

LAWYERS



for FORESTS



Forests: How are they regulated in Victoria?

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Introduction

- Forest regulation is complicated.
- Breaches of the law are often reported but seldom acted upon.
- LFF aims, among other things, to lift environmental management standards through ensuring compliance with, and enforcement of, the law.
- We need lawyers to help achieve this aim!
- Today is about providing the “fundamentals” for lawyers interested in helping out.

Overview

- RFAs – the role of the Commonwealth and States;
- Victoria's forest reserve system;
- The legal regulation of the areas of State Forest which are available for logging;
- Endangered Species Legislation;
- Some of the problems with the system;
- An example of the way things work in practice.

A “National Approach”

- National Forest Policy Statement (NFPS) signed in 1992 by Cth and States.
- Agreement to use "Regional Forest Agreements" (RFAs) to implement the NFPS commitments.
- The Cth government claims that RFAs aim “to resolve the long standing conflict between conservation and industry over forest management”.
- Conservation groups claim that RFAs are a mechanism to expedite the export of woodchips by removing Commonwealth regulation (ie export and EIA controls).

RFAs

- RFAs are (in general) not legally enforceable.
- They are simply agreements between the States and Commonwealth governments whereby:
 - The Commonwealth agrees to accredit Victoria's regime for managing the forests;
 - The Commonwealth agrees to remove export controls and environmental impact assessments;
 - The States agree to implement their management systems; and
 - The States agree to lift their regulation of forests to meet nationally agreed criteria.

The 4 Components of RFAs

- RFAs have 4 stated goals:
 - to clarify government responsibilities;
 - to establish and manage a forest reserve system;
 - to manage forests outside the reserve system in accordance with “ecologically sustainable forest management”; and
 - to develop an “efficient, internationally competitive timber industry”.
- Today we will look at the first 3 points.

Who is Responsible?

- The NFPS states:

Where there is a Commonwealth interest in an environmental matter it may accredit a State's process.... When the Commonwealth has accredited a State system or process, the Commonwealth will give full faith and credit to the results of that system of process when exercising its own responsibilities. Wherever possible, the Commonwealth will use this accreditation process.

What was the Cth's role?

- The Commonwealth used to play a role in regulating forests via export controls:
 - The Commonwealth used to required annual licences to be granted to export woodchips.
 - However, the *Export Control Act 1982* does not apply to woodchips sourced from RFA areas.
 - Under the old EIA legislation (the EPIP Act), the decision to issue an export licences has been found to trigger EIA assessment.
 - The new EIA legislation (the EPBC Act) does not apply to RFA areas.

What is Victoria's role?

- The actual regulation of Victoria's forests is achieved primarily through Victoria's existing legal framework:
 - the *Forests Act 1958* (Vic);
 - Forest Management Plans;
 - The Codes of Practices for Timber Production; and
 - other pieces of legislation such as the *Flora and Fauna Guarantee Act 1988* (Vic), the *Wildlife Act 1975* (Vic) and the *National Parks Act 1975* (Vic).

How is Victoria divided up?

- In Victoria there are 5 RFA areas:
 - East Gippsland
 - Gippsland
 - the Central Highlands
 - the North East
 - the Western District (which encompasses the Otways, the Cobobonnee and the Wombat forests)
- In simple terms, each RFA area is broken up into:
 - “reserved” forests (eg National Parks); and
 - forests “available for logging”.

The Reserve System

- There are a wide variety of “parks” and reserves” in Victoria, all with their own management regimes and permitted and prohibited activities.
 - Land may be declared to be a National, State, Wilderness or ‘Other’ park under the *National Parks Act 1975* (Vic);
 - ‘Nature reserves’ or ‘wildlife sanctuaries’ may be declared under the *Wildlife Act 1975* (Vic).
 - State Forests, while generally available for logging, also contain protected areas.
- The amount of land which *must* be set aside in a reserve system is determined by the RFAs.

The JANIS Criteria

- Under the RFAs, Victoria agreed establish a “Comprehensive Adequate and Representative” reserve system (the CAR reserve system).
- The national criteria for establishing such a system is known as ‘JANIS Criteria’.
- The JANIS criteria applies to all forest ecosystems.
- The targets set in the criteria can be varied for ‘socio-economic’ reasons and must only be implemented where ‘practicable and possible’

The JANIS Criteria

- The JANIS Criteria requires that the following should be protected in the conservation reserves:
 - about 15% of the pre-1750 distribution of each forest ecosystem;
 - at least 60% of vulnerable forest ecosystems, and all viable stands of rare or endangered forest ecosystems;
 - at least 60% of old growth forest within each Ecological Vegetation Class (as defined by Woodgate (1994)); and
 - at least 90% of high quality wilderness.

How 'secure' are the reserves?

- The Reserve System under the RFAs can be made up of:
 - Dedicated Reserves (eg National Parks);
 - Informal Reserves (eg nature reserves in State forests); and
 - Areas with Values Protected by Prescription (eg buffer zones along Heritage Rivers).
- Although a wide variety of reserved areas comprise the reserve system, in each case, industrial logging must be excluded.

State Forests Available for Logging

- State forests cover most forested public land in the State, excluding land contained in National, State and Wilderness parks
- State forests are extremely important for native flora and fauna and other ecological and resource values such as water quality and quantity.
- Most state forests that contain trees which can be woodchipped are under RFAs.
- Other ecosystems (eg box ironbark, river redgum forests) are not under RFAs!

Areas available for logging

- Crown land (ie State Forest) may be reserved for the purposes of logging under the *Crown Land (Reserves) Act 1978* or under the *Forests Act 1958*.
- Land reserved for logging is placed under the management and control of the Secretary (being the Head of the Department of Natural Resources and Environment): s 18A of the *Forests Act 1958*.

How are these areas managed?

- One of the primary mechanisms for managing State forests is through “Forest Management Plans”.
- FMPs spell out the uses of all areas of forest in each of the 15 forest management areas in Victoria.
- The legal basis for Forest Management Plans are derived from the *Forests Act 1958* (Vic) and the Code of Practices for Timber Production.
- However, as “management plans” they are difficult to enforce.

FMPs: the first layer of planning

- FMPs establish Forest Management Zones which prescribe the priorities and permitted uses in different parts of State Forest. There are three main zones:
- Special Protection Zones (SPZs): timber harvesting is excluded;
- Special Management Zones (SMZs): timber harvesting is allowed with conditions imposed to 'manage' specific features; and
- General Management Zones (GMZs): timber harvesting permitted.

Forest Management Plans and RFAs

- Some Forest Management Plans had been prepared at the time of the RFAs being signed.
- They were modified (to a lesser or greater degree) to bring them into line with the JANIS criteria “as far as was possible” (eg in East Gippsland).
- They were then ‘accredited’ by the (relevant) RFA.
- Some FMPs have not been completed, and LFF is currently seeking further information on their status.

WUPs: The next layer of planning

- The next stage of “planning” is to decide which coupes are to be scheduled for logging in the following three year period.
- These coupes are supposed to be selected from GMZs or, in some cases, SMZs.
- The coupes are noted on a Wood Utilisation Plan (WUP).
- WUPs are supposed to be publicly available and changes to these WUPs are supposed to be publicly notified.

FCPs: The final layer of planning

- The most detailed level of planning happens close to the time of logging, when:
 - the boundaries of the coupe are identified;
 - any patches of rainforests are identified so are to be excluded from logging;
 - stream buffers are identified in order to try to protect water quality; and
 - and seed and habitat trees are identified and marked
- These features are noted on a Forest Coupe Plan (FCP), which is signed off after the coupe is logged.

Licences

- As a separate, but parallel process to coupe planning, the DNRE issues licences which permit logging to be undertaken.
- There are two sorts of licences issued under section 52 of the *Forests Act 1958*:
 - Forest operator licences; and
 - Forest produce licences.

Forest Operator Licences

- Forest Operator Licences regulate the actions of those people contracted to work in felling operations.
- These licences are not specific to any particular logging operation.
- The *Timber Harvesting Regulations 2000* provide for the possibility of suspension or cancellation of licences for breaches.

Forest Produce Licences

- Forest produce licences:
 - authorise the removal of a specific amount of wood from a specified area; and
 - contain particular terms and conditions relating to those logging operations.
- The *Forests (Licences and Permits) Regulations 1999* (Vic) prescribe the terms and conditions applicable to all licences.
- The holders of the licence must comply with the Code of Forest Practices for Timber Production.

Sustainable Yield

- When issuing forest produce licences, the DNRE must take into account the “Sustainable Yield Rate” which is defined as the:
 - *‘estimated annual rate of harvesting of hardwood sawlogs that is capable of being produced without impairment of the long term productivity of the land, taking into account the structure and condition of the forest’.*
- ‘Sustainable yield’ will be discussed by Andrew Walker.

How are woodchips regulated

- Note that ‘Sustainable Yield’ relates to ‘sawlogs’ only.
- The government claims that woodchipping is a by-product of ‘sawlog’ production, and hence that it is only necessary to limit sawlogs.
- But the figures reveal that in many cases, up to 80-90% of wood being taken from an area ends up as woodchips.
- As woodchipping has trebled since 1995, without a commensurate rise in sawlogs, it is difficult to believe the government’s claims that woodchipping is simply a by-product of sawlog harvesting.

The F&F G Act

- The objectives of the Act are to:
 - *to guarantee that all taxa of Victoria's flora and fauna ... can survive, flourish and retain their potential for evolutionary development in the wild; and*
 - *to conserve Victoria's communities of flora and fauna; and*
 - *to manage potentially threatening processes; ...*
- Section 4(2) requires public authorities to be administered so as to have regard to the flora and fauna conservation and management objectives.

The F&F G Act cont ...

- The Act provides a process of listing threatened taxa, communities, and potentially threatening processes.
- As soon as possible after listing, an action statement must be prepared: Section 19.
- Action statements, despite their name, do not bind the government to take any action.
- What they do is set out what has been done and what is intended to be done. They *may* include information on what needs to be done.

The F&F G Act cont ...

- “Critical habitat” for a listed taxa or community may be declared if this habitat is critical to the survival of that taxon or community: Section 20.
- Interim Conservation Orders can be made if “critical habitat” has been declared. They can require a range of measures to be taken, from halting all activities in an area, to requiring a permit to be granted before further works are undertaken.
- No ICOs have been made to date.

Some of the problems

- Forest Management Plans and RFAs are largely unenforceable.
- The RFA Act (Cth) has given *some* federal legislative underpinning to the RFAs.
- It seeks to give legal effect to the obligations of the Cth to pay compensation to a State under each RFA.
- The RFA compensation clauses are not uniform.
- The Central Highlands RFA provisions state that the Cth must pay compensation to Vic if it conserves further areas of forest, and that the State must hold that money as trustee for the person who suffers the damage (the company, not the forest operators).

More problems

- Code of Forest Practices:
 - Numerous breaches of the Code reported by environment groups.
 - Unwillingness to report breaches because workers ‘already pushed’ to get more from each coupe by DNRE’s faulty data.
 - Successful enforcement action has been taken on private land, but there appears to be no standing on public land.

Even more problems

- ‘Conservation’ commitments under the RFA have not been ‘actioned’ while industry ‘commitments’ have received a high priority.
- Information and guidelines not readily available to the public.
- The Flora and Fauna Guarantee Act 1988 is largely impotent on public land (and is only enforced on private land through the planning system, where it must be “taken into account”).

Example: Starlings Gap







Leadbeater's Possum

- The Leadbeater's Possum, a small marsupial, is found only in Victoria and along with the Helmeted Honeyeater is Victoria's faunal emblem.
- The Leadbeater's Possum is listed as endangered both in Victoria under the *Flora and Fauna Guarantee Act 1988 (Vic)* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.
- An action statement has been prepared under the F&FG Act.

The Central Highlands

- The present distribution of the Leadbeater's Possum is restricted to mainly publicly owned tall ash eucalypt forests found in the Central Highlands.
- Both a Regional Forest Agreement and Forest Management Plan have been prepared for the Central Highlands.

The 'Road Proposal'

- In April 2000, Paul Pearson, Senior Planner, wrote to Tim Sanders, Forest Management Planner, seeking approval for a road alignment.
- The proposal involved a “road straightening exercise” (approximately 650m long) which would pass through Leadbeater’s possum habitat, a SPZ and SMZ.
- In the memorandum seeking approval, the Leadbeater’s possum was not mentioned.

The 'Authorisation'

- There is a requirement that Senior Foresters give approval to 'major improvement operations' in the Wood Utilisation Plan Guidelines.
- Remarkably, the memorandum seeking approval was not only written by Paul Pearson, but was then endorsed by Paul Pearson for the Senior Forester
- The Senior Forester's signature appears for the first time after a significant amount of works are completed (when a decision is made to allow the road to be steeper than the relevant prescription).

The 'Discovery'

- In June 2000, work commenced on the realignment.
- Shortly thereafter 'nesting boxes' were discovered. The site turned out to be a 'Leadbeater's Possum Monitoring Site'.
- A decision was made to slightly realign the proposed route from the Monitoring Site to the Monitoring Site Buffer

'as a compromise between prohibitive roading costs and the continuing validity of the site while increasing safety for forest users.'

Consultation?

- At no stage was any public consultation undertaken.
- There is a requirement to publicly consult where the Manager, Forestry Victoria or the Regional Manager considers that an amendment involves issues that are likely to be “sensitive”.
- Given that loss of large, old, hollow bearing trees is the major issue threatening Victoria's emblem, it is hard to see how the proposal would be viewed as not a ‘sensitive’ issue.
- In conclusion, the road went through without any analysis of the effect on the Leadbeater’s possum and without the public having an opportunity to comment.

Conclusion

- Australia's record of extinctions continued to climb.
- There are over 50 types, or species, of Australian animals and over 60 species of Australian plants that are extinct: www.ea.gov.au.
- About 240 species of native animals and over 1160 species of native plants may become extinct in the near future: www.ea.gov.au.

Conclusion cont...



- Victoria's record is appalling.
- We have lost at least 60 species since European settlement.
- The survival of 500-600 vascular plant species and at least 250 animal species is threatened:
www.nre.vic.gov.au.

Logging in Gippsland



Walking in the Bush



Snig track through rainforest – Dingo Creek



Last Sassafras Tree – Dingo Creek

