

Kelly Crosthwaite
Deputy Secretary, Bushfire and Forest Services
Department of Energy, Environment and Climate Action
Level 13, 8 Nicholson Street
EAST MELBOURNE VIC 3002

15 January 2025

Dear Ms Crosthwaite,

REGULATORY IMPACT STATEMENT FOR THE FORESTS (FIRE PROTECTION) REGULATIONS 2025

I would like to thank your staff at the Department of Energy, Environment and Climate Action (the Department) for preparing the Regulatory Impact Statement (RIS) for the Forests (Fire Protection) Regulations 2025 (the proposed Regulations).

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. The Victorian Guide to Regulation (VGR) explains the Commissioner's role in more detail.

A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received on 15 January 2025 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

Background and problems

Victoria is one of the most fire-prone regions in the world. The large areas of native vegetation in the state largely comprise highly flammable eucalypt forest. Around one third of Victoria consists of public land including parks, reserves, state forests and national parks. The Department explains that forests provide several key benefits:

- environmental benefits such as cleaner air and water, carbon storage, pollination, pest insect control, healthier soil and the prevention of soil erosion

- social and cultural benefits such as the promotion of physical health, connection to Country for Traditional Owners, and socialisation and recreation; and
- economic benefits associated with visits to parks estimated to generate \$1 billion in gross value added to local economies and support around 14,000 jobs.

Various businesses operate in or near Victoria's state and national parks including sawmilling, beekeeping, mining, quarrying, brick making and eucalyptus oil distilling. Agriculture maintenance activities such as welding also occur close to forests.

The Department explains that fire impacts air, water and soil quality and threatens the sustainability of plants and wildlife, undermining the benefits provided by forests. Fire poses immediate and long-term health risks, destroys assets and disrupts industries such as agriculture and tourism. The Department cites economic costs such as a 2021 Insurance Council of Australia estimate of damage from fires in 2019-20 at \$5.5 billion.

The *Forests Act 1958* (the Act) covers activities in Victorian forests. The Act specifies any land in state forests, national parks, forests reserves and forests parks as a fire protected area and imposes a general duty to prevent the spread of fire and specific provisions:

- limiting the use of fire to certain times and locations, such as prohibiting fires when there is acute fire danger
- prescribing offences for leaving campfires or barbeques unattended; and
- regulating the size of and clearance around campfires and barbeques

The Department explains that some details of offences under the Act must be specified in regulations. The Act enables regulations to be made covering the lighting and use of fires, activities with the potential to ignite fires, the provision of written authority to light fires, and facilities and equipment required to prevent or suppress fires. The *Forests (Fire Protection) Regulations 2014* (the current Regulations), currently prescribe these matters for visitors to forests, businesses operating in and around forests and Traditional Owners. The current Regulations also expand coverage of the regulatory framework to impose similar obligations to the Act in areas within 1.5 kilometres of forests and national parks.

Other legislation and regulations contain provisions intended to reduce the likelihood of bushfires and limit any damage. For example, the *Crimes Act 1958* makes it an offence to intentionally or recklessly cause a bushfire. Specific regulations also govern activities in national parks, alpine resorts, forest parks and reserves, and state game reserves.

In the RIS, the Department acknowledges that most people are aware of the general risks and impacts associated with fires in forest areas and want to prevent their spread. It also acknowledges businesses in fire prone areas such as sawmills have private incentives to limit fire risks, such as protecting assets and complying with insurance policies.

However, the Department explains that risks from campfires and barbeques are not always fully understood, particularly factors such as how quickly fires can spread and that private incentives may not adequately contain risks related to unobserved activities.

The Department explains that allowing the current Regulations to expire on 8 June 2025 without being remade would involve the following risks:

- the mechanism to specify when written authority is required to start a fire in a forest area would no longer operate, meaning that fires could only be prohibited under other instruments (e.g. a Ministerial notice to prohibit the use of fire under the Act, or a total fire ban under the *Country Fire Authority Act 1958*)
- detailed requirements that ensure fire prevention and suppression equipment and procedures are followed for commercial activities such as sawmilling that pose inherent risks of starting fires would no longer apply; and
- areas close to forests protected by the Act, such as land within 1.5 kilometres of state forests or national parks would no longer be subject to the same level of restrictions as public lands, reducing restrictions on fire lighting and high fire risk activities, potentially increasing the risk of fire spreading to public lands.

The Department explains that the current Regulations have generally been effective at preventing the accidental ignition of bushfires. However, the Department notes that:

- the current Regulations cannot eliminate the risk of unattended campfires, with several thousand instances recorded in the fire protected area
- stakeholder feedback indicated that allowing fire prevention trenches for campfires risks damage to Aboriginal Cultural Heritage or the environment; and
- there is scope to introduce an exemption which enables Traditional Owner groups to undertake ceremonial or cultural uses of fire in accordance with an existing natural resource agreement under the *Traditional Owner Settlement Act 2010*.

Options and Impact Analysis

The Department analyses three options to remake the Regulations:

- Option 1 – remake the current regulations with minor amendments (e.g., removing reference to the use of trenches for fire-containment and exempting recognised Traditional Owner groups from the proposed Regulations in some circumstances);
- Option 2 – less prescriptive performance-based regulations specifying outcomes and objectives (e.g., providing choice of fire-suppression tools); and
- Option 3 – non-regulatory approach involving public information and education.

Options are assessed against a base case of the regulations expiring without being remade using a multi-criteria analysis (MCA) with the following criteria and weightings:

- Protection of life, human safety and property (20 per cent)
- Protection of the environment (20 per cent)

- Provide assurance commercial activities are conducted safely (10 per cent)
- Minimising costs to business (20 per cent)
- Minimising costs to individuals (20 per cent); and
- Minimising costs to government (10 per cent).

The Department identifies Option 1 as the preferred option likely to reduce fire risk the most by providing clear, prescriptive guidance that better accounts for gaps in public awareness of fire risks (and how to reduce them) than the performance-based approach under Option 2 or a public information campaign under Option 3. Estimated total costs of around \$1.7 million over ten years for Options 1 and 2 are based on similar monitoring and enforcement activities, while Option 3 would involve lower total costs of around \$650,000.

The Department supplements the MCA with break-even analysis estimating the benefits for each main benefit category required for the preferred option to outweigh its costs by:

- preventing the loss of one life over a period of around 30 years;
- avoiding a small fraction of the economic losses or carbon dioxide emissions caused by a single large bushfire; or
- preventing a small fraction of the carbon dioxide equivalent emissions.

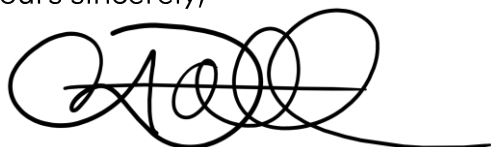
Implementation and Evaluation

The Department explains that implementation of the proposed Regulations is expected to be straightforward, given their similarity to longstanding existing arrangements. The Department plans to communicate proposed minor updates to the Regulations by updating government resources and public education documents and engaging with industry stakeholders and Traditional Owner groups. The Department expects high overall compliance with the proposed Regulations, but notes that monitoring behaviour in large fire protected areas is difficult and will rely on a risk-based approach.

The Department commits to ongoing monitoring of the proposed Regulations ahead of a specific evaluation in around 2033 prior to the proposed Regulations sunset in 2035.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely,



Cressida Wall

Commissioner for Better Regulation