



13 January 2006

Jane Fennessy  
Policy/Legislation Officer  
Parks and Forests  
Department of Sustainability and Environment  
Level 3/8 Nicholson Street  
EAST MELBOURNE VIC 3002

Dear Madam

**PROPOSED  
SUSTAINABLE FORESTS (TIMBER HARVESTING) REGULATIONS 2006:  
PRELIMINARY & INFORMAL COMMENTS**

**Introduction**

We refer to the letter we received from Janine Haddow, Executive Director of Parks & Forests, dated 16 December 2005.

Thank you for the opportunity to provide our preliminary and informal comments on the *Sustainable Forests (Timber Harvesting) Regulations 2006* ("**Proposed Regulations**"). We await your contact at the appropriate time regarding our provision of any formal comments.

We note that these informal and preliminary comments were sought to be submitted on or before Friday, 6 January 2006. Given the Christmas and New Year holiday period, and the date Ms Haddow's letter was received, it was not possible for Lawyers for Forests Inc to provide comments by that date. These comments have been provided at the earliest opportunity and we hope that they are given consideration under the circumstances.

**Demerit points system**

The Proposed Regulations create a demerit points system in relation to timber harvesting operators' licences. The circumstances under which demerit points can be incurred are listed in column 1 of schedule 2.

The Proposed Regulations do not make it mandatory to issue demerit points if any of the breaches listed in column 1 of schedule 2 occur. The issue of demerit points should be mandatory.

## **Prosecution provisions**

The demerit points system appears to, in effect, refer to some requirements under the Code of Forest Practice for Timber Production ("**Code**") and, if a licensee breaches any of those requirements, the licensee may incur demerit points. All requirements in the Code should be complied with and this should be achieved by incorporating a direct reference to the Code.

A breach of the Code is a breach of law. A breach of the Code carries negative environmental implications and so should carry a penalty that is synonymous with the ramifications of the breach. The penalty should be a specific deterrent that is tantamount to the outcome of the breach. Accordingly, the Proposed Regulations should carry prosecution provisions for breaches of the Code. This can be achieved by introducing a broad provision enabling prosecution for any breach of the Code.

If this is not accepted, the Proposed Regulations should, in the least, provide prosecution provisions for the breaches listed in column 1 of schedule 2 that carry more severe environmental consequences. For example, item 1 of column 1 of schedule 2 (felling a tree that has not been marked for extraction) clearly carries greater environmental detriment than item 5 of column 1 of schedule 2 (carrying on work contrary to the directions of the Secretary relating to working in wet conditions). Surprisingly, a breach of item 5 incurs more demerit points than a breach of item 1.

Alternatively, if this is not accepted, the breaches listed in column 1 of schedule 2 that have more severe environmental consequences should result in the breaching licensee being fined as well as incurring demerit points. This proposed amendment is again motivated by the need to have penalties that act as effective deterrents.

## **Reviews**

The Proposed Regulations enable the licensee to have the demerit points incurred reviewed (regulation 12) and the suspension or cancellation of a licence reviewed (regulation 16) by the Department of Sustainability and Environment ("**DSE**").

The Proposed Regulations do not provide any procedures for the review. Where the review is to be undertaken by the DSE (and considering the DSE have marked out the coupe, which may be a relevant fact to the demerit points incurred or licence cancellation/suspension), the review procedures should be detailed in the Proposed Regulations.

Alternatively and preferably, a fairer and more just system would see an independent third party undertake the reviews, such as the Environment Protection Authority. The further review to the Secretary if the licensee is not happy with the outcome of the review by the DSE (regulation 19) should be removed. The DSE and the Secretary have an interest in fulfilling the logging

and so, having a decision-making power to hinder the logging by suspending or cancelling licences may generate allegations of bias or conflict of interest.

The recommendations under this heading "Review" will provide less opportunity for allegations of bias or conflict of interest and create more objectivity and impartiality in the review process.

### **Public record**

The register referred to in regulation 21 should also record all demerit points incurred, licence suspensions and licence cancellations. The register should be made available for inspection by the public, and maintained on the DSE website.

### **Terms of licences**

Unlike the *Timber Harvesting Regulations 2000 (Vic)*, the Proposed Regulations do not set out the terms and conditions of the licences. This is a serious deficiency. The terms and conditions of the licences should be consistent, enforceable and on the public record.

### **Conclusion**

We hope these preliminary and informal comments have been of assistance. We consider that the adoption of these comments and consequent amendment of the Proposed Regulations will provide a fairer and more just process. Additionally, the result will be a process that more properly promotes the conservation and better management of Victoria's remaining native forests than the current draft.

We reiterate that the above constitutes preliminary and informal comments. In particular, we have not reviewed fully the interaction between the Proposed Regulations and the *Sustainable Forests (Timber) Act 2004 (Vic)*, and will provide further comments when we have had the opportunity to fully consider the Proposed Regulations and during the further consultation process to be undertaken under the *Subordinate Legislation Act 1994 (Vic)*.

If you have any queries please do not hesitate to contact Vanessa Bleyer on behalf of the Executive Committee of Lawyers for Forests Inc. We look forward to hearing from you.

Yours faithfully



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