the regulatory documents was read out to the Manager of Timber Harvesting Compliance to which they replied "It says that, but it should not say that" or words to that effect.

In a letter received by GECO from the Manager of Timber Harvesting Strategy on September 29, 2017 regarding another logging operation where a 100m buffer should have applied to a stand of rainforest that coincided with a linear reserve, DELWP conceded that a 100m should apply and stated that DELWP were in the process of reviewing other stands of rainforest in East Gippsland that coincide with linear reserves to apply 100m buffers. To our knowledge, there is no evidence that this process has taken place or that the forest management zoning scheme has been amended accordingly. In this case DELWP argued that VicForests had not breached the Code requirement for a 100m buffer, as the buffer had not been identified in the forest management zoning scheme that DELWP had prepared in line with their responsibilities; therefore DELWP were essentially taking the blame for VicForests' logging within the required buffer.

Solution: Make better use of existing powers under section 70 of the SFTA Act. Require and direct authorised officers to stop logging operations if a suspected breach has occurred or if there is a threat of serious damage to the environment.

Encourage, expect and require officers to understand and use the powers available to them.

Whilst there are numerous ways in which the SFTA Act should perhaps be amended and strengthened, in particular in relation to preventing breaches and taking appropriate action, the SFTA Act requires amendment to grant greater powers to authorised officers to stop logging operations that are deemed to be in potential breach of the Code and are causing damage to the environment. In any processes or plans to amend the SFTA Act, independent legal advice should be sought, including regarding how these powers can be strengthened and in order to clarify how they can be used in their current form.

¹⁸ Available at:

https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0021/29307/Planning-Standards-for-timber-harvesting-operations-in-Vics-State-forests-2014.pdf

4. C) Highly guarded and lengthy nature of compliance investigations

In the absence of appropriate pre logging surveys, monitoring and compliance auditing, the community, with the support and interest of the scientific sector, has attempted to and begun to fill the regulatory void created by DELWP.

Many community or citizen science groups are now acting as unofficial regulators of logging across eastern Victoria. These groups participate in activities such as threatened species surveys in proposed or active logging coupes, documenting areas of protected rainforest in proposed logging coupes or areas of rainforest that have been impacted by logging, and documenting a raft of other regulatory requirements that VicForests are supposed to comply with, and which DELWP is supposed to ensure VicForests are compliant with.

These groups submit reports to DELWP through the Forest Reports email address¹⁹, and over the last five years there have been in excess of three hundred reports provided to DELWP from community groups.

Since the Andrews government took office, dozens of breaches have been reported where no regulatory action has been taken by DELWP.

A selection of 27 cases of these reported breaches was documented in a report titled '*Lawless logging*' published by GECO, the FFRC and Friends of the Earth in 2017.²⁰ The report documents 27 cases of logging in East Gippsland and Victoria's Central Highlands that conservationists allege have breached the Code.

The DELWP compliance unit's approach to investigations of breaches reported by the community has been highly guarded and secretive. DELWP has shown great reluctance to provide stakeholders with updates regarding the status of investigations. This has created a lack of trust in DELWP's approach to their investigations and sends a message to stakeholders whose reporting has triggered investigations, that DELWP do not take their compliance role seriously.

When breach investigations are closed, the Timber Harvesting Compliance Unit very rarely shares information or results with the stakeholders who reported the breaches. In the vast majority of investigations, no regulatory action is taken and no reasons are provided to stakeholders to explain how DELWP made decisions to not take regulatory action.

The lengthy nature of investigations has led to what appears to be a deliberate allowing of limitation periods to expire—making prosecutions for obvious breaches impossible. For example the rainforest logging breach investigations for the 'Bellman', 'Football' and 'Webbed Feet' logging coupes continued

¹⁹ Email address is at: <https://www.forestsandreserves.vic.gov.au/forest-management/forest-reports>

²⁰ Hill, E, GECO, FoE, FFRC, Lawless logging - an investigation into breaches of the regulatory framework governing logging operations in the state forest of Victoria, September 2017
https://d3n8a8pro7vhm.cloudfront.net/friendsofearthmelbourne/pages/2525/attachments/original/1504694616/Lawless_Logging_Report_Digital%281%29-compressed.pdf?150469461

until the statute of limitation periods expired and the cases were closed shortly after the limit period was reached. No explanations were provided as to how DELWP concluded that no regulatory action was required, nor why the investigations took so long in the first place.

We understand that the first of two investigation reports for the 'Bellman' logging coupe rainforest breach recommended a prosecution against VicForests. But the report was re-done by another officer. GECO was then notified by DELWP that the case was closed and that no breach was found and therefore no regulatory action would be taken. However, this was months after the statute of limitation period had in fact expired, therefore preventing court action anyway.

The original report has twice been requested under Fol. Both Fol requests have been rejected, one is currently under appeal.

Independent experts were contracted by Environment East Gippsland Inc and Environmental Justice Australia to investigate VicForests' compliance with rainforest protections in the 'Webbed Feet' logging coupe. The reports produced by the experts were to be used as evidence in the Environment East Gippsland Inc Vs VicForests Supreme Court case concerning logging in the Kuark forest in 2016.²¹ The experts found that rainforest protections had been breached and provided these reports to DELWP after the timber harvesting compliance unit requested them. No regulatory action or prosecutions took place despite independent expert reports confirming breaches.

Investigations by Farrah Tomazin from *The Age*²² revealed that the statute of limitation periods for 'Football', 'Bellman' and 'Webbed Feet' logging coupes had expired, however DELWP informed Ms Tomazin that the cases were still under investigation. It was only after the Ms Tomazin went back to DELWP and asked about the expiry of the limitation periods that DELWP staff changed their story and said the investigations had concluded.

DELWP contracted third party independent experts to assess VicForests' compliance with rainforest protections for the 'Bellman', 'Webbed Feet', 'Football' and 'Take Me Home' logging coupes. GECO was told that these independent expert reports would assist DELWP with possible prosecutions of VicForests. Repeated Fol requests for copies of these reports have been rejected on the basis that provision of the reports would expose DELWP's methodologies used for assessing compliance which would unfairly prejudice other investigations. The requests are currently under appeal with the office of the Victorian Information Commissioner.

Currently, we have serious concerns that another DELWP compliance investigation will not finalise within the statute of limitations period thereby making a prosecution impossible.

²¹ Environment East Gippsland Inc website - Kuark forest Supreme Court case
<http://www.eastgippsland.net.au/news/kuark-forests>

²² Available at:
<https://www.theage.com.au/politics/victoria/andrews-government-accused-of-impotent-approach-to-logging-breaches-20180224-p4z1lg.html>

Logging of rare plants—that have protective prescriptions in the regulatory framework and require protection zones—occurred at a logging coupe on Watershed Road in Gippsland. This was reported to DELWP by the FFRC in March 2017.²³ The logging had occurred some months prior to the report—thus the two year period in which a prosecution can be made may have by now therefore already expired. DELWP assigned case reference number 2017 - 0020 to the breach report. These rare plants had present and known records on DELWP’s Victorian Biodiversity Atlas at the time of the logging operations, meaning that even at the desktop level, the presence of these plants in forests inside coupe boundaries could and should have been identified and acted on before the forests were logged by VicForests. This logging, in known locations of rare plants that require protection zones, is a clear breach. We have been unable to get any clear information about the current status of this investigation and DELWP has not provided any update to the FFRC.

Solution: To improve accountability, develop and implement transparent systems of communicating with stakeholders. These should set clear protocols requiring the timely provision of detailed information regarding status of investigations, findings of investigations, statements of reasons for decisions to close cases, and to take or not take regulatory action.

Ensure there is capability, capacity and willingness within the Timber Harvesting Compliance Unit, or any equivalent departmental unit or function, to thoroughly pursue and finalise investigations and swiftly take the necessary steps to prosecute breaches within statute limitation periods. This could be done by increasing the number of compliance officers, but also by ensuring compliance officers show aptitude to the application of their work, and actually understand the regulatory documents that they rely upon and their legal applications and are prepared to utilise them.

Shift the culture of the Timber Harvesting Compliance Unit in particular and the Department generally from one that is largely apathetic and consistently looking for reasons to not prosecute and take regulatory action against VicForests, to one that is focussed on finding ways to prosecute where necessary and take effective regulatory action.

4. D) Senior DELWP staff see regulatory obligations as discretionary

In our general experience, and as particularly documented in the Environment East Gippsland (EEG) v VicForests (Brown Mountain) Supreme Court case, staff of DELWP, and its predecessors, interpret the regulatory role as discretionary.

Departmental staff appear not to see the enforcement of requirements made through the Forest Management Plans (FMPs) and regulatory documents as mandatory, but rather as being arbitrarily applied based upon their own discretion.

²³ Fauna and Flora Research Collective report on logging of protected plant species, accessed here https://faunaandfloraresearchcollective.files.wordpress.com/2017/03/170315-watershed-road-logging-of-protected-flora-and-buffers-742-507-0004-and-742-507-0005-al_ffrc.pdf

Justice Osborn’s judgement on the EEG Vs VicForests Supreme Court case (Brown Mountain) in 2010 highlights this at paragraph 691-694, referring to oral evidence given by a senior public servant that there is always discretion as to whether requirements of the FMP are implemented. Further, this senior public servant said that with regard to FMP guidelines ‘there is a choice in everything we do’.²⁴ Contrary to that individual’s evidence, Justice Osborn found that “[t]he standard stated in the FMP is not expressed to be subject to the overriding discretion of DSE. It is not expressed to be conditional upon the formulation of a further opinion by DSE”.²⁵

When under cross examination this same public servant expressed a view that the Special Protection Zones, which were in response to detection based zoning measures created through the FMP, were not required to be implemented by DELWP.²⁶ During the course of the cross examination, it was revealed that despite the area of forest in question containing a highly significant population of Greater Gliders and Yellow Bellied Gliders that met the threshold for protection as specified in the FMP, the public servant was of the view that it was not necessary for DELWP to implement a Special Protection Zone.

DELWP’s discretionary view of their role as a regulator with regard to obligations set out in FMPs is again evident in the current Supreme Court legal proceedings against the Secretary of DELWP brought by the FFRC.

The FFRC argues that DELWP is failing to meet its obligations to protect 60% of wet and damp old growth forest in East Gippsland. These obligations are set out in the East Gippsland FMP. DELWP’s position is they have no obligations to protect old growth forest and they state in their defence that the requirements in the FMP are ‘a drafting error’.²⁷ Please read the DELWP defence document in the footnote with link to the court documents below.

Solution: There is clearly an entrenched culture of avoiding, playing down, excusing or denying the various regulatory and other instruments and mechanisms the Department has available to it.

Whilst some structural changes have been made within the Department in recent years, this seems to have worsened, rather than improved, DELWP’s responses to alleged breaches and there has not been any notable increase in effective prosecution of VicForests whatsoever. Where the attitude of senior departmental staff towards application of measures available to them to regulate VicForests is so poor, it is unsurprising the regulator is in and itself, incredibly ineffective.

²⁴ Environment East Gippsland Inc. Vs VicForests (Brown Mountain) Supreme Court judgement, paragraph 691 page 209, available at

[http://www.eastgippsland.net.au/files/documents/EEG_v_Vicforests_Judgment%20\(11_8_10\).pdf](http://www.eastgippsland.net.au/files/documents/EEG_v_Vicforests_Judgment%20(11_8_10).pdf)

²⁵ Environment East Gippsland Inc. Vs VicForests (Brown Mountain) Supreme Court judgement, paragraph 693 page 209, available at

[http://www.eastgippsland.net.au/files/documents/EEG_v_Vicforests_Judgment%20\(11_8_10\).pdf](http://www.eastgippsland.net.au/files/documents/EEG_v_Vicforests_Judgment%20(11_8_10).pdf)

²⁶ Environment East Gippsland Inc Vs VicForests (Brown Mountain) Supreme Court case transcript for day 12, p 1034, accessed via this link <http://www.eastgippsland.net.au/eeg-v-vicforests-transcripts>

²⁷ Fauna and Flora Research Collective website with links to court documents including ‘DELWP Defecne’ (17 1 18) <https://faunaandfloraresearchcollective.wordpress.com/andrews-labor-government-to-defend-their-old-growth-forest-logging-in-the-supreme-court/>

As described elsewhere, DELWP needs to undergo cultural change that supports and requires the application of appropriate expertise and fosters and expects a willingness and determination to hold VicForests accountable to the law.

Conclusion

We describe here a selection of exchanges, events, and records of a lack of willingness within DELWP to properly regulate VicForests' logging operations. There are numerous other examples of poor and ineffective communication, a lack of timeliness to act or respond, and an unwillingness to prioritise the environment but instead pave the way for logging operations to continue—including in threatened species habitat, rare forests, and rainforests, despite prescriptions or requirements for protection zones being required under law.

We propose a range of solutions—some perhaps more immediate, others requiring substantial structural or cultural change within the Department.

As described at the outset, we want to see a truly independent regulator, with staff who understand the powers available to them and are required, willing and able to utilise these without fear or favour.