

Questions on notice 11 March 2021 – Inquiry into Ecosystem Decline in Victoria.

Submitted by Richard Hughes, Victorian Campaigns Manager, The Wilderness Society Victoria.

Question 1

Have you got examples of where the OCR are not properly addressing things? We have heard evidence from them that they are successfully prosecuting breaches, so can you expand on that a bit more, where you say they are not? As noted on page 33 of the transcript;

Answer 1

An example of the OCR being compromised in their ability to address breaches is the regulation of post logging burns, where DELWP has responsibilities. The difficulty for the OCR to address these types of breaches is not just the scope of their powers, but is also an issue of independence – given breaches in DELWP responsibility would need to involve the OCR prosecuting the department it sits within.

Two examples concerning this type of breach are given below.

OCR Investigation into regeneration burns in Rubicon State Forest

Following a complaint that regeneration burning had damaged retained vegetation and excluded areas at multiple coupes in Rubicon State Forest, an OCR investigation was conducted that failed to identify breaches, for reasons that should raise concern, as outlined in extracts from the OCR Investigation Outcome below.

(extract from a letter sent by the Office of the Conservation Regulator, dated 23 November 2020, to Rubicon Forest Protection Group):

'... During the investigation consideration was had as to the identification of the entity(s) responsible for the planning, authorisation, and undertaking of burning conducted at these coupes. The investigation found that whilst action is required to be taken by VicForests for forest regeneration pursuant to Code clause 2.6.1, and VicForests does plan regeneration burns, the approval of burn planning, the authorisation for ignition of burns, and the command and control of the burn, is an activity that is undertaken by DELWP [Forest Fire Management Victoria (FFMVic)].

It was further identified that FFMVic undertakes this activity under lawful authority delegated to the Chief Fire Officer by the Secretary to the Department of Environment, Land, Water and Planning (DELWP), pursuant to section 62A(1)(a) of the Forests Act 1958. As the activity is conducted under authority from the Forests Act 1958, it is not considered to be a timber harvesting operation subject to section 45 of the Sustainable Forests (Timber) Act 2004, from which the Conservation Regulator's authority to regulate timber harvesting operations is primarily derived.

Following these findings, the Chief Fire Officer of DELWP has committed to conducting an independent review of relevant procedures, operating arrangements and agreements to clarify

roles, responsibilities and requirements related to the planning and conduct of regeneration burns, and to ensure that fire protection and values protection requirements are improved. The Chief Fire Officer will release the results of this independent review in February 2021. Whilst no adverse finding will be recorded in this matter, the investigation did make observations of the conduct of burning that is further outlined below.

To appropriately direct resources, the investigation's primary focus was the burn known as "Alexandra – 287-510-0009. – Royston Range South" that was ignited on 29 March 2018 (map – Attachment 2). Several other coupes nearby, including Calvin, Rio and Bonds were also inspected. The investigation made the following observations of the impact of burning:

- *Excluded vegetation in the waterway buffer between Calvin and Rio coupes, including Mountain Ash and Myrtle Beech, were impacted by radiant heat and some signs of low intensity fire encroaching into and then self-extinguishing.*
 - *Retained habitat trees on the mid to upper slope of Bonds coupe were subjected to radiant heat and flame contact and appeared to be dead.*
 - *A filter strip applied to a tramway located on the upper slope in Cool McCool coupe was impacted by relatively high intensity fire, with evidence of a mixture of radiant heat and direct flame contact observed. Not all trees were killed and some were displaying epicormic growth.*
 - *The THCU notes that filter strips are not exclusion areas as per the Code, as the prescription is directed at the exclusion of machinery whilst permitting harvesting.*
 - *A waterway buffer applied to a gully on the boundary of Magilla Gorilla and Cool McCool coupes, where radiant heat significantly impacted overstorey vegetation and a relatively high intensity fire ground fire moved through the buffer.*
 - *An excluded area in Super Ted coupe for a temporary stream that was retained as a patch of at a relatively low intensity.*
- ...'*

OCR Investigation into regeneration burns in Big River State Forest

Following a complaint that regeneration burning had damaged a Leadbeater's Possum Special Protection Zone in Big River State Forest, an OCR investigation was conducted that did not identify breaches, for reasons that should raise concern as outlined in an extract from the OCR Investigation Outcome below.

(extract from a letter sent from the Office of the Conservation Regulator, dated 3 March 2021, to Wildlife of the Central Highlands)

'... During the investigation consideration was had as to the identification of the entity(s) responsible for the planning, authorisation, and undertaking of regeneration burning connected with timber harvesting. The investigation found that whilst action is required to be taken by VicForests for forest regeneration pursuant to Code clause 2.6.1, and VicForests does plan regeneration burns, the approval of burn planning, the authorisation for ignition of burns, and the command and control of the burn, is an activity that is undertaken by DELWP [Forest Fire Management Victoria (FFMVic)].

It was further identified that FFMVic undertakes this activity under lawful authority delegated to the Chief Fire Officer by the Secretary to the Department of Environment, Land, Water and Planning (DELWP), pursuant to section 62A(1)(a) of the Forests Act 1958. As the activity is undertaken under authority from the Forests Act 1958, it is not considered to be subject to section 45 of the Sustainable Forests (Timber) Act 2004, from which the Conservation Regulator's authority to regulate timber harvesting operations is primarily derived.

Following these findings, the Chief Fire Officer of DELWP has committed to conducting an independent review of relevant procedures, operating arrangements and agreements to clarify roles, responsibilities and requirements related to the planning and conduct of regeneration burns, and to ensure that fire protection and values protection requirements are improved. The Chief Fire Officer will release the results of this independent review in 2021.

Whilst no adverse finding will be recorded in this matter, the investigation made the following observations of the impact of burning:

- Excluded vegetation in Leadbeater's Possum Special Protection Zone on the western side of the coupe was impacted by fire and fire suppression activities including a dozer trail.*

...'

An additional issue is the need for increased auditing and related public transparency assessing coupe compliance with the environmental regulatory framework.

The OCR did not publish a 2018-19 Forest Audit report, is yet to make the 2019-20 report publicly available, and has not met its own internal auditing targets (16 coupes being audited of a target 30 in 2019-20).

In addition to any resourcing issues, establishing an independent Conservation Regulator, underpinned by legislative requirement and public transparency requirements around auditing and compliance would provide greater public confidence in regulation on contentious matters involving both commercial interests and departmental responsibilities

Question 2

how many members do you have in the Wilderness Society? How many members are signed up? As noted on page 34 of the transcript

Answer 2

Wilderness Society has more than 30,000 members nationwide.