

Regulating Victoria's Native Forests

October 2022

Independent assurance report to Parliament
2022–23:9

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Independent assurance report to Parliament

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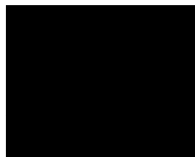
The Hon Nazih Elasmal MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Maree Edwards MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of the Audit Act 1994, I transmit my report Regulating Victoria's Native Forests.

Yours faithfully



6 October 2022

The Victorian Auditor-General's Office acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

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Audit snapshot

Does the Office of the Conservation Regulator (OCR) effectively regulate timber harvesting operations?

Why this audit is important

Victoria's native forests are precious natural assets, providing environmental, health and wellbeing, cultural and socio-economic benefits.

Effective regulation of timber harvesting is crucial to ensure this resource is protected for future generations.

OCR was established in 2019 to improve timber harvesting regulation and to ensure harvesting does not adversely affect other forest values.

Who and what we examined

We examined the Department of Environment, Land, Water and Planning's (DELWP) OCR.

We looked at whether OCR effectively monitors and enforces compliance with timber harvesting regulations focusing on its forest report assessments and investigations.

What we concluded

OCR has made progress in improving timber harvesting regulation.

However, OCR has further work to do to address the weaknesses in its

systems, processes and reporting. This will support strong regulatory outcomes and improve its effectiveness in regulating timber harvesting in Victoria's native forests.

What we recommended

We made 10 recommendations to OCR, including:

- 2 about updating its systems
- 6 about improving its assessment and investigations policy and processes
- 2 about monitoring, evaluating and reporting its achievement of outcomes.

Key facts

Forest report compliance outcomes from July 2019 to June 2022



123

compliance reports received



94

compliance reports assessed
as requiring no further action

2

referred for investigation

3

warning letters

4

made up of a letter of advice; referred to Coupe Inspection Program; statutory timeframes exceeded; and a verbal warning/education approach

5

findings of noncompliance

15

cases open

Source: VAGO, based on OCR data.

What we found and recommend

We consulted with the Department of Environment, Land, Water and Planning's (DELWP) and considered its views when reaching our conclusions. The agency's full response is included in Appendix A.

Office of the Conservation Regulator (OCR) has not yet sufficiently developed or integrated its timber harvesting compliance systems to support decision-making

Gaps in collected data prevent OCR from assessing noncompliance

OCR's timber harvesting compliance unit (THCU) does not always have access to necessary and sufficient data to determine whether noncompliance has occurred in its assessment of complaints.

How consistently OCR collects and categorises important data when conducting proactive surveys is unclear. This has resulted in cases where allegations that VicForests logged identified endangered trees could not be substantiated. While it is VicForests', not OCR's, responsibility to collect relevant pre-harvest data, the way OCR records Forest Protection Survey Program (FPSP) information limits its ability to assess noncompliance.

Key intelligence systems are still under development

Gumnut, OCR's intelligence system introduced in 2021, is still under development and does not link to THCU's case management system. While the case management system does track enforcement actions, such as section 70 directions, warning letters or production notices, this information is not used for intelligence-based decisions.

OCR is not planning to migrate historical data from its previous intelligence system, Secure Intelligence Database (SiD), because of the cost and data quality issues. The data stored in SiD is less clean and is categorised differently than the data in Gumnut. This limits OCR's ability to combine data from the 2 systems to access and analyse long-term data that can support decisions. However, OCR has committed to continually improving Gumnut and with time can address these issues.

Timber Harvesting Compliance Unit is the team responsible for regulating timber harvesting operations in the OCR.

OCR's **Forest Protection Survey Program** aims to detect conservation values (such as animals and plants and their habitats) that are either threatened or of high conservation value in areas (coupes) of state forest scheduled for harvest.

VicForests is the state-owned business responsible for harvesting, selling and regrowing timber.

Using a **section 70 direction** issued under the *Sustainable Forests (Timber) Act 2004*, an authorised officer may give directions to remedy any harm caused by the identified noncompliance.

OCR makes extensive use of satellite images to assess and inspect coupes. However, because of budget constraints it is unable to access higher resolution and more detailed imagery. This would provide OCR up-to-date imagery for more detailed assessments of allegations of noncompliance.

OCR also uses its Coupe Inspection Program (CIP) and its Forest Audit Program (FAP) to proactively detect noncompliance and identify risks of environmental harm.

Recommendations about taking an intelligence-led approach

We recommend that:		Response
Department of Environment, Land, Water and Planning	1. finalises its tender for a permanent case management system and plan for implementing it, with a view to integrating it with the intelligence database (see Section 2.1)	Accepted
	2. develops a case for procuring current, higher-resolution satellite imagery that includes a cost-benefit analysis of purchasing this intelligence (see Section 2.1).	Accepted

Operational risks impact OCR's delivery of its programs and activities

Gaps in forest report and investigation procedures limit effectiveness

OCR has no procedure to investigate and analyse larger sample sizes when there are allegations of widespread or systemic noncompliance in forest reports. OCR advised that it analyses larger data samples as part of its program and activity planning but this does not extend to complaints and investigations.

When assessing complaints, OCR also relies heavily on evidence provided by complainants and VicForests. To limit the number of unsubstantiated complaints it receives, OCR provides guidance to support complainants through the forest report process.

There is no consistent, documented process for THCU officers to request further information from complainants when they need it for an assessment or investigation. Including this as a standard process would enable complainants to clarify or provide further information about their report where required.

OCR's procedures and correspondence with complainants do not set clear time limits for providing additional information before officers will close an investigation file. Setting such timeframes would promote consistency in OCR's correspondence with complainants. It would also give officers structured guidance on when to close or continue an investigation. Without this, case officers may prematurely close or unnecessarily delay investigations that are awaiting further information.

Anyone can submit a forest report, or complaint, online if they have detected threatened species in timber harvesting areas or potential timber harvesting compliance issues.

Communication with stakeholders

OCR does not explain the statute of limitations period in its communications with stakeholders and the public, even though this is a crucial factor in making decisions.

Officers employ a variety of methods to calculate the limitation period. However, there is no information on how and why they do this. Making this information public will allow stakeholders and the community to have an understanding that the statute of limitations is a factor in the OCR's ability to prosecute.

OCR advised that since 1 March 2022, it can request information via production notices to determine the date of an alleged offence more accurately.

OCR's explanation of how its policies, like its *Compliance and Enforcement Policy*, informed case decisions in internal documentation and correspondence to complainants has improved since 2019. However, it could be strengthened.

Gaps in Review of Outcome policy impact transparency

The October 2018 *Independent Review into Timber Harvesting Regulation: Panel Report to the Secretary of the Department of Environment, Land, Water and Planning*, (2018 Review) recommended the creation of a policy to review internal decisions. When our audit started, OCR did not have a documented process or policy for reviewing case decision outcomes. OCR drafted a Review of Outcome policy in April 2022 and finalised it in May 2022. However, the final policy does not require OCR to provide a rationale for endorsing the decision, update complainants on the progress of the review, or stipulate timeframes for the review process.

OCR's use of enforcement powers is limited

OCR has not explored all enforcement options

The 2018 Review recommended that OCR develop tools to apply a more graduated and proportionate response to noncompliance. In practice, OCR does not use all these powers in response to timber harvesting noncompliance because they are not available under timber harvesting legislation or OCR has not yet explored their use. OCR's ability to create new tools under timber harvesting legislation is limited, hence the main enforcement options OCR uses are warning letters and findings of noncompliance.

Findings of noncompliance and other compliance options, such as letters of advice, are considered low-level sanctions. Currently, there is no avenue available to issue infringement notices if noncompliance is identified for timber harvesting. Without an effective range of enforcement tools, OCR cannot ensure that consequences for timber harvesting offences are graduated and proportionate. OCR has provided advice to the government about the need to improve its regulatory tools. In December 2021 the government signalled its support for strengthening the OCR with new infringement powers for breaches of the *Code of Practice for Timber Production 2014 (as amended 2022)* (the Code).

OCR does not effectively evaluate its timber harvesting enforcement activities

OCR does not effectively review its past timber harvesting enforcement activities. It does not assess whether subjects have a pattern or history of noncompliance and whether enforcement outcomes are effective in changing behaviour. OCR has advised

that as Gumnut matures, it will be able to evaluate enforcement trends for effectiveness.

Recommendations about taking a risk-based approach

We recommend that:

Response

Department of Environment, Land, Water and Planning	3. develops guidance for assessing forest reports where there are allegations of widespread or systemic noncompliance so that its assessments are intelligence-led and proportionate to the alleged noncompliance (see Section 3.1)	Accepted
	4. reviews its forest report assessment and investigations procedure to include a consistent process for: <ul style="list-style-type: none"> requesting information to further a complaint assessment or investigation, including how, when and why to request additional information and timeframes to guide responses how to calculate the statute of limitations period communicating the rationale for outcomes, including policies used, in correspondence to complainants (see Section 3.2) 	Accepted
	5. revises its Review of Outcome policy and addresses the identified weaknesses: <ul style="list-style-type: none"> update complainants at the acknowledgement and review stages stipulate timeframes for acknowledging a complaint or for completing a review provide a rationale for endorsing each case decision document the rationale for a review's outcome for transparency and to show the judgement or evidence behind a decision (see Section 3.2) 	Accepted
	6. develops guidance for stakeholders and the public that includes general information about the statute of limitations and how this affects Office of the Conservation Regulator's ability to consider complaints and commence investigations and prosecutions (see Section 3.2)	Accepted
	7. reviews timber harvesting noncompliance and assesses these for development of guidelines for how its stakeholders should interpret the <i>Code of Practice for Timber Production 2014 (as amended 2022)</i> and the <i>Code of Practice for Timber Production 2014 (as amended 2022) Schedule 1: Management Standards and Procedures for timber harvesting operations in Victoria's State forests</i> (see Section 3.3)	Accepted
	8. develops a procedure for using injunctions and finalises the proposed policy for issuing enforceable undertakings (see Section 3.3).	Accepted in principle

OCR does not comprehensively report on its performance and evaluate the effectiveness of its monitoring activities

OCR has yet to finalise a monitoring, evaluation and reporting framework

OCR has not yet implemented a framework that identifies timber harvesting outcomes and measures to comprehensively monitor and assess their achievement.

OCR intends to implement a monitoring, evaluation and reporting (MER) framework that uses outcome logic mapping for its key regulatory decisions. However, it lacks the staffing capacity to do this. This exposes OCR to potential underperformance and a lack of meaningful information to support planning. Without an MER framework, OCR also cannot show that it is effectively reducing the risk of regulatory failure and provide assurance to the government that it is achieving its outcomes.

Performance measures are not fit for purpose

OCR's Budget Paper 3: Service Delivery reporting and annual performance statements do not contain relevant reporting on the effectiveness of its monitoring and compliance activities to the government and the public.

OCR's timber harvesting compliance performance measures and targets are outlined in its June 2019 *Regulating timber harvesting in State forests under the Allocation Order: Statement of Regulatory Intent* (SRI). However, these metrics do not meet the standards set out in the Department of Treasury and Finance's (DTF) *Resource Management Framework*. Specifically, there are no cost or quality measures and no measures of the efficiency of activities.

Regulating timber harvesting in State forests under the Allocation Order: Statement of Regulatory Intent states how OCR should use its powers to prevent and respond to breaches of the law. It also sets performance targets OCR reports against annually.

Performance target revisions provide a better measure of performance

In 2020, OCR discussed the performance measures in the SRI and the need for revising them. OCR's executive team agreed to remove 2 percentage-based targets and amend them to number-based targets to remove fluctuations not within their control and provide a better measure of performance.

Revising performance measures and targets can be appropriate in some circumstances to provide a better indication of performance.

OCR does not adequately measure the effectiveness of its activities to regulate timber harvesting

OCR has not adequately evaluated the effectiveness of its timber harvesting monitoring and compliance activities. Without this, it cannot reliably assure the government and public about the efficiency and effectiveness of its activities and programs to regulate timber harvesting operations.

Recommendations about performance monitoring

We recommend that:	Response
Department of Environment, Land, Water and Planning	<p>9. finalises and implements its monitoring, evaluation and reporting framework, including:</p> <ul style="list-style-type: none"> • developing and implementing a timber harvesting compliance monitoring, evaluation and reporting plan • introducing timber harvesting compliance outcomes and indicators to measure the effectiveness of its activities (see Section 4.1)
	<p>10. reviews and revises its performance indicators in its <i>Regulating timber harvesting in State forests under the Allocation Order: Statement of Regulatory Intent</i> to include cost, quality and efficiency measures to allow for a more comprehensive and transparent view of the timber harvesting compliance unit's performance in addressing noncompliance (see Section 4.1).</p>

1.

Audit context

Victoria has a range of laws and regulations that govern the planning and conduct of commercial timber harvesting operations. These laws seek to ensure that harvesting is sustainable and that environmental, economic and social values of Victoria's native forests are protected for future generations.

VicForests is the state-owned business responsible for harvesting, selling and regrowing of timber. OCR regulates VicForests' timber harvesting operations.

This chapter provides essential background information about:

- OCR
 - OCR's timber harvesting compliance and enforcement approach
 - Key forest management legislation
-

1.1 Office of the Conservation Regulator

History

Before OCR was established, DELWP regulated timber harvesting operations.

In September 2018, following DELWP's unsuccessful prosecution of VicForests for an alleged breach of the *Sustainable Forests (Timber) Act 2004* (SFT Act), the secretary of DELWP commissioned the 2018 Review. This was at the request of the Minister for Environment and Climate Action.

DELWP established OCR in early 2019 in response to one of the 2018 Review's recommendations about reviewing governance and management reporting arrangements for regulating native timber harvesting.

Since then, a number of cases have alleged unlawful logging by VicForests.

OCR's mission

OCR's mission is to be an effective, trusted, best-practice regulator.

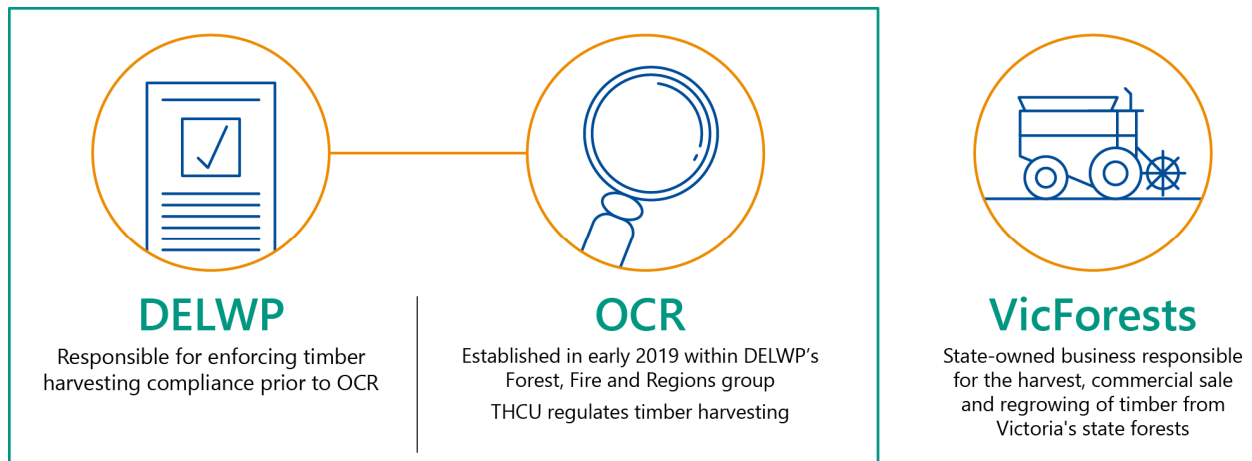
Timber harvesting operations are a key area that OCR regulates by identifying and protecting forest values and ensuring that timber harvesting complies with environmental law. It:

- receives reports of threatened species where timber harvesting is planned and aims to ensure interim protections are applied to protect values from timber harvesting
- assesses and investigates reports from the community about allegations of noncompliant timber harvesting activities
- aims to prevent environmental harm before, during and after timber harvesting by conducting proactive inspections
- independently assesses compliance of VicForests' timber harvesting operations
- endeavours to take appropriate enforcement action when noncompliance is identified.

Roles and relationship

OCR was not set up as an independent regulator. DELWP created a new administrative structure to enable it to deliver core regulatory services and used existing DELWP staff to resource OCR. Figure 1A explains OCR's relationship to DELWP and VicForests.

FIGURE 1A: **OCR's relationship to DELWP and VicForests**



Source: VAGO.

OCR regulates public land use, biodiversity, fire prevention and timber harvesting.

1.2 **OCR's timber harvesting compliance and enforcement approach**

OCR has made changes to the systems, structures and processes previously used to regulate timber harvesting. Changes include introducing a proactive CIP, which is designed to prevent environmental harm during timber harvesting.

Figure 1B highlights the key systems and programs used by OCR.

FIGURE 1B: **Key OCR systems and programs**

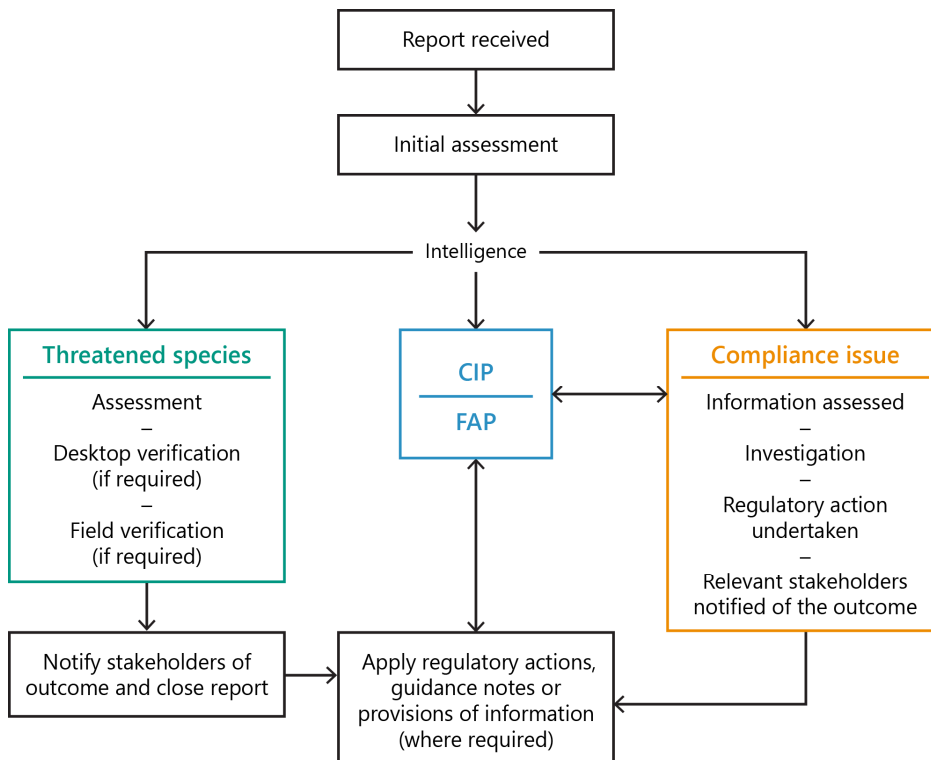
OCR systems and programs	Function
Forest Protection Survey Program (FPSP)	Aims to detect conservation values, such as animals and plants and their habitats, that are either threatened or of high conservation value in areas of state forest that are scheduled to be harvested.
Coupe Inspection Program (CIP)	Aims to prevent environmental harm during timber harvesting. OCR aims to inspect coupes based on the presence of important environmental values and high-risk activities.
Gumnut	OCR's intelligence repository used for regulatory compliance operations. It collects observations about alleged and verified noncompliance and is accessed by OCR's intelligence analysts and authorised officers.
Forest Information Portal (FIP)	A publicly available, interactive map that shows forest-related data, including vegetation types, boundaries, recreation locations and data from forest programs.
Forest Audit Program (FAP)	OCR commissions an independent environmental audit annually to measure compliance of commercial timber harvesting operations against the Code's requirements. OCR selects coupes for auditing using a risk-based selection process based on the characterisation of the coupes in information provided to it by VicForests. Prior to OCR, DELWP (and its predecessors) have managed the program since 2010.
Timber harvesting compliance unit (THCU) viewer	THCU viewer uses satellite imagery, captured every 2 days, to monitor harvest activities. It includes data points, including some photos, collected by officers in the field, as well as trees, waterways, and other notable features. It is only for internal use.

Source: VAGO, based on OCR information.

OCR also introduced a web-based form to allow members of the public to report the detection of threatened species in timber harvesting areas or potential timber harvesting compliance issues.

Figure 1C illustrates the forest report process.

FIGURE 1C: **Forest report process**



Source: VAGO, based on OCR information.

This audit focuses on how OCR assesses and investigates allegations of noncompliance identified through its forest report process.

OCR's *Compliance and Enforcement Policy* outlines the regulatory principles that guide its compliance and enforcement activities. See Figure 1D.

FIGURE 1D: **OCR's regulatory principles**

Principle	What it means
Outcomes focused	Driven by outcomes that are clearly articulated and measured
Risk based	Focus effort and actions on the most significant risks to maximise regulatory outcomes achieved
Intelligence led and evidence based	<ul style="list-style-type: none"> Information and intelligence drives compliance planning, prioritisation and regulatory responses Applies its principle of proportionality to understand the relative risk, the scale of likely harm and the culpability of those who do not comply with the law Decisions are informed by intelligence, science and other data
Proportionate and graduated	<ul style="list-style-type: none"> Activities to support compliance or respond to noncompliance will be proportionate to the risk of harm caused. Greater harm and intentional noncompliance will incur a proportionately stronger enforcement response Compliance activity or response to noncompliance aims to build on and be informed by past actions
Collaborative	Committed to collaborating with the Victorian community, Traditional Owners, stakeholders and other regulators
Transparent	<ul style="list-style-type: none"> Committed to engaging better with the community, stakeholders and regulated parties Being open and transparent about its regulatory approach, including the limitations and constraints on what action it can take
Safe	Committed to protecting the safety and wellbeing of its people and ensuring safety is integral to how they work

Source: VAGO, based on OCR's 2019 *Compliance and Enforcement Policy*.

1.3 Key forest management legislation

Commercial timber harvesting is subject to the SFT Act. It provides a framework for sustainable forest management and sustainable timber harvesting in state forests.

The SFT Act establishes the allocation order, timber release plans and compliance obligations provisions for timber harvesting in state forests. Commercial timber harvesting that is not the subject of an allocation order is approved through section 52 of the *Forests Act 1958*.

Code of Practice for Timber Production 2014 (as amended 2022)

The Code is the primary regulatory instrument that applies to commercial timber production in native forests (both public and private) and plantations in Victoria.

The Code includes the *Management Standards and Procedures for timber harvesting operations in Victoria's State forests* (MSP) as schedule 1, which provides detailed operating instructions to managing authorities, harvesting entities and operators to comply with the Code.

Regulatory reform

The Victorian Government passed the *Forests Legislation Amendment (Compliance and Enforcement) Act 2021* on 12 October 2021. It came into force on 1 March 2022.

The amendments aim to improve the environmental regulation of timber harvesting.

By ...	The amended Act means ...
clarifying the offence of unauthorised timber harvesting operations to apply to VicForests and contractors	VicForests, or a VicForests' contractor, is liable for the noncompliance.
widening the application of enforceable undertakings and injunctions	OCR can apply graduated and proportionate tools in response to noncompliance.
providing authorised officers with powers to require the production of documents relating to compliance with the SFT Act	authorised officers can access more relevant and complete information when investigating and monitoring compliance with the regulatory framework because they are no longer reliant on voluntary submission of data by timber harvesting operators.
incorporating documents (including spatial data) by reference for instruments made under the <i>Forests Legislation Amendment (Compliance and Enforcement) Act 2021</i> and the SFT Act	contemporary mapping tools can be validly included in instruments that regulate timber harvesting.
increasing the statute of limitations period to 3 years	OCR can consider complaints and investigations across a greater time period.

The Code has also undergone reform recently. It was amended in November 2021 and again in June 2022. The amendments include:

- formalising and clarifying protection requirements for certain species
- moving the MSP into the Code as a schedule, rather than having them sit separately as an incorporated document
- clarifying ambiguous wording and layout
- amending the definition of the precautionary principle.

2.

Taking an intelligence-led approach

Conclusion

OCR is in the process of developing and integrating its systems and tools to support decision-making on timber harvesting compliance.

Existing weaknesses in data quality and completeness mean that OCR's key information systems and tools have some deficiencies in informing its timber harvesting compliance report assessments and investigations.

This chapter discusses:

- Weaknesses in intelligence systems and tools
 - Data gaps
 - Information sharing
-

2.1 Weaknesses in key intelligence systems and tools

Weaknesses in OCR's systems, including poor data quality assurance and incomplete data, mean they do not fully support intelligence-led decision-making in its forest report assessments and investigations.

Intelligence systems and tools

OCR implemented its key intelligence system, Gumnut, in 2021. While it is improving the amount of data held in this system, it is not yet mature enough to support an intelligence-led and risk-based approach to regulating timber harvesting compliance.

Gumnut is still under development and does not link to THCU's case management system. Gumnut's data and features relating to timber harvesting compliance are still relatively immature. While there are a significant number of new observations being made, many still need to link back to SiD to create a long-term trend. Moreover, observations specific to THCU have less metadata associated with them, making it difficult to search and categorise observations. However, OCR has committed to continually improving Gumnut and with time can address these issues.

OCR tracks enforcement actions, such as section 70 directions, warning letters and production notices. However, these are not used for intelligence-based decisions.

While the columns required for key metrics in OCR's timber harvesting case management system are checked, they are occasionally missing metadata that would help staff progress and manage resourcing and prioritise cases. For example, in reports since January 2021 we found the following unfilled cells:

- 'traffic light status' (9 per cent of reports)
- 'date preliminary assessment complete' (18 per cent of reports)
- 'investigation priority' (11 per cent of reports).

These figures are based on data from OCR's case management system after it has been through OCR's quality assurance process. This includes populating selected data points with information in OCR's case assessment reports. It is important that OCR completes and updates metadata in its case management system in a timely way to assist with managing its caseload.

OCR currently has a tender underway for a case management system that will integrate with its intelligence system. OCR advised us that the procurement process is well advanced but did not provide an estimated date for completion.

System integration increases efficiency and consistency of information. This is important in providing timely and accurate advice on regulatory requirements, particularly with an increase in forest litigation. In its 2022–23 business case, OCR acknowledged that the robustness of government advice and decisions was under increasing scrutiny. Increasing forestry litigation means the government's decisions and advice need to be increasingly robust to withstand scrutiny in the courts.

OCR also does not plan to migrate historical data from its old intelligence database, SiD, into Gumnut because it has determined this would deliver a negative cost benefit. However, this means that key data will continue to be fragmented across systems. THCU authorised officers have access to a searchable, read-only version of SiD and must make requests to OCR's regulatory intelligence unit for specific

information, such as criminal history checks. This limits the efficiency and effectiveness of OCR's operations because it cannot easily access long-term data about coupes and contractors to assess systemic noncompliance or identify patterns and risks.

Geographic information systems

OCR's geographic information systems (GIS) offer sufficient data to assess compliance in a variety of cases, including for steep slopes and endangered species. This is strengthened by OCR's use of satellite imagery to visually detect harvesting activity.

However, OCR is not the custodian of this data, and cannot improve its quality. OCR has processes to manage risks around the more incomplete datasets. However, there is still a risk that it will overlook illegal harvesting because of poor-quality data. Additionally, despite OCR's reliance on satellite images for visual inspection, budget constraints prevent it from accessing clearer, more detailed imagery.

OCR uses its GIS to respond to reports of noncompliance. While it is also used to support risk profiling based on OCR priorities, it is not used to actively detect noncompliance. OCR's GIS could use satellite imagery to detect timber harvesting and flag when it is out of legal boundaries. However, OCR has not implemented this due to a lack of resources. Rather, it relies on its CIP and FAP to proactively detect noncompliance.

2.2 Data gaps

The extent to which OCR consistently collects and categorises important data, such as the maturity of identified endangered trees, when conducting proactive surveys is unclear. This has resulted in cases where allegations that VicForests logged identified endangered trees could not be substantiated because there was no evidence to prove that the harvested trees were mature and so should have been protected.

While it is VicForests', not OCR's, responsibility to collect relevant pre-harvest data, the way OCR records FPSP information limits its ability to assess noncompliance. Figure 2A illustrates examples where OCR could not assess if noncompliance occurred.

FIGURE 2A: **Case study: Assessments highlighting incomplete data**

We found examples where incomplete data meant that OCR could not assess if noncompliance had occurred.

A 2020 complaint alleged that 8 tree geebung—an endangered species—were present in a coupe that had been harvested, which had not been identified pre-harvest. Of these, 7 specimens had been destroyed.

VicForests is required by law to identify forest values as part of its harvesting planning. However, the law does not specify how it should do value assessments and OCR has no statutory power to stipulate the nature and scope of these activities.

OCR did not investigate because there was insufficient evidence to prove that VicForests had knowledge of the location of these specimens. Potential data sources, such as an FPSP pre-harvest survey, were not available for this coupe.

In this case, data gaps directly led to the destruction of endangered trees, including a 'very large' specimen. This lack of data also made it impossible for OCR to ascertain whether noncompliance had occurred.

In another 2020 complaint, the lack of information about the maturity of trees in OCR's FPSP prevented it from determining whether VicForests had breached its obligations.

The maturity of a specimen is a critical factor in deciding whether it needs to be protected. It is difficult to analyse maturity using FPSP surveys as they do not record this data consistently. Instead, VicForests determines if a specimen is sufficiently mature to warrant protection. However, without specimen maturity data, it is impossible for OCR to know if VicForests did not identify, and then harvested, potentially protected flora.

Source: VAGO, based on OCR information.

Timber harvesting compliance legislation and OCR's legislated powers restrict OCR's ability to access key VicForests data. Currently, OCR commonly cites insufficient data on its case assessments as a reason not to pursue investigations.

2.3 Information sharing

The 2018 Review recommended that government agencies, non-government environmental groups and VicForests create a system of shared data.

OCR has advised that its FIP satisfies the requirements of this recommendation. However, the FIP is public-facing and so excludes information that would not be appropriate to disclose or necessary for public access. Ultimately, the FIP does not include enough information about VicForests' harvesting activities to help OCR prepare its CIP or enforcement activities.

OCR advised that not all coupe information is available because the information published is at VicForests' discretion and VicForests does not have to publish its coupes map. Where the information is not made public, or when specific information is needed, without an information-sharing agreement officers need to request the information from VicForests in each instance. This causes delays and lengthens the time taken to assess areas or prepare for inspections.

The only information OCR routinely receives from VicForests is a rolling operations plan, which provides basic information about what is planned to be harvested and where. VicForests updates the rolling operations plan and OCR downloads it every week.

VicForests sends OCR a weekly email that includes the date coupe harvesting started. OCR has advised that at times there is a time lag between the actual start date of coupe harvesting and when the email is sent. If harvesting has been temporarily paused at a coupe, OCR is not notified when it restarts.

3.

Taking a risk-based approach

Conclusion

OCR aims to use a risk-based framework to conduct its complaint assessments and investigations into timber harvesting operations. However, there are operational and process gaps and limitations that impede OCR's ability to fully implement and achieve this approach.

OCR's use of enforcement powers is not graduated or proportionate. This is partly because OCR has not explored all options available to it and partly due to the lack of enforcement powers available to it in relation to timber harvesting.

This chapter discusses:

- OCR's effectiveness in regulating timber harvesting operations
 - Gaps in policies and procedures
 - OCR's approach to enforcing compliance
-

3.1 OCR's effectiveness in regulating timber harvesting operations

Monitoring and assessing compliance

We found weaknesses in how OCR monitors and assesses timber harvesting compliance and in its complaint assessment and investigation processes, which may affect how consistently cases are assessed and investigated.

Sample size

OCR's THCU does not always analyse and investigate larger samples to confirm compliance when there are allegations of widespread or systemic noncompliance in forest reports. There is no procedure for this included in OCR's complaint assessment or investigation processes. This is illustrated in the case study in Figure 3A. OCR advised us that it analyses larger data samples as part of its annual program and activity planning.

This weakness was also identified in an independent review of the case in Figure 3A commissioned by OCR. It found that OCR could have considered further slopes within this catchment in the field or across other catchments. Alternatively, OCR could have also considered VicForests' planning processes to prevent noncompliance in more slopes across further coupes.

FIGURE 3A: **Case study: Multiple coupes in water catchments**

In November 2019 OCR received a complaint alleging VicForests had been harvesting timber since 2004 on steep-slope zones that exceeded mandated limits in certain water catchments*.

The complaint alleged VicForests harvested coupes in exclusion zones across various water catchment areas, including over 150 coupes in one specific water catchment. The complaint also included an in-field assessment of 4 coupes with slopes exceeding 30 degrees.

OCR completed a desktop analysis to prioritise and select coupes to investigate. OCR then investigated the 4 coupes assessed by the complainant. OCR's spatial analysis of harvest areas and slope in water catchment areas found comparable results to the allegations in the complaint.

OCR determined that of the 4 coupes, 2 were outside the statute of limitations period, based on the harvest commencement date, and excluded these from its investigation.

OCR completed preliminary surveys of the remaining 2 coupes, then comprehensive inspections on both. The results showed that the highest single transect assessment of slope for each of the 2 coupes was 34 and 33.2 degrees.

In June 2020, OCR's authorised officers visited the VicForests regional office to discuss the case.

In July 2020, OCR asked VicForests to provide a report in relation to the allegations. OCR assessed the report and closed the case based on the following:

- The area containing slopes over 30 degrees was identified as 3.8 per cent and 4.5 per cent of the coupes' harvest areas.
- The average slope was 31.8 degrees in one coupe and 31 degrees in the other and OCR considered this a low-level slope limit breach.
- OCR adopted a 1-degree error margin, reducing the area of noncompliance to 1.4 per cent in one coupe and 0.6 per cent in the other.
- No evidence of mass soil movement or impact to water quality was identified.
- The statute of limitations period for one coupe had expired by this stage due to the length of the investigation and was nearing the end for the other.

OCR did not take enforcement action because:

- the degree of noncompliance was considered minor
- it had not identified any evidence of mismanagement of the risk of mass soil movement into waterways.

OCR sent a letter of advice to VicForests that included OCR's interpretation of slope requirements and the factors that OCR considered in its assessment and investigation.

Note: *The Code and the MSP applicable at the time included a general exclusion of timber harvesting operations for slopes over 30 degrees for the catchment relevant to the case study in Figure 3A.

Source: VAGO, based on OCR information.

Reliance on third-party evidence

OCR relies heavily on evidence provided by complainants in assessing complaints. Figure 3B shows that OCR requires complainants to provide physical evidence instead of in-field analysis by authorised officers. OCR provides guidance to complainants to support them in submitting information about possible breaches of timber harvesting legislation. However, it means OCR bases confirmation of compliance in its

preliminary assessments primarily on the information provided by complainants rather than its own intelligence and assessment.

FIGURE 3B: **Case study: Gap between coupe boundary and retained vegetation**

In June 2021 OCR received a complaint alleging a breach of the MSP in relation to a gap between a coupe boundary and retained vegetation. The MSP requires that no gap between retained vegetation is to be greater than 150 metres. The complainant alleged the gap was 465 metres and provided satellite imagery as evidence.

In its assessment of the complaint, OCR noted that the complainant based their allegation on their own definition of 'retained vegetation', by using reference to similar words such as 'retained trees' in the Code.

In its assessment, OCR noted that the SFT Act, the Code and the MSP do not define 'retained vegetation'. Therefore, OCR used a dictionary definition of 'vegetation', which does not exclude individual trees.

The case officer examined satellite imagery and found a significant number of canopy eucalypts at an approximate density of 15 trees per hectare across the net harvest area. This analysis also identified vegetation that had been retained within and across the gross coupe area.

OCR closed the case based on its analysis of density and its interpretation of the MSP. OCR's case decision record also noted that the complainant did not provide physical evidence of noncompliance but used satellite imagery.

The approver of the case decision did not document their reasoning.

OCR notified the complainant of the outcome. The complainant was not satisfied with the outcome and requested a review.

The case reviewer upheld the outcome. However, the reviewer did not document the reasons for upholding the decision. OCR advised the complainant they could contact the Victorian Ombudsman if dissatisfied with the decision.

While OCR did not have a policy in place for reviewing outcomes of complaints at the time of this case, it did have a dispute resolution process.

Source: VAGO, based on OCR information.

Provision of information

The ability to obtain timely information and documents is vital during investigations. The 2018 Review recommended the creation of new powers and protections to give authorised officers coercive powers to obtain information. Legislative amendments giving authorised officers powers to obtain documents took effect on 1 March 2022.

Under the SFT Act, an authorised officer may issue a written notice requiring the production of documents from VicForests, a VicForests contractor or any other person named in the production notice. OCR has welcomed this and has started using this power. To date it has issued 11 production notices.

Despite these changes, authorised officers still do not have legal powers to enter or search premises under the SFT Act.

3.2 Gaps in policies and procedures

Requests for further information

OCR can request further information from a complainant when it is necessary to further an assessment or investigation. This gives the complainant an opportunity to clarify details and provide further information if required. However, this process is not documented in the timber harvesting compliance manual and there is no guidance around when this should occur. As a result, while we found that officers requested further information for some forest reports, we have not seen evidence that this happens consistently.

OCR does not have a consistent template or procedure for requesting further information. Officers also do not provide complainants with indicative timeframes for providing further information before closing a file.

OCR advised that requesting further information with timeframes is a documented process for its threatened species reports and this is applied to compliance reports and investigations. However, we do not have evidence of this occurring consistently.

Guidance around requesting further information, such as procedures, templates and timeframes, promotes consistency and provides structure to assessments and investigations.

Communicating with stakeholders

OCR does not explain the statute of limitations period to its stakeholders or the public, despite it being a factor in case decisions. On 1 March 2022 the statute of

limitations period was extended from 2 years to 3 years. It applies to investigations and complaint assessments across OCR. If OCR assesses a complaint as outside the statute period, it cannot proceed to prosecution.

In practice, officers take steps to calculate the limitation period through a variety of methods, such as requesting evidence from VicForests or its contractors or by assessing satellite imagery. However, OCR's timber harvesting compliance manual does not include guidance on how to calculate this. This is a gap in OCR's forest report assessment and investigation process.

The application of OCR's policies to its case outcomes is not always clear in correspondence to complainants or in internal decision records. The reasoning for how its policies, like its *Compliance and Enforcement Policy*, informed the decision is not consistently communicated clearly and/or often missing from documentation. Although OCR has improved its correspondence since 2019, it could strengthen the link between internal policies and procedures and its decisions.

Review of Outcome policy

The 2018 Review recommended that DELWP creates a policy to review internal decisions. OCR established a dispute resolution process in late 2021. However, when our audit started, OCR did not have a documented process or policy for reviewing complaint or investigation outcomes.

OCR drafted a Review of Outcome policy in April 2022 and finalised it in May 2022. However, the final policy still does not require OCR to:

- update complainants at the acknowledgement and review stages
- set timeframes for acknowledging a complaint or completing a review
- provide a rationale for endorsing the case decision
- record the rationale for a review's outcome for transparency and to show the judgement or evidence behind a decision.

3.3 OCR's approach to enforcing compliance

OCR does not apply a proportionate and graduated approach to enforcement partly because of the limitations in timber harvesting legislation and partly because OCR has not used all available options.

Enforcement options under OCR's Compliance and Enforcement Policy

OCR's *Compliance and Enforcement Policy* outlines its approach to responding to noncompliance. It identifies several enforcement options available to it to both remedy and punish noncompliance or deter future noncompliance through the use of sanctions (see Figure 3C). In practice, OCR does not use all these powers in response to timber harvesting noncompliance because they are not available under timber harvesting legislation or OCR has not yet explored their use. Figure 3C shows OCR's available enforcement options and those that can be applied by OCR for timber harvesting.

FIGURE 3C: **Enforcement options in OCR's Compliance and Enforcement Policy**

Enforcement options	Applicable to timber harvesting
Remedy	
Directions	✓
Advisory or education letters	✓
Verbal advice	✓
Voluntary rectification or cooperative compliance plans	✓
Sanctions	
Formal verbal cautions or warning letters	✓
Findings letters	✓
Show cause notices	X
Infringements	X
Insertion of conditions in approvals, permissions or authorisations	X
Injunctions	✓
Enforceable undertakings	✓
Civil proceedings	✓
Prosecutions	✓
Suspension, revocation or cancellation of permissions or authorisations	✓
Referral to another regulatory agency or professional body	✓

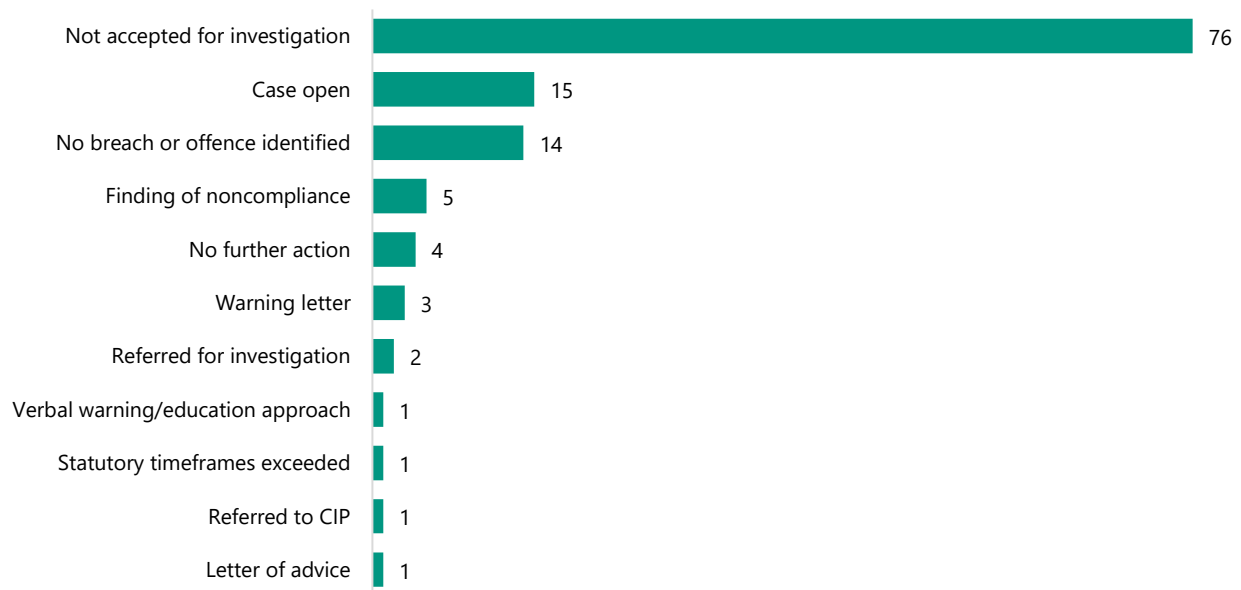
Source: VAGO, based on OCR information.

Enforcement outcome results

Forest reports

From July 2019 to June 2022, OCR received 123 compliance reports from members of the public, environmental groups, VicForests, DELWP staff or as part of the CIP. Figure 3D shows the outcomes of these reports. It shows that 94 reports (or 76 per cent) were either not accepted for investigation, did not identify a breach or resulted in no further action.

FIGURE 3D: **Number of outcomes for compliance reports received from 1 July 2019 to 30 June 2022**



Note: A single forest report can apply to multiple coupes and is treated as one matter for assessment and determination of outcomes.

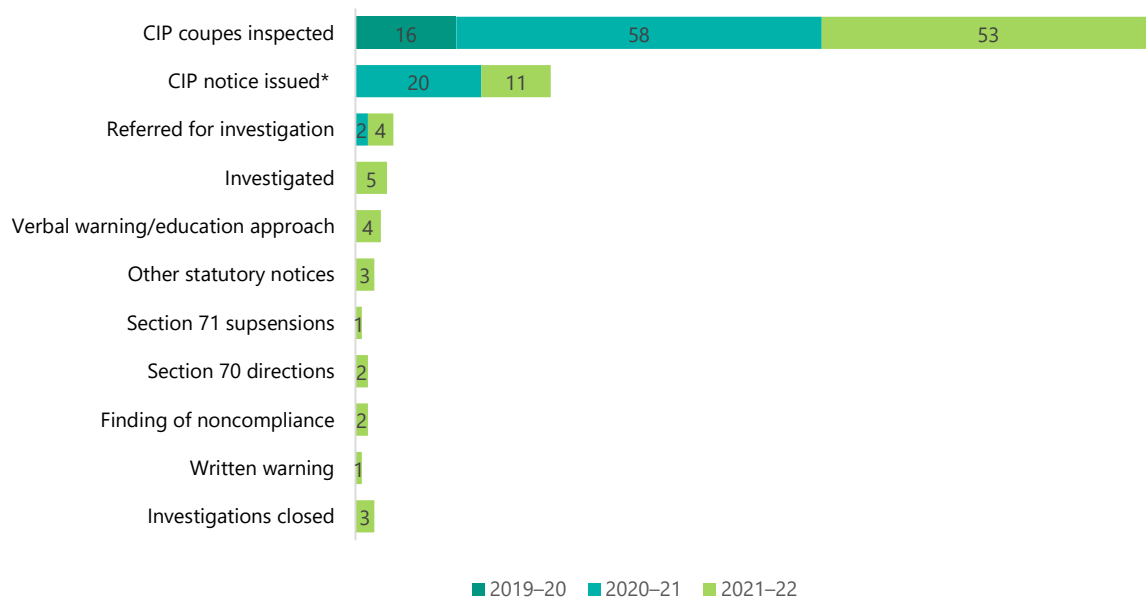
Source: VAGO, based on OCR data.

Coupe Inspection Program

OCR proactively inspects coupes scheduled for harvesting through its CIP. OCR introduced this in 2019–20. Prior to this, DELWP did not have a proactive program. Coupe inspections occur throughout the year and are designed to prevent environmental harm that may occur during harvesting. Where risks are identified, OCR issues written requests to modify planning or remedy minor issues. It can give formal directions or suspension notices under legislation. The CIP also identifies alleged noncompliance that are investigated.

Figure 3E shows the outcomes of OCR’s CIP from 2019–20 to 2021–22.

FIGURE 3E: **Number of CIP inspections and outcomes from 1 July 2019 to June 2022**



Note: *Noncompliance was observed and a request for information or remediation was issued.

Source: VAGO, based on OCR data.

OCR's enforcement approach

The 2018 Review recommended the development of tools for a more graduated and proportionate response to noncompliance. However, OCR is limited in its ability to create new tools under timber harvesting legislation. Consequently, OCR's main options for enforcement are warning letters or findings of noncompliance, as seen in Figure 3D. Findings of noncompliance and other compliance options, such as letters of advice, are considered low-level sanctions. OCR advises these are a key part of future case decisions if similar noncompliance occurs.

Without effective enforcement tools, OCR cannot ensure that consequences for timber harvesting offences are graduated and proportionate. This reduces its effectiveness as a regulator. In its briefings to the government relating to the Code amendments, OCR has provided advice about improving regulatory tools.

OCR's authorised officers can issue a direction under section 70 of the SFT Act to remedy any harm that has occurred because of noncompliance or to compel VicForests to do certain things. However, a section 70 direction is not always an available option because it is not always possible to remedy harm that has occurred due to noncompliance.

Enforceable undertakings are another way to ensure compliance, but to date none have been issued. OCR has not yet explored or defined how it would issue one or how it would get approvals from DELWP for one. OCR has advised that a policy on the use of enforceable undertakings will be completed in 2022-23.

Currently, OCR's officers cannot issue infringement notices under the SFT Act for timber harvesting noncompliance. This contrasts with the *Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill 2022* introduced into Parliament in May 2022. If passed, this will include stronger penalties (maximum fines of more than \$21,000 or 12 months imprisonment) for protesters who illegally enter timber harvesting safety zones.

Where relevant, authorised officers can use other legislative enforcement powers when assessing forest reports or conducting investigations, such as offences under the *Wildlife Act 1975* (Wildlife Act). This can give authorised officers increased enforcement powers, for example, to obtain information. However, OCR advised that powers under other Acts are only available in a small number of timber harvesting investigations. Without this, authorised officers have limited avenues for enforcement actions, as seen in the case study in Figure 3F.

FIGURE 3F: **Case study: Waterway compliance**

In 2019, as part of its CIP, OCR carried out an inspection in response to new information about rock blasting in a creek line between 2 coupes.

OCR's inspection found 10 large boulders in a creek bed that contained an endangered fish species, barred galaxias. Officers found that the boulders were recently unearthed, with evident machine marks, and the route that the boulders had rolled down to the creek was also clear.

After this inspection, OCR started an investigation.

Officers issued a section 70 direction for the protection of barred galaxias from roading operations and sediment control from the road. The contractor complied with this direction.

Officers considered including allegations relating to the disturbance of the fish and their habitat under the Wildlife Act because this legislation has greater offences and powers to obtain documentation.

OCR later obtained legal advice that the Wildlife Act does not apply to fish. As a result, wildlife offences were removed, reducing the potential offences available in this investigation.

After interviews with VicForests' contractors, OCR officers became concerned that VicForests had not provided any proper plans and directions to contractors to avoid breaches occurring in planning and construction of the switchback (the road on which vehicles travelled to reach the coupes).

OCR officers requested information about the planning for the switchback from VicForests. OCR did not receive information that it considered to be of 'an appropriate standard or detail to construct the switchback'.

The evidence on the lack of planning for the switchback was strong. Despite this, OCR considered that legal advice provided for a prior case cast doubt on the strength of the case for prosecution.

Contractors carried out the switchback works. At the time of this investigation, OCR's ability to prosecute VicForests for the actions of its contractors was limited by the SFT Act. The legal advice was that the legislation applied to VicForests but did not extend to contractors.

OCR completed the investigation and issued warning letters to VicForests and its contractors.

The area considered in this investigation is now included in the CIP for future inspections. Officers also inspected the site after the investigation to ensure the road was stable and that drainage of the area was functioning.

Source: VAGO, based on OCR information.

As of 1 March 2022, changes to legislation mean that VicForests is liable for the noncompliance of its contractors.

Evaluating the effectiveness of timber harvesting enforcement activities

OCR does not have a formalised framework or process for evaluating the effectiveness of its enforcement activities. It does not effectively review enforcement actions to assess whether subjects have a pattern or history of noncompliance and whether enforcement actions are effective in changing behaviour.

This is a missed opportunity because such an analysis will identify which sections of the Code and MSP are more open to interpretation. OCR could use this information to develop guidance on how to interpret these sections. OCR has advised that as Gumnut matures, it will be able to evaluate enforcement trends for effectiveness.

4.

Monitoring performance

Conclusion

OCR does not comprehensively report on its performance and evaluate the effectiveness of its monitoring activities to drive continuous improvement.

OCR is yet to finalise its MER framework. This exposes OCR to both potential underperformance and a lack of appropriate information to support planning.

OCR has increased the transparency of THCU's regulatory priorities through its public reporting against measures in the SRI. However, issues with its performance measures mean that reporting does not provide assurance to the government that it is achieving its outcomes efficiently and effectively.

This chapter discusses:

- Monitoring, evaluation and reporting
 - Performance reporting
-

4.1 Monitoring, evaluation and reporting

OCR has not yet implemented a framework that identifies timber harvesting outcomes and measures so it can comprehensively monitor and measure their achievement.

OCR has not yet finalised its MER framework and has not developed its associated THCU MER plan. In July 2020, OCR's leadership team endorsed the MER framework. This comprehensive framework includes program logic, a monitoring program, evaluation and a reporting program. As part of this, OCR has started developing short, medium and long-term outcomes and draft indicators to measure achievement of them.

In 2021, OCR identified a lack of funding as the main reason for the delay in implementing the MER framework.

Key performance measures

OCR does not have meaningful measures to assess the effectiveness of its timber harvesting compliance monitoring activities.

OCR acknowledges that its Budget Paper 3: Service Delivery reporting and annual performance statements do not provide the government and public with relevant reporting on the effectiveness of its monitoring and compliance activities.

Currently, OCR uses performance measures and targets in its SRI to quantify the efficiency and effectiveness of its processes and activities. However, we have found deficiencies in them. Our assessment of OCR's performance measures and indicators against the guidelines set out in DTF's *Resource Management Framework* confirms this. The guidelines indicate:

- a performance objective/s should be clear, measurable and reportable
- performance indicators should cover all elements of an agency's performance objective/s
- clear and relevant performance measures should cover the quantity, quality, cost and timeliness of an agency's services.

DTF's *Resource Management Framework* requires a meaningful mix of quality, quantity, timeliness and cost measures. This helps agencies provide a comprehensive and transparent view of their performance. OCR's only key performance measures and targets are those listed in its SRI. Figure 4A lists these and their results for 2020–21 and 2019–20. OCR's reporting and performance measures do not indicate that it faces any challenges in addressing noncompliance.

FIGURE 4A: **OCR's performance measures, targets and results for 2019–20 and 2021–22**

Measure	Target	2021–22	2020–21 result	2019–20 result
		forecast result		
Per cent of coupes planned for timber harvesting that have been assessed in the FPSP for the potential presence of target flora and fauna, including threatened species and other values such as prescribed vegetation communities and trees	100 per cent	100 per cent	100 per cent	100 per cent
Per cent of coupes planned for timber harvesting that are field surveyed under the FPSP with a risk of the potential presence for target flora and fauna, including threatened species and other values, such as prescribed vegetation communities and trees	80 per cent ^(a)	81 per cent	94 per cent ^(b)	86 per cent
Per cent of coupes planned for timber harvesting that may contain rainforest that are spot checked to ensure that VicForests has correctly identified rainforests and has put the required protections in place	20 per cent	NA ^(c)	NA ^(c)	25 per cent ^(d)
Time to acknowledge receipt of reports of noncompliance	Less than 2 workdays	1.67 workdays	0.47 workdays	0.9 workdays
Time to commence verification of threatened species reports	Less than 5 days	0.81 days	1.36 days	0.5 days
Number of coupes harvested in the previous year audited as part of the FAP to monitor VicForests' compliance with the Code and the MSP	30	24	30	30
Per cent of coupes harvested in the previous year audited as part of the FAP to monitor VicForests' compliance with the Code and the MSP	20 per cent	Measure removed	Measure removed	11 per cent
Number of coupes planned for timber harvesting, or where timber harvesting is underway, that are subject to compliance inspections to monitor VicForests' compliance with the regulatory framework	30	53	58	16
Per cent of coupes planned for timber harvesting, or in which timber harvesting is underway, that are subject to compliance inspection to monitor VicForests' compliance with the regulatory framework	20 per cent	Measure removed	Measure removed	9.6 per cent
Average time taken to investigate alleged or suspected noncompliance	Less than 12 months	7.5 months	15.7 months	7.4 months

Note: OCR did not publish 2021–22 results by the time of this audit.

^(a)Target has been changed in Victorian *Budget Paper No. 3 Service Delivery 2022–23* to 64 per cent. The lower 2022–23 target reflects the funding profile of the FPSP and forecast coupe selection capacity.

^(b)The 2020–21 expected outcome is higher than the 2020–21 target due to \$1 million in funding being brought forward from 2021–22 to ensure surveys could be conducted well in advance of proposed harvest dates.

^(c)This measure is now embedded in the proactive CIP.

^(d)Result excludes coupes in Gippsland and East Gippsland regional forest agreement areas because they were unable to be assessed due to the 2019–20 bushfires.

Source: VAGO, based on OCR's *Year In Review 2019–20* and *Year in Review 2020–21* and forecast results provided by OCR.

Of the measures listed in Figure 4A, 5 are quantity measures and 3 relate to timeliness. There are no cost or quality measures and there are no measures to

enable an understanding of the efficiency of activities. In addition, OCR does not have any measures to define the cost of its activities.

OCR's SRI also lists several activity measures that it publicly reports annually in its Year In Review. See Figure 4B.

FIGURE 4B: **Activity measures**

Activity measure	Indicator	2021–22 forecast result	2020–21 result	2019–20 result
Number of threatened species reports received	Number	98	70	74
Number of threatened species reports verified	Number	32	28	28
Number of reports of alleged or suspected noncompliance received	Number	31	62	30
Number of reports of alleged or suspected noncompliance investigated	Number	5*	4	11

Note: OCR did not publish 2021–22 results by the time of this audit.

*A further 5 investigations arose from the proactive CIP.

Source: VAGO, based on OCR's *Year in Review 2019–20* and *Year In Review 2020–21* and forecast results provided by OCR.

These raw counts of activities do not provide any insight into OCR's performance in regulating timber harvesting. The reader has no idea if the result reflects good or poor performance and it does not allow for an understanding of quality, cost and timeliness.

Performance target revisions

In 2020, OCR discussed the performance measures in the SRI and the need for revising them. However, due to limited available resources for a full review, OCR's executive team agreed to remove and amend the following percentage-based targets for the *Year In Review 2020–21*:

- per cent of coupes harvested in the previous year that were audited as part of the FAP to monitor VicForests' compliance with the Code and the MSP
- per cent of coupes planned for timber harvesting, or in which timber harvesting is underway, that are subject to compliance inspection to monitor VicForests' compliance with the regulatory framework.

The rationale for removing these percentage-based targets and amending them to a number-based target is because the number of coupes harvested in a financial year can vary. If a higher number of coupes are harvested, such as 300, a target of 20 per cent would mean THCU would need to potentially inspect and audit 60 coupes. This means that when a higher number of coupes are harvested in a year, the likelihood of achieving the target is reduced compared to a number-based target.

Revising performance targets is reasonable to remove fluctuations not within the control of OCR and provide a better indication of performance.

4.2 Performance reporting

Public performance reporting

OCR has increased the transparency of THCU's regulatory priority through its public reporting against measures in the SRI. However, issues with its performance measures, identified in Section 4.1, mean that reporting does not provide meaningful information on the effectiveness of its timber harvesting compliance activities.

A better-practice principle for regulators is to measure the performance of regulatory activities, evaluate their effectiveness and communicate their impact on regulatory outcomes.

OCR also considers its FIP as a form of public reporting. Our comparison of coupes listed on THCU's case database and coupes on the FIP found that 221 of the 843 coupes are not searchable through the FIP. Therefore, more than a quarter of coupes are not readily available through public reporting. OCR advised that this discrepancy is because these coupes are no longer part of the current timber release plan, which the FIP uses to allow search and is updated every few years. However, the gap in OCR's public reporting remains.

The **timber release plan** shows areas where VicForests may conduct timber harvesting operations in state forests. These areas are divided into sections of the forest called coupes.

Internal performance reporting

OCR has set up internal arrangements, such as weekly leadership briefings and monthly executive meetings, that allow the Chief Conservation Regulator to have a more detailed understanding of THCU's emerging issues, staff resources and operations.

OCR also reports to DELWP's executive board and provides briefings to the Minister for Environment and Climate Action every quarter. This reporting includes a summary of highlights and challenges for the quarter as well as regulatory risks. For example, operations and performance reporting to DELWP's executive board in 2021 identified challenges with resourcing and recruiting experienced staff.

In late 2021, OCR reported that responding to timber-harvesting-related subpoenas, court proceedings and the policy and legislative work program has significantly impacted resources. OCR reporting also identified the reputational impact brought on by the Australian Broadcasting Corporation's media attention in late 2021 about systemic harvesting on steep slopes in water catchment areas.

OCR has not evaluated the effectiveness of its timber harvesting monitoring and compliance activities. Without this, OCR cannot reliably assure the government and public about the cost-effectiveness of its activities and programs to regulate timber harvesting operations.

The **Chief Conservation Regulator** leads OCR and is accountable for decision-making.

APPENDIX A

Submissions and comments

We have consulted with DELWP and we considered its views when reaching our audit conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report, or relevant extracts, to this agency and asked for its submissions and comments.

Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

DELWP	37
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Department of Environment,
Land, Water and Planning

PO Box 500, East Melbourne,
Victoria 8002 Australia
delwp.vic.gov.au

Mr Andrew Greaves
Auditor-General
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Ref: SBR012985



Dear Mr Greaves

REGULATING VICTORIA'S NATIVE FORESTS - PROPOSED REPORT

Thank you for your letter of 30 August 2022 providing the Department of Environment, Land, Water and Planning (DELWP) with an opportunity to comment on the proposed performance audit report – Regulating Victoria's Native Forests, and for the revised audit report provided to DELWP on 26 September 2022.

Please find attached DELWP's response to the recommendations in the report and the actions the department proposes to take, including expected completion dates to address these.

As you are aware, I commissioned the *Independent Review of Timber Harvesting Regulation* in 2018 to enable DELWP to more effectively regulate timber harvesting. In 2019, DELWP established the Conservation Regulator to oversee public land, wildlife and timber harvesting regulation and implement the recommendations of the Independent Review.

Since that time, the Conservation Regulator has made significant progress in strengthening timber harvesting regulation. Important improvements made by the Conservation Regulator include:

- proactively assessing industry compliance through the new proactive Coupe Inspection Program
- strengthened ability to draw on all available intelligence to identify non-compliance risks and trends within the industry, to set priorities for compliance evaluation by the Regulator
- greater data, information and performance metrics for the community and industry through:
 - the *Regulating timber harvesting in State forests under the Allocation Order* Statement of Regulatory Intent
 - annual reporting in the Conservation Regulator's *Year in Review* publication
 - improved information on the Conservation Regulator's website (www.conservationregulator.vic.gov.au)
 - the Forest Information Portal which provides a powerful new online interactive tool to present data including Forest Protection Survey Program findings, outcomes of threatened species reports and Forest Report investigation outcomes.
- improved internal policies, standard operating procedures, guidance and templates for regulatory operations
- improved access and use of technology including for intelligence gathering, case management and in-field assessments
- strong investment in building the capacity and capability of regulatory staff (including authorised officers)
- greater engagement with community stakeholders and with the timber harvesting industry to raise awareness of the laws that apply and how to report suspected non-compliances to the Conservation Regulator

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002.



OFFICIAL-Sensitive

It is pleasing to see VAGO has recognised the progress that has been made since the *Independent Review of Timber Harvesting Regulation* in this audit. I note and appreciate VAGO's recognition of the need to continue to build on these new foundations.

In conducting this audit, VAGO has focused particularly on the way the Conservation Regulator assesses allegations of non-compliance by the timber harvesting industry made by the members of the community. These "Forest Reports" are an incredibly valuable source of intelligence for the Conservation Regulator, and each report is diligently assessed. The Conservation Regulator has also made significant improvements in the information available to support community members to understand what the law requires of the timber harvesting industry, and to assist community members to contribute to the effective oversight of the industry by submitting a Forest Report allegation.

While diligently assessing Forests Reports is an essential part of the Conservation Regulator's work to assess the industry's compliance with the law, it is just one limb of the Conservation Regulator's integrated work program to evaluate compliance with the law. DELWP also implements the proactive Coupe Inspection Program and the Forest Audit Program that take a risk-based approach to evaluating industry compliance. These programs offer different approaches to compliance assessment that are important complements to the assessment of Forest Reports received from the community. The Conservation Regulator has a robust understanding of non-compliance history through combining the intelligence from these programs of work, allowing it to continuously improve the focus of its regulatory effort on the areas of highest risk.

The Conservation Regulator is focused on continuous improvement and is delivering that improvement through a well-planned and prioritised work program that invests in improving regulatory practice and robust business systems, policies and procedures. The work program to achieve these improvements includes:

- investing in a new regulatory Case Management System. The tender for the new Case Management System is now finalised and the work to deliver a new system that will support further improvements in regulatory case management is commencing.
- a focus on actively implementing and progressively enhancing the new Regulatory Intelligence technology system ("Gumnut"), delivering a modern technology solution that supports the Conservation Regulator's intelligence-led regulatory approach.
- ensuring that the new Intelligence and Case Management systems are effectively integrated, and that they further enhance the Regulator's work to track compliance history and the outcomes achieved by previous regulatory actions.
- implementing an internal assurance program that assesses compliance with regulatory policies and procedures.
- continuing to build our regulatory capability program to further enhance the specialist regulatory skills of Conservation Regulator's staff.

DELWP is well placed to respond to the recommendations. DELWP has either accepted or accepted in principle each of the recommendations made in the report. Detailed responses are set out in the attached "DELWP Management Action Plan". Moreover, the recommendations in the report, and the associated actions set out in this letter are consistent with the Conservation Regulator's existing work program and its continued implementation of its published policies and regulatory best practice.

If you would like more information about this matter, please contact Ms Kate Gavens, Chief Conservation Regulator, DELWP on email kate.gavens@delwp.vic.gov.au.

Thank you again for your audit report.

Yours sincerely



John Bradley
Secretary

28/09/2022

Encl.

Regulating Victoria's Native Forests performance audit

DELWP's Management Action Plan

Recommendations	Agreed Action	Completion Date
Recommendation 1 Finalise its tender for a permanent case management system and plan for implementing it, with a view to integrating it with the intelligence database (see Section 2.1)	Accepted The Conservation Regulator is finalising its tender for a new case management system, which will be delivered in 2023/24. This system will appropriately link to the Conservation Regulator's intelligence database (Gumnut).	30 / 10 / 2022
Recommendation 2 Develop a case for procuring current, higher-resolution satellite imagery that includes a cost-benefit analysis of purchasing this intelligence (see Section 2.1).	Accepted The Conservation Regulator will procure high resolution satellite imagery.	30 / 06 / 2023
Recommendation 3 Develop guidance for assessing forest reports where there are allegations of widespread or systemic non-compliances so that its assessments are intelligence led and proportionate to the alleged non-compliance (see Section 3.1)	Accepted The Conservation Regulator will augment existing internal guidance to assist officers in assessing forest reports alleging widespread and/or systemic non-compliance so that the regulatory response is appropriately risk-based.	31 / 12 / 2022
Recommendation 4 Review its forest report assessment and investigations procedure to include a consistent process for: <ul style="list-style-type: none"> requesting information to further a complaint assessment or investigation, including how, when and why to request additional information and time frames to guide responses how to calculate the statute of limitations period communicating the rationale for outcomes, including policies used, in correspondence to complainants (see Section 3.1). 	Accepted The Conservation Regulator will augment existing internal guidance to: <ol style="list-style-type: none"> formalise processes for requesting additional information from complainants. affirm the process to calculate statute of limitations when assessing complaints. improve the communication of case outcomes by consistently conveying the rationale for regulatory decisions. 	31 / 12 / 2022



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Recommendations	Agreed Action	Completion Date
Recommendation 5 Revise its Review of Outcome policy and address the identified weaknesses: <ul style="list-style-type: none"> • update complainants at the acknowledgement and review stage • stipulate time frames for acknowledging a complaint or for completing a review • provide a rationale for endorsing each case decision • document the rationale for a review's outcome, for transparency and to show the judgement or evidence behind a decision (see Section 3.1) 	Accepted The Conservation Regulator will revise its Review of Outcome policy to incorporate guidance around: <ul style="list-style-type: none"> i) updating complainants at key review stages. ii) setting time frames for acknowledging receipt of a complaint and completing a review. iii) ensuring that, as part of case decision reviews, the rationale for the review decision is documented. 	31 / 10 / 2022
Recommendation 6 Develop guidance for stakeholders and the public that includes general information about the statute of limitations and how this affects OCR's ability to consider complaints and commence investigations and prosecutions (see Section 3.1).	Accepted The Conservation Regulator will publish on its website an explanation of the statute of limitations as it operates in timber harvesting regulation.	30 / 03 / 2023
Recommendation 7 Review timber harvesting non-compliances and assess these for development of guidelines for how its stakeholders should interpret the Code of Practice for Timber Production 2014 (as amended 2022) and the Code of Practice for Timber Production 2014 (as amended 2022) Schedule 1: Management Standards and Procedures for timber harvesting operations in Victoria's State forests (see Section 3.2).	Accepted The Conservation Regulator will continue its practice of reviewing and assessing case outcomes for opportunities to improve regulatory guidance. This will be implemented annually. The Conservation Regulator will enhance its approach by: <ul style="list-style-type: none"> i) conducting an annual process to seek feedback on guidance needs, and ii) publishing guidance that has been developed to the Conservation Regulator's website. 	30 / 06 / 2023
Recommendation 8 Develop a procedure for using injunctions and finalise the proposed policy for issuing enforceable undertakings (see Section 3.2)	Accepted in Principle The Conservation Regulator will clarify its approach to the use of enforceable undertakings and injunctions.	30 / 04 / 2023

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Recommendations	Agreed Action	Completion Date
Recommendation 9 Finalise and implement its monitoring, evaluation and reporting framework, including: <ul style="list-style-type: none"> • developing and implementing a timber harvesting compliance monitoring, evaluation and reporting plan • introducing timber harvesting compliance outcomes and indicators to measure the effectiveness of its activities (see Section 4.1) 	Accepted in principle The Conservation Regulator's Monitoring, Evaluation and Reporting (MER) framework is currently being developed. As part of this work, reporting metrics for timber harvesting regulation will be developed. This work will then inform improved performance indicators in the Statement of Regulatory Intent for timber harvesting in State forests. In the design of new metrics, consideration will be given to the cost-effectiveness of reporting options so that reporting strikes a balance between data collection costs and the intent to produce meaningful measures.	31 / 03 / 2024
Recommendation 10 Review and revise its performance indicators in its Regulating timber harvesting in State forests under the Allocation Order – Statement of Regulatory Intent to include: <ul style="list-style-type: none"> • cost, quality and efficiency measures to allow for a more comprehensive and transparent view of the Timber Harvesting Compliance Unit's performance in addressing non-compliance (see Section 4.1) 	Accepted in principle The Conservation Regulator's Monitoring, Evaluation and Reporting (MER) framework is currently being developed. As part of this work, reporting metrics for timber harvesting regulation will be developed. This work will then inform improved performance indicators in the Statement of Regulatory Intent for timber harvesting in State forests. In the design of new metrics, consideration will be given to the cost-effectiveness of reporting options so that reporting strikes a balance between data collection costs and the intent to produce meaningful measures.	31 / 03 / 2024

APPENDIX B

Acronyms, abbreviations and glossary

Acronyms

CIP	Coupe Inspection Program
DELWP	Department of Environment, Land, Water and Planning
DTF	Department of Treasury and Finance
FAP	Forest Audit Program
FIP	Forest Information Portal
FPSP	Forest Protection Survey Program
GIS	geographic information systems
MER	monitoring, evaluation and reporting
MSP	<i>Code of Practice for Timber Production 2014 (as amended 2022) Schedule 1: Management Standards and Procedures for Timber Harvesting Operations in Victoria's State forests</i>
OCR	Office of the Conservation Regulator
SiD	Secure Intelligence Database
SRI	<i>Regulating timber harvesting in State forests under the Allocation Order: Statement of Regulatory Intent</i>
THCU	Timber Harvesting Compliance Unit
VAGO	Victorian Auditor-General's Office

Abbreviations

the Code	<i>Code of Practice for Timber Production 2014 (as amended 2022)</i>
2018 Review	<i>Independent Review into Timber Harvesting Regulation: Panel Report to the Secretary of the Department of Environment, Land, Water and Planning</i>

Abbreviations

SFT Act	<i>Sustainable Forests (Timber) Act 2004</i>
Wildlife Act	<i>Wildlife Act 1975</i>

Glossary

Reasonable assurance	We achieve reasonable assurance by obtaining and verifying direct evidence from a variety of internal and external sources about an agency's performance. This enables us to express an opinion or draw a conclusion against an audit objective with a high level of assurance. We call these audit engagements. (Our assurance services fact sheet)
Limited assurance	We obtain less assurance when we rely primarily on an agency's representations and other evidence generated by that agency. However, we aim to have enough confidence in our conclusion for it to be meaningful. We call these types of engagements assurance reviews and typically express our opinions in negative terms. For example, that nothing has come to our attention to indicate there is a problem. (Our assurance services fact sheet)

APPENDIX C

Scope of this audit

Objective

We looked at whether the OCR effectively regulates timber harvesting operations.

Who we examined

OCR (within DELWP)

Its key responsibilities

OCR is responsible for monitoring timber harvesting compliance in state forests and enforcing legislation.

What we examined

We examined whether OCR effectively monitors and enforces compliance with timber harvesting regulations through its assessment of forest reports and investigations.

How we assessed performance

To form our conclusion against our objective we used the following lines of inquiry and associated evaluation criteria.

Line of inquiry

Criteria

Does OCR effectively monitor compliance with timber harvesting regulations?

1. OCR's information systems and tools provide key intelligence to inform its regulatory approach.
2. OCR uses a risk-based approach for conducting inspections, audits, investigations and assessments of forest reports (complaints) into timber harvesting operations.
3. OCR comprehensively reports on its performance and evaluates the effectiveness of its monitoring activities to drive continuous improvement.

Does OCR effectively enforce compliance with timber harvesting regulations?

1. OCR's use of its enforcement powers is timely, proportionate and consistent with OCR's statement of regulatory intent and compliance and enforcement policy.
2. OCR comprehensively reports on its performance and evaluates the effectiveness of its enforcement activities to drive continuous improvement.

Our methods

As part of the audit we:

- reviewed timber harvesting compliance policies, legislation and guidelines
- analysed OCR's procedures for assessing forest reports and investigating allegations of noncompliance
- assessed key data systems used to monitor and enforce timber harvesting noncompliance
- interviewed key staff.

We conducted our audit in accordance with the *Audit Act 1994* and ASAE 3500 *Performance Engagements* to obtain reasonable assurance to provide a basis for our conclusion.

We complied with the independence and other relevant ethical requirements related to assurance engagements.

We also provided a copy of the report to the Department of Premier and Cabinet.

Cost and time

The full cost of the audit and preparation of this report was \$520,000. The duration of the audit was 6 months from initiation to tabling.

Auditor-General's reports tabled during 2022–23

Report title

<i>Results of 2021 Audits: Technical and Further Education Institutes</i> (2022–23: 1)	July 2022
<i>Results of 2021 Audits: Universities</i> (2022–23: 2)	July 2022
<i>Follow-up of Protecting Victoria's Coastal Assets</i> (2022–23: 3)	August 2022
<i>The Effectiveness of Victoria Police's Staff Allocation</i> (2022–23: 4)	September 2022
<i>Quality of Major Transport Infrastructure Projects Business Cases</i> (2022–23: 5)	September 2022
<i>Major Projects Performance Reporting 2022</i> (2022–23: 6)	September 2022
<i>Quality of Child Protection Data</i> (2022–23: 7)	September 2022
<i>Follow-up of Maintaining the Mental Health of Child Protection Practitioners</i> (2022–23: 8)	September 2022

All reports are available for download in PDF and HTML format on our website
www.audit.vic.gov.au

Auditor-General's responsibilities

Our fact sheets provide you with more information about our role and our audit services:

- [About VAGO](#)
Information about the Auditor-General and VAGO's work
- [Our assurance services](#)
Information about the nature and levels of assurance that we provide to Parliament and public sector agencies through our work program

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