

**SUBMISSION TO THE
DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING**

Comments on

2021 Proposed Variation of the Code of Forest Practice for Timber Production

Submission by

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Introduction

IFA/AFG strongly supports codes of practice as an effective tool to regulate forest management. IFA/AFG members have been directly involved in developing the Victorian Code of Practice for Timber Production, in implementing the Code, and in monitoring and auditing and compliance activities. Ideally, all significant forest activities (including fire management, production of non-timber forest products, recreation or conservation) should be subject to codes of practice, irrespective of tenure. Codes need to be accompanied by appropriate training and support to assist forest managers and operators in meeting code requirements. Codes should be based on current scientific knowledge, subject to periodic review and public input.

The success of an environmental regulatory system is determined by capacity of prescribed policies and practices to protect environmental and cultural values, the extent to which these prescriptions are implemented, the cost of regulation, and the degree to which members of society have trust and confidence in the system. Well-designed and implemented co-regulatory approaches, with high levels of transparency, can be effective in delivery of good technical standards of forest practices and high levels of compliance (see Wilkinson et al 2014).

The IFA/AFG welcomes the clear Statement of Regulatory Intent to describe how the Office of the Conservation Regulator intends to use the regulatory tools that are available to it under the law, and to increase transparency in the investigation of community reports and education activities for the community and regulated entities.

The IFA/AFG supports the proposed amendments based on the following principles:

- (1) The “Code of Forest Practice” is intended to provide direction to timber harvesting managers, harvesting entities and operators to deliver sound environmental performance when planning for, and implementing, timber harvesting activities. It is not intended to be a legal contract. The Code has been written by experienced forestry personnel with the aim of facilitating forest operations and providing guidance to planners, supervisors, operators, and auditors. It was not designed to be a legal document because flexibility is required to interpret and apply the Code in specific operational settings.
- (2) The proposed changes are intended to reinforce the utility of the Code in meeting the provisions of (1) above, and to make it such that Court Interpretations for specific cases are not the primary guidance.
- (3) The Code addresses important challenges for forest operations, while walking a “tight line” between being a practical guide for operators while providing the basis for Government agencies and regulators to meet their legal requirements.
- (4) That professional judgement, contractor self-monitoring, monitoring by VicForests and by DELWP, and post-logging auditing of operations are the primary mechanisms for

IFA/AFG Submission to DELWP on Code of Forest Practice Variations

review and enforcement. The Code can never incorporate prescriptions for all potential problems in forest management matters and this should not be expected.

- (5) That uncertainties or disputes about the application of the Code are addressed through these monitoring and auditing processes. These processes should aim for learning and continuous improvement of practice without every incidence of suspected non-compliance being a subject of legal challenge. Application of penalties should consider the extent of environmental harm, the reparability of these harms, the intention and degree of co-operation, implementation of corrective actions and the previous history of the offender.

The IFA/AFG indicates its willingness to be actively involved in continued development and improvement of the Code. Victorian Division members offer their professional capacity to review and redesign the consider the application of the Revised Code of Forest Practice to different aspects of forest operations. In this regard, the IFA/AFG can call on a range of expertise in forest planning, harvesting, conservation, fire protection, hydrology and forest auditing.

In undertaking a major review, we consider that cultural values and knowledge of Traditional Forest Owners and the potential impacts of climate change on forests and forest operations are not sufficiently addressed in the current Code. Knowledge and values of Traditional Owners, experience of local and professional forest managers, and the breadth of evidence from forest research need to be integrated in this review of the Code.

Professor Rod Keenan, Chair, Victorian Division

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Mr Braden Jenkin

IFA/AFG Submission to DELWP on Code of Forest Practice Variations

Background

This Submission to Draft amendments to the Code of Practice for Timber Production covers:

- (1) The Draft 2021 Amendments to the Code of Practice for Timber Production 2014.
- (2) Draft Management Standards and Procedures to Timber Harvesting Operations in Victoria's State Forests 2021, and
- (3) Draft 2021 Amending Instrument – Code of Practice for Timber Production 2014.
- (4) Draft Forest Management Zoning Accountability Framework 2021
- (5) Appendix 1 Strategic Forest Management Zoning Targets 2014, and
- (6) Appendix 2 Illustrative Example of Future Forest Management Zoning Report Card.

We also referred to the “Questions and Answers” accompanying the document.

In asking for submissions DELWP indicates:

- (1) The *Code of Practice for Timber Production 2014* (the Code) is the primary instrument for regulating timber harvesting operations in Victoria's publicly owned State forests, private native forests and plantations. It is pivotal to delivering environmental protection, ecologically sustainable forest management, and stability for forest-based industries, ensuring our public forests are protected for the benefit of all Victorians.
- (2) A comprehensive scientific review of the Code – a commitment under the Regional Forest Agreements (RFAs), will be completed by the end of 2023. Any early input from stakeholders received through the 2021 Code review will also be considered in scoping the review – however, there will be further consultation undertaken with community and stakeholders on the comprehensive Code review once this work is underway.
- (3) The 2021 variation builds on and improves amendments proposed in 2019. Amendments proposed in 2019 remain critical to ensuring clarity of the Code. The benefit of additional time has also enabled the drafting of the 2019 package to be refined and further clarifying amendments have been added as new issues have arisen since 2019.

The “Questions and Answers” document states “The amendment to the definition of the precautionary principle in the Code aims to address uncertainty in its interpretation that has arisen with courts interpreting the obligation in the Code in different ways. The amendment will bring the wording in line with that used in the NSW forests regulatory framework (Protection of the Environment Operations Act 1997 (NSW)) and confirm that the precautionary principle in the Code is to be interpreted in accordance with *Environment East Gippsland Inc v VicForests*¹, (*the Brown Mountain case*).”

The plethora of documents and the lack of “marked up” documents made it impossible for us to examine and consider the word-by-word changes.

¹ *Environment East Gippsland Inc v VicForests* [2010] VSC 335 (*Brown Mountain*).