

LETTERS RE VICFORESTS

TREVOR POULTON -

SERIOUS FLAWS IN VICTORIAN STATE GOVERNMENTS OUR FOREST OUR FUTURE - THE GOVERNMENT MUST REDUCE THE SUSTAINABLE YIELD IN EAST GIPPSLAND NOW

Despite the Government's claim that it has "strict regional sustainable yield policies supported by legislation" (see Our Forests Our Future - Industry Profile), the government has stated that it intends to maintain the current "legislated sustainable yield rate" for at least the next several years and therefore continue logging our State forests at a rate far exceeding the revised sustainable yield figure which was established by the Expert Data Reference Group in October 2001.

If the State government immediately reduced the sustainable yield for East Gippsland from the current 249,367 cubic metres/year to the revised figure of 138,600 cubic metres/year being a reduction of 44%, the government would not be under pressure to supply unsustainable volumes of timber out of East Gippsland and could meet the current required volume supplies without logging Goolengook. The government would then have time to refer any inquiry into Goolengook to the VEAC.

Exercise of unreasonable power by the Minister

Failure to reduce the sustainable yield rates is contrary to the RFAs which maintain logging must take place at a sustainable rate. Minister Garbutt may also be "exercising unreasonable power" in refusing to recommend to Cabinet reduction of the sustainable yield rates for each of the Forest Management Areas in the State. The Minister's actions in this regard could possibly be challenged at the Victorian Administrative & Appeals Tribunal.

The State Government's media release date 21/2/2002 states:

"Ms Garbutt said the group conducted a comprehensive, independent assessment of that data and methodologies used to determine sustainable yield.

The group found existing sustainable yield figures were outdated and no longer appropriate to ensure the sustainability of harvestable timber, or to sustain the logging industry and communities that rely on it."

Our Forest Our Future policy statement stated:

"We have, for the first time produced a definitive estimate of timber which is accessible and of a quality suited to the changing needs of industry. the newly-available data provides more sophisticated and reliable estimates of sustainable yield than in the past."

Our Forest Our Future - Sustainable Yield

“Taking these factors into account has meant a further reduction to proposed sawlog supply levels to 567,500 cubic metres a further reduction to proposed sawlog supply levels to 567,5000 cubic meter per annum. This represents a reduction of about 30% from current licence levels across the State.”

“The sustainable yield rates and licence volumes will continue to be refined as new resources data emerges. The supply strategy to be adopted will ensure that there is a capacity to adjust to this emerging information.”

Our Future Our Forest is based on an incorrect understanding of the law

The State government’s Our Forests Our Future policy statement claims that current legislation under the *Forest Act* provides for yield estimates to be reviewed every 5 years but offers no mechanism to adjust licences within the 15 year timber supply period. This claim is incorrect at law and has led to bizarre policy outcomes such as the Government maintaining it must buy out licences to reduce over logging.

In fact, a procedure to amend the timber allocations for sawmills and woodchip enterprises clearly exists under section 52B of the Forest Act whereby the Secretary of DNRE is required annually to review the allocations for licences and permits based on the current legislated sustainable yield. If the Government legislated the revised sustainable yield figures of the Expert Data Reference Group then all timber allocations would need to be redetermined for sawlog supply levels taken under licences for the year beginning 1 July 2002.

Compensation Myth

By avoiding reviewing the licences on the basis of the true sustainable yield figures, the Government can maintain that the licences have value based on current timber volume allocations. The government is maintaining, through its announcement of establishing a fund for a Voluntary Licence Reduction Programme to buy back licences, the myth that it has a contractual obligation to compensate the timber industry on the basis of the current sustainable yield figures. If the government reduced the sustainable yield now, a number of licences would probably be worthless, as DNRE would not be able to allocate any volumes of timber to the licence holders as a result of the 34% sustainable yield reduction statewide.

Ironcially, under the *Forest Act*, unless the sustainable yield is reduced, even when the licences are bought back, the government will still be obligated to authorise supply of timber consistent with the legislated sustainable yield rate. The government therefore needs to reduce the sustainable yield figure now, so that it is dealing with realistic timber volume yields.

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19 March 2002

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15 September 2003

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Dear Minister,

**FOREST WORKING PARTY
 VICFORESTS DIRECTIONS PAPER**

The Forest Working Party of the ALP Conservation, Environment & Resources Policy Committee has reviewed the draft Directions Paper 'Delivering Sustainable Forest Management' dated 31 July 2003.

Given the shortage of time available for Forest Working Party to respond, the following views are forwarded prior to our next general policy committee meeting and are representative only of those on the subcommittee.

We would like to meet with you to further discuss the issues once our response has been tabled at the next policy committee meeting on 23 September 2003.

DIRECTIONS PAPER WITH PROPOSED AMENDMENTS

The Forest Working Party **encloses** a version of the Directions Paper which has been marked up since circulated to the Policy Committee by the Minister's Office.

The amended Directions Paper has been prepared through ALP members' consultation with environment groups including Environment Victoria, the Australian Conservation

Foundation, Friends of the Earth and the Wilderness Society who were also privy to the paper and is consistent in many regards with the views of these organisations.

The aim of the enclosed amendments to the Directions Paper is to make suggestions to the Government as to how the Paper can be made more acceptable to the community such that the paper is not rejected outright by the environment movement. If the suggested amendments are accepted by the Government we feel the Directions Paper will lead to constructive consultation and community approval.

The amendments in the Directions Paper recommend that the corporatisation of VicForests as a State Business Corporation is not required to fulfil the Government's commitment to meet competitive neutrality provisions. There are viable alternative models such as establishing a Service Agency (see 1999 KPMG Report) or a Statutory Authority (as an example, the EPA), which minimises the potential for VicForests to be PRIVATISED in the future. Alternative models could also include the creation of a Ministry to deal exclusively with commercial timber production as in Western Australia, rather than the agency being accountable to the Minister for Agriculture as proposed. This would ensure complete separation of policy and commercial decision making by government.

Another concern is the naming of the new body. The name 'VicForests' would be more appropriate for a policy and regulation entity for forest management than for the commercial entity. VicForests is clearly not concerned with forest management in its entirety, yet the name ironically suggests otherwise. More appropriate titles would be – **VicWood**, or VicTimber (which in fact would probably be more appealing to stakeholders in the timber industry). Western Australia has given the name of Timber Products Commission to its commercial entity. The Forest Working Party recommends that the Government considers an alternative titles to VicForests.

The suggested amendments are intended to ensure that the Directions Paper presents the public with an opportunity to have input into reforming forest management. The Directions Paper as currently structured does not invite public consultation and assumes that the Government's preferred model for VicForests is a *fait accompli*. The Forests Working Party believes that a public consultation process ought be undertaken through a review process.

RELEASE OF A FOREST POLICY AND REGULATION DIRECTIONS PAPER

The Forest Working Party supports the recognition by the Government in the Directions Paper that the whole forest management regulatory framework requires review. However, it is not made clear in the Directions Paper when or how this review will be undertaken.

The Forest Working Party believes that comprehensive reform of the entire suite of legislation and instruments regulating forest management in Victoria should be undertaken as a matter of urgency. The proposed review should therefore extend to consideration of the Forests Act 1958, the Flora & Fauna Guarantee Act 1988, the Conservation Forests & Lands Act 1987, and the Codes, Plans and other instruments approved under those Acts.

Some of the directions for the required substantive reforms that The Forest Working Party believe are necessary are outlined in amendments to the Directions Paper, in particular under the heading ‘**Policy and Regulation of Forest Management.**’ Priority initiatives for change in the policy and regulatory framework should include:

- Development of minimum performance criteria for ecological sustainability in addition to the broad ‘indicators’ outlined in the Montreal Framework
- Protection of all old growth forest and high conservation value forest
- Re-instatement of ecological surveys in all Forest Management Blocks prior to finalisation of logging plans
- Strengthening of environmental legislation such as the *Flora and Fauna Guarantee Act* (1988)
- Strengthening of current instruments such as the Code of Forest Practices
- A public review of silvicultural practices in all forest areas to ensure they are ecologically sustainable, in accordance with the 2002 ALP election policy platform (*Listens Then Acts: Labor’s Plan for Building a Stronger and Fairer Community in Victoria*, 2002 p. 75.)
- A public review of the impacts of logging on water yield through application of the ‘Macaque’ model
- Formalisation of ongoing community consultation and participation in forest management, including commercial forest management
- Establishment of the ‘optimal yield’ (i.e. the rate of logging that delivers the greatest benefit to all stakeholders in forest management) as recommended by Professor Jerry Vanclay and the Expert Data Reference Group (2002)
- Introduction of mechanisms to ensure that forest management decision making is required to comply with ecologically sustainable development principles

As stated, the Forest Working Party looks forward to meeting with the Minister to discuss these issues before release of the Directions Paper into the public domain.

Yours faithfully

Forest Working Party
ALP Conservation, Environment & Resources Policy Committee

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 Margo Carroll
 Dianne Anderson
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16 September 2003

Ms Jennifer Fraser
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Dear Ms Fraser

**DRAFT DIRECTIONS PAPER
DELIVERING SUSTAINABLE FOREST MANAGEMENT**

Lawyers for Forests ("**LFF**") has reviewed the draft Directions Paper 'Delivering Sustainable Forest Management' dated 31 July 2003 ("**the Directions Paper**"). Environment Victoria provided LFF with a copy of the Directions Paper, which LFF understands was released to Environment Victoria and other environment groups for comment before its release for general public comment.

LFF welcomes the opportunity to comment on the Directions Paper, and the commitment by the Government to reform Victoria's forestry laws.

THE AMENDED DIRECTIONS PAPER

LFF encloses a marked up version of the Directions Paper showing suggested amendments. It has been prepared in consultation with environment groups including Environment Victoria, the Australian Conservation Foundation and the Wilderness Society.

LFF does not endorse the amended Directions Paper in the sense of either supporting the ideas that are expressed in it or believing that it is adequate. Nor has LFF yet commented on the models and ideas set out in the Directions Paper.

LFF will submit a formal response to the Directions Paper once it has been publicly released, and at other stages of the consultation process. The suggested further consultation process is set out below.

The aim of the amendments is to make suggestions to the Government as to how the Directions Paper could be made more 'acceptable' to the environment movement, so that the paper is not rejected outright by environment groups, and so constructive consultation may occur.

In effect, the suggested amendments seek to get the 'terms of reference' right. The suggested amendments generally involve making the Directions Paper focus on the options for reform rather than a presentation as a *fait accompli* of a pre-chosen option. LFF believes that the Directions Paper is currently too focused on setting out a model and asking how to implement it. It should set out alternative models and invite comment.

Further comments on the Directions Paper are set out below. Some specific comments are attached in Appendix 1.

OUTCOMES SOUGHT

LFF believes forestry law reform should achieve ecologically sustainable forest management outcomes including:

- an end to logging in old growth and high conservation value forests;
- a forestry management system that is ecologically sustainable, transparent and accountable; and
- a forestry industry that complies with competition policy, including (among other things) an end to all State subsidisation of forestry operations and full cost pricing of native timber.

Whilst the Directions Paper does indicate a Government commitment to the third of these objectives, it does not deliver on the first objective, and does not spell out in any detail how the Government proposes to achieve the second objective. Indeed ecologically sustainable development should be the guiding principle for forest management. However, this is not stated in the Directions Paper.

Accordingly, the Directions Paper fails to address a large number of issues in relation to the substantive reform of forestry management required to make the Victorian forest management system ecologically sustainable, transparent and accountable, (**“the required substantive reforms”**) and concentrates primarily with the creation of VicForests.

LFF believes the Government should undertake a consultation process regarding the required substantive reforms. This process should encompass the release of a detailed issues and options paper outlining directions and options for reform.

FURTHER PRELIMINARY COMMENTS ON THE DIRECTIONS PAPER

Required substantive reforms

LFF supports the recognition by the Government in the Directions Paper that the whole forest management regulatory framework requires review. However, it is not made clear in the Directions Paper when or how this review will be undertaken. This should be made clear.

LFF believes that structural reform is deficient without the required substantive reforms accompanying it. If the new system is based on faulty aspects of the existing system, it will not achieve acceptable ecologically sustainable forest management outcomes. Some of the directions for the required substantive reforms that LFF (and other environment groups) believe are necessary are outlined in amendments to the Directions Paper, in particular under the heading ‘Policy and Regulation of Forest Management.’

LFF believes that comprehensive reform of the entire suite of legislation and instruments regulating forest management in Victoria should be undertaken as a matter of urgency. This review should extend to consideration of the Forests Act 1958, the Flora & Fauna Guarantee Act 1988, the Conservation Forests & Lands Act 1987, and the Codes, Plans and other instruments approved under those Acts.

Such reform should be the subject of a further consultation process. The public consultation process undertaken in the review of the Environment Effects Act 1978

generally provides an appropriate consultation model, in particular with the release of a detailed issues and options paper.

Further, the structural reform should be undertaken in such a manner that it does not pre-empt the outcome of the required substantive reform process.

Lack of detail

The Directions Paper is also short on detail in a number of areas. LFF (and other groups) cannot evaluate the likely effectiveness of the proposed reforms without the appropriate level of detail.

LFF believes that the Directions Paper (or preferably a further consultation process) should go into further detail on the various criteria and standards referred to in the Directions Paper, such as sustainability principles and certification of harvesters. This detail should not be the *content* of the criteria and the like, but information such as how the criteria will be developed (including provision for community input), applied and enforced (including provision for community involvement in this), and where the criteria will be enshrined (in LFF's view in legislation rather than inaccessible and often vague and inconsistent administrative guidelines).

Further detail is also required in the Directions Paper in relation to, for example:

- the role of community participation in forest management;
- enforcement of forest management obligations (and consequences of failure to comply with obligations);
- what information about forest management will be made available to the public and how;
- the content and preparation of the various plans to be used in forestry management, and comparison of these with the plans currently being utilised;
- the exact nature of the proposed forest management arrangements between the Department of Sustainability and Environment ("DSE") and VicForests, and the role and nature of Timber Resource Plans;
- the development of ecologically sustainable development principles and the manner in which those principles are required to be taken into account in forest management decision making.

FURTHER CONSULTATION

Finally, the proposed reforms will affect the management of Victoria's forests, a public resource. So, it is appropriate that the various management options and legislative basis for forest management should be open to public consultation.

Accordingly LFF believes:

1. Following the Directions Paper, a more detailed Issues and Options Paper should be released outlining the options for structural reform in greater detail, with public comment invited.
2. An Issues and Options paper should be released for the required substantive reforms, again with public comment invited.

FORESTS ACT AMENDMENT BILL, 2003

LFF also understands a Bill will be introduced before the current Spring session of Parliament to reform the Forests Act. LFF believes the Bill should not pre-empt any of the reforms outlined in the Directions Paper. In particular LFF

believes the Bill should not introduce any arrangements which restrict the public's right to access Victoria's forests (such as the creation of exclusion zones).

CONCLUSION

LFF welcomes the reform of the legislation underpinning Victoria's forest management system. As the Directions Paper acknowledges in the context of the Forests Act, the legislation is outdated and requires reform. The challenge will be to reform it and other relevant legislation in a manner which ensures open, accountable and ecologically sustainable decision making (with meaningful community participation). LFF urges the Government to accept this challenge.

LFF would also welcome the opportunity to meet with you to discuss the issues raised above further. LFF also seeks a meeting with the Minister to further elaborate its views.

If you have any questions please contact Vanessa Bleyer or Andrew Walker on the numbers below.

Yours faithfully

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APPENDIX – OTHER COMMENTS ON THE DIRECTIONS PAPER

1. LFF does not necessarily accept the various claims made by the Government in the Directions Paper under the heading “Delivering Sustainable Forest Management”.
2. LFF does not necessarily believe the Montreal Process Framework is the appropriate set of criteria and indicators for the conservation and sustainable management of temperate and boreal forests.
3. The proposed forest management arrangements for VicForests and DSE should be spelt out. The arrangements (and the basis on which VicForests is established) should ensure that:
 - VicForests is accountable to DSE and other environment protection bodies.
 - There is an exchange of information and cross fertilisation of ideas between VicForests and DSE and other environment protection bodies.
 - VicForests is required to operate in accordance with clearly defined ecologically sustainable development principles.
 - VicForests is not able to be privatised.

(And it may be that the use of separate legislation rather than the State Owned Enterprises Act is a more appropriate vehicle for the formation of VicForests).