



Monday 9 September, 2019

The Hon Lily D'Ambrosio
Minister for Energy, Environment and Climate Change, Minister for Solar Homes

By email: lily.dambrosio@parliament.vic.gov.au

Re: Proposed changes to the Code of Practice for Timber Production

Dear Minister D'Ambrosio,

We are very concerned about changes proposed by your department for the Code of Practice for Timber Production (the Code), recently released for public comment.¹

¹ As at <https://engage.vic.gov.au/future-of-our-forests/code-of-practice>

For the reasons outlined below, we believe the process to amend the Code should be abandoned and the process started afresh in a manner which aligns with the intent of recommendations arising from the Independent Review of Timber Harvesting Regulation, and with the Department's response to that review, as well as with your intent, as Minister, for effective regulation of logging in publicly owned state forests.

The Department of Environment, Land, Water and Planning ('the Department') purports to be strengthening the protection of forests and wildlife: "to ensure that environmental, cultural and economic values of State forests are protected and enhanced for future generations".²

However the proposed changes to the Code take forest management in the opposite direction and are contrary to the stated objectives of the independent review you commissioned into the capabilities of DELWP as regulator of logging, last year.

We understand from discussions with the Department,³ and from the materials released for consultation, that the impetus for this review of the Code is recommendation 10 from the Independent Review of Timber Harvesting Regulation. The Department's response to that recommendation is as follows:

DELWP will pursue a variation to the Code to correct errors and ambiguities, and to incorporate new environmental protections, such as for large trees. This will include a public consultation process. As part of this process, DELWP will engage with stakeholders to develop a common understanding on the Code.⁴

However the proposed revisions to the Code go much further than this recommendation and concerningly include wholesale deletion of key provisions.

There has been none of the promised public consultation to develop a common understanding and the reforms proposed indicate that the Department has seized the recommendation as an opportunity to strip away key protections contained in the Code as they relate to the Department.

In particular, the proposed changes **remove all landscape based threatened species and ecosystem protections on public land**,⁵ including long-standing iconic Victorian

² <https://engage.vic.gov.au/future-of-our-forests/code-of-practice>

³ Including in particular in a meeting with senior DELWP staff and key eNGO stakeholders in April, 2019.

⁴

https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0022/414166/DELWP-Response-to-the-Independent-Review-of-Timber-Harvesting-Regulation.pdf at page 11

⁵ In particular Mandatory actions for Long-term forest management planning at s 2.1.1.1 of [the Code](#); and all "Fixed Zoning" or "Fixed FMZ Rules" in parts 2.1, 3.1, 3.2, 3.3, 4.1, 4.2, 4.4, 4.6, 5.1.2-5.1.3, 6.2-6.3, 7.1.1 and Tables 3, 8 & 10 of [the Planning Standards](#).

environment protections such as requirements to reserve minimum areas of old growth forest across regions,⁶ protect high quality habitat across the landscape for keystone threatened species such as Powerful, Sooty and Masked Owls and Leadbeater's Possum,⁷ and protect Victorian ecosystems that are endangered.⁸

The proposed changes appear designed to remove from the Code **each and every requirement upon your Department to conserve habitat for threatened species and high conservation value ecosystems on public land**, leaving only the small protections that VicForests applies to individual species or features detected in logging coupes. It is only your Department that is empowered to, and required (under the current Code) to maintain the broader habitat and ecosystem protections at the landscape scale via its control of forest management zones, which VicForests has no power to manage.

These habitat and ecosystem rules are critical to the legally effective protection of forest wildlife and habitats and the integrity of our reserve system. Yet in total, **the proposed revision deletes from the Code more than 400 specific protection rules** that currently apply to conserve Victoria's threatened fauna habitat, ecosystems, historic and recreation sites across the landscape.

Such an attack on Victorian environment law is unprecedented in the last two decades and the characterisation of these changes as "improving regulatory certainty" or addressing "administrative errors" is misleading and urgently requires refinement.

It is unfathomable that in the midst of a global extinction crisis, where more Victorian species are at risk of extinction and less old growth forests remain than at any point in recorded history, your government would proceed with these changes.

In April 2019, senior staff at DELWP and the Wilderness Society met regarding proposed forest law reform. In that meeting the Wilderness Society was very clear that there has not ever been changes made to the Code that have improved the situation for the environment.

This situation regrettably continues, with the proposed changes resulting in serious weakening of the Code at a time when protections for the environment need strengthening more than ever before.⁹

⁶ [Planning Standards](#), s 4.6.3.3, 4.6.3.4, 4.6.4.4, 4.6.4.5, 4.6.5.2

⁷ Planning Standards Table 3 Fixed FMZ Rules for Powerful, Sooty and Masked Owls and Leadbeater's Possum pp.21-26.

⁸ Planning Standards s 4.6.2

⁹ As at

<https://www.un.org/en/climatechange/>

<http://www.fao.org/forestry/climatechange/53459/en/>

<https://www.iucn.org/resources/issues-briefs/forests-and-climate-change>

<https://esajournals.onlinelibrary.wiley.com/doi/full/10.1890/ES14-00051.1>

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0139640>

In the wider context of Regional Forest Agreement (RFA) ‘modernisation’ program, in which governments intend to continue the logging industry’s exemption from national environment law, the strength of the state’s forest management system is imperative.

It is concerning that while at the same time that RFAs are being renegotiated—and the industry’s exemption from national environmental laws is proposed to continue—moves are afoot to weaken environmental protections in the state’s forest management system currently accredited under the RFAs, and likely the system to continue to be accredited into the future.

Practically, the effect of the proposed changes to the Code will be to remove from the Code requirements that your Department protect certain threatened species habitat, old growth forests and endangered ecosystems.

Your Department describes the rules proposed for removal as “non-enforceable protections” that were in other documents and consolidated into the Code.¹⁰

Yet one such protection, for old growth forests in East Gippsland, is currently the subject of a Supreme Court proceeding alleging non-compliance by your Department with that mandatory rule (the trial has concluded and judgment is pending).

Your Department’s position in that proceeding is that the other documents where those rules sit (namely, Forest Management Plans) do not require your Department to do anything and do not contain any mandatory requirements at all. While your Department says that the protections being removed from the Code ‘have historically been undertaken, established and maintained to protect important forest values’, it is precisely their removal from the Code now that is likely to result in such protections not being maintained from here on. Your Department says these protections are ‘forest management zoning directions from a point in time’ that now ‘create confusion’. Yet there is no proposal to update, strengthen and improve these directions—there is simply a proposal to wholesale delete the existing rules.

Whilst there may be a case for clarifying the Code, as was recommended by the independent reviewers you commissioned in 2018, long-standing concerns as articulated by forest conservation groups, scientists and lawyers have in the main instead centred around:

- **ineffective compliance and enforcement** of the Code, in line with legal requirements, and indeed with community expectations, and also around
- **strengthening** of the Code to ensure high conservation values are not threatened or destroyed by State government logging operations, and in light of current science

¹⁰ Via the Planning Standards, See Code Update FAQ 14.

(most such rules were drafted in the mid-nineties and have not been reviewed in substance since despite ongoing declines).

We are gravely concerned that the changes you are overseeing do not strengthen the Code—and in fact drastically weaken it.

Additionally, despite the recent, and welcome, creation of the Office of Conservation Regulation (OCR), there is yet to be substantive improvements regarding the effective enforcement of the Code. If there is improvement in regards to enforcement, it may be for naught if the Code is weakened.

DELWP states that in line with the review you commissioned in 2018, that the goals of this first raft of proposed changes to the Code are to make changes to it such that it is:

- Clear: easier to understand for the community.
- Accurate: free of administrative errors.
- Enforceable: can be used more effectively for compliance activities.¹¹

Minister, you do not need to weaken protections for forests and wildlife in order to make the Code clearer and more easily understood by the community.

Neither do you need to weaken protections for forests and wildlife in order to tidy up administrative errors.

A number of us will be writing to you separately about the consequences of the loss of other key provisions, such as the removal of all the mandatory long-term planning provisions that currently sit in Section 2.1.

We are shocked and bewildered at the direction in which the Code review is headed, given your repeated assurances that it is not your desire to weaken forest and wildlife protections. We do not believe that this is the legacy you intend.

We are gravely concerned about the proposed changes and urge you to withdraw them immediately and instead commence in good-faith a process of strengthening the Code in line with the recommendations of the inquiry and in consultation with key stakeholders.

Further to requests already made, we reiterate our request for an urgent meeting with you to discuss these concerns in person, particularly given the short timeframe in which the proposed changes appear to be progressing.

¹¹ As at <https://engage.vic.gov.au/future-of-our-forests/code-of-practice>

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Amelia Young', written in a cursive style.

Amelia Young
Victorian Campaigns Manager
The Wilderness Society

On behalf of:

Victorian National Parks Association
Gippsland Environment Group
Wildlife of the Central Highlands (WOTCH)
Environment East Gippsland
Lawyers For Forests
Rubicon Forest Protection Group
Goongerah Environment Centre (GECO)
Save Our Strathbogie Forest
Friends of Leadbeater's Possum
Healesville Environment Watch Inc.
Environment Victoria
East Gippsland Rainforest Conservation Management Network
MyEnvironment