

Appendix 7. Proposed Amendments to the Forests Act 1958

This Appendix outlines proposed amendments to the Forests Act 1958 (as of 1 March 2019) to increase reporting, implementation and accountability transparency.

It is based on an analysis of the 2019 version of the *Forest Act 1958* incorporating amendments up to 1 March 2019 which have been deleted or amended in such a manner which reduces transparency in reporting and/or accountability and obfuscation in operation. The current *Forests Act* should be amended to incorporate these powers and duties.

	Section	<i>Forests Act 1958</i> as at 10/09/1980	<i>Forests Act 1958</i> as at 01/03/2019 Amendments that should be included in the current <i>Forests Act</i> .
Power of Minister to request report of Commission as to certain matters of policy	25	(1) The Minister may at any time in writing request the Commission to propose in writing a scheme for effecting an increase of income or a decrease of expenditure or for carrying out any matter of general policy specified by the Minister, and if the Minister approves of the same he may direct the Commission to take all necessary steps to carry out the same.	The minister should have powers under the <i>Forests Act</i> to request the Secretary [currently DELWP] to propose in writing improvements for financial management and on implementation of Government policy. If the Minister approves such advice from the Secretary then the Minister may direct the Secretary to act on it. If there is any doubt or difference of opinion, concerning forest fire management on public land, the matter should be finally determined by the State Crisis and Resilience Council.
Differences of opinion	25	(2) If any doubt or difference of opinion occurs respecting the provisions of this section the same may be finally determined by the Governor in council.	
Funds for current expenses of Commission to be voted by Parliament.	29	Financial (1) The Commission shall out of such moneys as are from year to year provided for that purpose by Parliament pay the costs of the administration maintenance protection and management of all State forest and all such other matters and things as are subject to its jurisdiction and control.	Sections 29 and 34 are required in the current <i>Forests Act 1958</i> to ensure that the costs of fire prevention, fire suppression and <u>total</u> costs of recovery attributable to the bushfire are transparently reported in annual reports and publicly available. Such information must also be provided to the Inspector- General for Emergency Management. While the Department gives itself 100% in meeting this Obligation, the quoted paragraphs seen earlier in Appendix 6 are not clearly expressed.
Entry of payments	29	(2) An entry of every such payment shall be made in the books of account of the Commission and shall set forth the State forest or other matter or thing in respect of which it has been made.	
Commission to report to Minister on certain matters	34	Reports, Minutes, &c. (1) The Commission in addition to any other powers and duties conferred or imposed upon it under this Act shall consider and report to the Minister upon all questions and matters arising out of or relating to – a) general forest policy; b) the efficient control disbursement and application of all public moneys provided for the purposes of this Act; c) the scales of rates to be fixed or prescribed from time to time in respect of fees royalties dues and charges for forest produce; and d) generally, all matters or things referred to the Commission by the Minister for consideration and report. e)	
Recommendations by Commission	34	(2) The Commission may in such report make any recommendation it deems advisable.	

<p>Report statement and estimates to be made by Commission</p>	<p>35</p>	<p>(1) As soon as may be after the thirtieth of June in each year the Commission shall cause to be prepared a report statements and estimates as follows:-</p> <p>a) A report of its proceedings during the financial year then last preceding with respect to –</p> <ul style="list-style-type: none"> i. the demarcation of state forest by survey including the character quality and valuation of timber: ii. the renewal and improvement of State forests: iii. working plans: iv. the protection of state forest from fire animals pests and other causes of damage: <p>c) Estimates for the ensuing of the principal forest works proposed to be undertaken and of the moneys likely to be required for carrying into effect the provisions of the Act; and</p> <p>d) A statement with respect to such other matters as are prescribed.</p> <p>(2) Such annual report statements and estimated shall be laid before both Houses of Parliament in the month of October in each year if parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.</p>	<p>Section 35 ensures that Departmental annual reports contain the necessary information so that the IGEM can effectively review the performance of the Department and EMV in all matters of emergency management including bushfire on public land (FPA), including costs of fire prevention, fire suppression, planned use of fire and damage and recovery.</p>
<p>Minutes of proceedings of Commission</p>	<p>37</p>	<p>(1) The Commission shall keep minutes of all its proceedings in such manner and form as the Governor in Council from time to time directs and shall at the beginning of each week cause to be submitted to the Minister a copy of all minutes kept during the preceding week pursuant to this section.</p>	
<p>Minister to have reports &c. and assistance of officers and employés under the Commission</p>	<p>37</p>	<p>(2) The Commission shall furnish the Minister with all such reports documents papers and minutes as are required by parliament pursuant to any Act or pursuant to any order of either House of Parliament.</p> <p>The Commission shall also furnish the Minister with full information on all business of the Department to enable answers to be made to all questions asked by Parliament concerning the Department or to enable the Minister to furnish any returns required by Parliament or which he himself requires.</p> <p>For the proper conduct of his business the Minister shall be entitled at all times to put himself into direct communication with all branches of the Department and all officers and employés under the commission, and also to see all documents papers and minutes which he required either for Parliament or himself and to be supplied with copies thereof, and also to avail himself of the services and assistance of any officer or employé.</p>	<p>Section 37 is required to ensure accountability of the Secretary and of the responsible Minister.</p>

On matters that impact on forest fire management on public land, the current *Forests Act* (as at 1 March 2019), sections 20, 21, 22, 27A, 29, 41, 42, 50 –[5(a), 5(ca) 5(cb)]; set down comprehensive powers and duties of the Secretary DELWP, including several similar to those under the *Forests Act* as at 10/09/1980. They include:

Prevention of and protection from fire

61A Chief Fire Officer

There is to be a Chief Fire Officer of the **Department of Environment and Primary Industries**¹ employed under Part 3 of the **Public Administration Act 2004**. (Department name has not been updated)

61B Functions of Chief Fire Officer

The Chief Fire Officer of the Department of Environment and Primary Industries has the following functions—

- (a) to exercise any functions authorised by the Secretary in respect of fire related activities in every State forest, national park or on protected public land;
- (b) any other function conferred on the Chief Fire Officer by or under this or any other Act.

61C Immunity

(1) The Chief Fire Officer of the Department of Environment and Primary Industries is not personally liable for any thing done or omitted to be done in good faith—

- (a) in the exercise of a power or the discharge of a duty under this Act or the regulations or any other Act or regulations made under that Act; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act or the regulations or any other Act or regulations made under that Act.

62(3) The Secretary must not carry out work of a kind specified under subsection (2)(b) on protected public land not managed and controlled by the Secretary, unless the Secretary has consulted about the work proposed to be undertaken with the person or body responsible, under the Act under which the land is managed and controlled, for the management and control of the land.

S. 62AA(1)(a) repealed by No. 73/2013 s. 87(a).

62AA(2) The Secretary must have regard to any guidelines, procedures or operating protocols issued by the Emergency Management Commissioner under section 44 of the Emergency Management Act 2013 (version 015 as at 1 January 2020) for the purposes of carrying out a duty under subsection (1).

Key sections of the *Forests Act* (01/07/2017) concerning PREVENTION AND PROTECTION FROM FIRE have been updated principally to reflect the role of Emergency Management Victoria and the Emergency Management Commissioner viz:

61D Emergency Management Victoria

The Secretary must, in performing its functions and exercising its powers under section 62(2)(a), collaborate and consult with Emergency Management Victoria.

62(2) *“Despite anything to the contrary in any other Act or law, the Secretary must carry out proper and sufficient work in State forests, national parks and on protected public land*
(a) for the immediate prevention and suppression of fire...

Under section 62(2) *“... the Secretary must [also] carry out proper and sufficient work in State forests, national parks and on protected public land— ...*
(b) for the planned prevention of fire.”

(3) The Secretary must not carry out work of a kind specified under subsection (2)(b) on protected public land not managed and controlled by the Secretary, unless the Secretary has **consulted** about the work proposed to be undertaken with the person or body responsible, under the Act under which the land is managed and controlled, for the management and control of the land. (Authors’ emphasis)

¹ Should read Department of Environment, Land, Water and Planning (DELWP)

62B Agreement required for Secretary to apply or use fire in national parks or on protected public land

The Secretary must not apply or use fire in a national park or on protected public land for any purpose set out in section 62A(1) unless the person or body that has management and control of the national park or protected public land **agrees** to its application or use. (Authors emphasis)

However, the Secretary is required, on the 50% of forested public land that is managed by Parks Victoria, to get agreement of Parks Victoria about the proposed fire prevention works.²

61E Compliance with operational standards of Emergency Management Victoria.

61EA Report on compliance with operational Standards developed by the Emergency Management Commission.

61EB Strategic Action Plan

- (1) The Secretary must implement the applicable work program to give effect to the Strategic Action Plan.
- (2) The Secretary must prepare a written report on the progress made, and achievements attained, by the Secretary to give effect to the Strategic Action Plan at intervals determined by the State Crisis and Resilience Council.
- (3) The intervals must not be less than one a year.
- (4) The Secretary must give a copy of a report prepared by the Secretary under subsection (2) to the State Crisis and Resilience Council and the Inspector-General for Emergency Management.

Note: the Secretary under section 20(b) must implement applicable work programs to give effect to the SAP, prepare written reports on progress and achievements [intervals must be not less than one a year] and provide copies of the report to the State Crisis and Resilience Council and the Inspector General for Emergency Management.

Section 20(b) of the current Act – Other powers and duties of the Secretary – *The Secretary shall prepare (b) plans works and plant for the establishment maintenance improvement and renewal of natural forests and plantations of indigenous and exotic trees and plants and for harvesting timber-crops and other forest produce and for the prevention and suppression of fires within fire protected areas.* (Authors' emphasis)

Comment. DELWP has the detailed knowledge, rather than the Emergency Management Commissioner of what should be in a Strategic Action Plan with respect to forested public land. Secretary must have the responsibility to devise applicable work programs that give effect to the SAP in consultation with the EMC. Should there be any dispute, this should be referred to the State Crisis and Resilience Council whose ruling shall be final. A similar requirement should also apply to section 61E.

61F Compliance with incident management operating procedures

The Secretary must comply with any incident management operating procedures.

Note: The Secretary/CFO should also be required to identify, record and report to the Inspector General for Emergency Management, immediately after each major fire, where the Chief Fire Officer has identified that incident procedures have the potential to or are inhibiting effective and efficient forest fire suppression.

Additional amendments recommended for inclusion in the current Forests Act –

61G Report on the costs of fire prevention, fire suppression, planned use of fire and damage and recovery from fire.

At the conclusion of a Class 1 or Class 2 forest fire on public land, the Secretary must report within 3 months to the Inspector General for Emergency Management on the total costs of fire prevention, fire suppression, planned use of fire and estimates of damage and recovery from fire, and provide a copy to the portfolio Minister.

² V131 as at 1 March 2019

Note: The IGEM operates independently of Emergency Management Victoria (EMV) the statutory body responsible for co-ordinating emergency management policy and the implementation of emergency management reform.

The responsibilities of the IGEM are described in section 64 of the *Emergency Management Act 2013*. V015 [as at 1 January 2020].

64 Functions of the Inspector-General for Emergency Management

- (1) The functions of the Inspector-General for Emergency Management are to—
- (a) develop and maintain a monitoring and assurance framework for emergency management, including outcome measures, against which the capacity, capability and performance of the emergency management sector is to be assessed; and
 - (b) undertake system-wide reviews, including reviewing the emergency management functions of responder agencies and Departments in relation to the monitoring and assurance framework; and
 - (ba) monitor and report to the Minister on the implementation of recommendations arising from reviews referred to in paragraph (b); and
 - (c) at the request of the Minister, provide advice to, or prepare a report for, the Minister on any matter relating to the functions of the Inspector-General for Emergency Management; and
 - (ca) at the request of the Minister, monitor and report to the Minister on the implementation of recommendations arising from reports referred to in paragraph (c) and from reports in relation to the emergency management sector in whole or in part; and
 - (d) evaluate state-wide training and exercising arrangements to maintain and strengthen emergency management capability; and
 - (e) monitor and report to the Minister on the implementation of the Strategic Action Plan by—
 - (i) responder agencies; and
 - (ii) Departments; and
 - (iii) the Emergency Services Telecommunications Authority; and
 - (iv) Emergency Management Victoria; and
 - (f) monitor and investigate the performance (in matters that are not financial matters) of the Emergency Services Telecommunications Authority in relation to the provision of services by the Emergency Services Telecommunications Authority to emergency services and other related services organisations; and
 - (g) make recommendations to the Minister about matters arising from any monitoring or investigation of the Emergency Services Telecommunications Authority; and
 - (ga) monitor, review and assess critical infrastructure resilience at a system level; and
 - (gb) monitor, review and assess emergency management planning at a system level undertaken in accordance with Part 6A; and
 - (h) perform any other functions conferred on the Inspector-General for Emergency Management by or under this or any other Act.
- (2) In making recommendations when performing functions under this section, the Inspector-General for Emergency Management must have regard to the resources that agencies have to implement the recommendations.
- (3) In performing the functions conferred on the Inspector-General for Emergency Management, the Inspector-General for Emergency Management may, subject to sections 65(1) and 67, consult with relevant stakeholders.
- (4) In performing the function of monitoring under this section in relation to recommendations or the Strategic Action Plan, the Inspector-General for Emergency Management may assess—
- (a) the progress of the relevant agency in implementing the recommendations or the Strategic Action Plan; and
 - (b) the effectiveness of the method used by the relevant agency in implementing the recommendations or the Strategic Action Plan; and
 - (c) the **efficacy**³ of the implemented recommendations or the Strategic Action Plan.

³ Authors' emphasis

Costs and benefits of fire prevention and suppression and recovery are a major measure of the effectiveness and efficiency [performance] of the responsible agency.

The parliament and the public must have comprehensive and transparent reporting on Victoria's preparedness and actions of the Secretary under Section 62(2)(a) and 62(2)(b) of the *Forests Act*.

Recommended change in organisational arrangement for the Inspector General for Emergency Management.

The independence of the IGEM must be paramount and safe guarded.

The State Crisis and Resilience Council [SCRC], is the peak body responsible for developing, co-ordinating and implementing policy and strategy across the emergency many spectrums and overseeing its implementation.

The Office of the IGEM should come out of the umbrella of the Department of Justice and be located in the Department of Premier and Cabinet.

The IGEM should report to the Chair of the State Crisis and Resilience Council to enhance its status and functions as the watchdog over one of the Government's core priorities to the community.