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Dear Code Review Team,

Thank you for the opportunity to submit our preliminary comments on the Department of Environment, Land, Water and Planning's (DELWP's) proposed comprehensive review and amendments to the *Code of Practice for Timber Production 2014 (as amended 2022)* (the **Code**).

We note the review is in its early stages and no proposed amendments have yet been circulated. We welcome the opportunity to provide high-level submissions at this stage as to principles which ought to guide the content of prescriptions in the new Code, particularly those for species listed under the *Flora and Fauna Guarantee Act 1988* (Vic) (the **FFG Act**). Many points made here were also discussed in Environmental Justice Australia's meeting with the Code Review Team in May 2022.

The required standard of protection to which the prescriptions must be directed

DELWP, and the Minister, are responsible for the recovery and improvement in the wild of all Victorian flora and fauna: FFG Act s4, s7. That is, not only arresting, but *reversing the decline* of threatened species. Accordingly, the prescriptions in the Code must be directed to achieving *the recovery and improvement in the wild* of all threatened species that occur within areas to which the Code applies. Prescriptions directed to maintaining present rates of decline of threatened species, or even halting current rates of decline, are inadequate and do not meet the required standard.

It is not DELWP, or the Minister's, role to administer the managed decline toward predicted extinction of threatened species. Yet, the declining conservation status of many forest-dwelling species, with timber harvesting identified as a current, major threat or very high risk to those species,¹ confirms that current prescriptions in the Code are in fact administering their managed decline. The comprehensive

¹ By way of example, Yellow-bellied Glider [Conservation Advice](#), p16; Greater Glider [Conservation Advice](#), p17; Leadbeater's Possum [Conservation Advice](#), p5.

Code review provides a welcome opportunity to ensure that prescriptions are strengthened to meet the legislatively required standard.

Species whose conservation status has either failed to improve since listing, or has worsened, necessarily require far more protective prescriptions to achieve the required standard.

Certain activities are manifestly inconsistent with achieving the recovery of a threatened species, such as killing them. A prescription cannot be said to assist the recovery of a threatened species and improve it in the wild if it permits them to be killed in the wild, nor if it permits destruction of occupied habitat. For many species, where habitat is a limiting factor, prescriptions will not promote species recovery even if it protects individuals or known occupied habitat, yet fails to protect other important habitat. That is so, for example, for Leadbeater's Possum² and for Yellow-bellied Glider.³

Yet, for species such as the Greater Glider, it is known that "gliders usually die if all or most of their home range is intensively logged".⁴ Coupes are regularly planned for intensive logging⁵ at the precise locations where Greater Gliders are recorded. An example of this is Hole coupe (467-506-0006, in the Central Highlands). This is one of hundreds of coupes that VicForests has planned, or is planning, for intensive logging within the harvest area containing Greater Glider records, yet which is said to apply current prescriptions for that species (40% basal area retention). It is also one of tens of coupes that VicForests has planned for logging with Yellow-bellied Glider records within the harvest area, yet which is said to comply with current prescription for that species (which only has a prescription applicable in East Gippsland, and then, only if an exceptionally high density of the species is detected).⁶

Similarly, for many plant species current prescriptions are either interpreted or applied in a such a way as to allow those plants to be killed by being logged, bulldozed or burned in post-logging burns. The Tree Geebung is one example of many. Killing Tree Geebungs in logging coupes is manifestly inconsistent with promoting the recovery and improvement in the wild of that species.

For Leadbeater's Possum, logging applying all current prescriptions is adversely affecting the species' critical habitat. It also modifies, destroys, removes and/or decreases the availability or quality of Leadbeater's Possum habitat to the extent that the species is likely to decline, and it actively *interferes* with its recovery.⁷ Self-evidently, such prescriptions must be significantly strengthened to meet the required standard.

² Woinarski, J. (2019), [Expert report in Federal Court of Australia Proceeding Friends or Leadbeater's Possums Inc v VicForests VID1228/2017](#), p 22-23 at [79]-[83].

³ [Conservation Advice for *Petaurus australis* Yellow-bellied Glider 2 March 2022](#), p8-9.

⁴ Flora and Fauna Guarantee Scientific Advisory Committee Final Recommendation on a nomination for listing *Petauroides volans* Greater Glider 16 March 2017

⁵ Intensive logging includes VicForests silvicultural methods clearfelling, seed tree retention, variable retention 1 and variation retention 2, all being even-aged silviculture methods with substantively similar effects on species such as Greater Glider. [Joint Expert Report of Dr Smith and Dr Nitschke in Supreme Court proceeding WOTCH Inc v VicForests SECI 2020 00373](#), p3-4.

⁶ *Code of Practice for Timber Production 2022: Schedule 1 Management Standards and Procedures*, p78, aside from prescriptions applicable in Otways and Portland-Horsham where timber harvesting no longer, or rarely, occurs on public land.

⁷ Woinarski, J. (2019), [Expert report in Federal Court of Australia Proceeding Friends or Leadbeater's Possums Inc v VicForests VID1228/2017](#), [60]-[68]; *Friends of Leadbeater's Possum Inc v VicForests (No 4)* [2020] FCA 704 [1348] – [1432], especially [1431] – [1432].

What should be considered in order to determine prescriptions that meet the required standard?

The starting point to determine what prescriptions are necessary to recover a threatened species is their current rate of decline. As Professor Woinarski noted in his careful review of DELWP's Threatened Species and Communities Risk Assessment (the **TSCRA**):⁸

I have some reservations about the approach and its implementation. Little or no consideration appears to have been given to existing population trends. Monitoring indicates that at least some Victorian forest-dependent threatened species are undergoing rapid decline (Lindenmayer et al. 2020): self-evidently for such species, the existing protective and other mechanisms are inadequate to maintain existing populations, let alone ensure recovery. Where known, information about population trends should have been foundational for any risk assessment that aims to evaluate whether existing management mechanisms are working effectively, or whether instead 'additional interim or permanent protections and management actions are necessary'. The risk environment for a species experiencing ongoing rapid population loss is very different to, and merits more prioritisation than, that of a species with stable population.

...

The problem is that the risk assessment process doesn't provide a numerical evaluation, for any species, of the extent to which current settings impair population viability or the extent to which any proposed actions would improve the conservation outlook (it is not clear for example, whether proposed additional interim actions are achievable or can be relied upon to work); or allow for explicit prioritisation across species in need for additional interim protection.

...

However, no threshold, or step in the risk assessment process, is provided to discriminate between additional actions that may be beneficial vis-à-vis those that are necessary. Little or no information is given on existing population trends, which is a shortcoming, as such data would provide more robust evidence on the extent to which existing protections and management actions are sufficient or need to be augmented.

It is critical that the current comprehensive Code review address this deficiency in the TSCRA, and not merely proceed to apply the interim protection measures that resulted from the process that suffered this identified defect.

Second, cumulative impacts of past together with current and future logging. This might include, but is not limited to, considering the Final Recommendations by the Flora and Fauna Guarantee Scientific Advisory Committee on the species' nomination for listing, and the species Commonwealth Conservation Advice. For example, this year the Commonwealth found timber harvesting is a "major" threat and "very high risk" to the Greater Glider with an almost certain likelihood to occur.⁹ Last year,

⁸ Woinarski, J. (25 September 2020), [Independent review of the Regional Forest Agreements 'Threatened species and communities risk assessment'](#), published by DELWP, p4-5.

⁹ As above, n1.

the Commonwealth found that timber harvesting is a “major” threat and “very high risk” to the Yellow-bellied Glider with an almost certain likelihood to occur.¹⁰

Prescriptions informed by a consideration of the threat or impact of current or future logging, in isolation from the loss of habitat and populations due to the cumulative effect of past logging, will fail to develop prescriptions that achieve recovery and improvement in the wild of forest-dwelling species.

Third, bushfire impacts, including cumulative impacts of recent repeat, extensive fire, coupled with historic logging, and planned future logging. It is not apparent that the TSCRA and resulting interim protections considered cumulative impacts of historic logging, let alone those coupled with repeat bushfire. If not, that is another reason that merely applying the interim protection measures on a permanent basis would not achieve the required standard.

It is critical to consider the Commonwealth bushfire response information and identified management responses required, in particular bushfire information and conservation and recovery actions that have been incorporated into Conservation Advices updated post-bushfire.¹¹

Fourth, the stated conservation and recovery actions in Conservation Advices, Recovery Plans, and recommendations on nominations for listing species. For example, the recent Greater Glider Conservation Advice states:¹²

In the aftermath of bushfires, protect any unburnt habitat (within or adjacent to recently burnt landscapes) in order to support population recovery. This includes, but is not limited to: ... Areas identified to be important post-fire refuges.

Establish, maintain and enforce effective prescriptions in production forests to support populations of the greater glider (southern and central). This includes, but is not limited to: appropriate levels of habitat retention, timber harvesting exclusion and timber harvesting rotation cycles; maintenance of wildlife corridors between harvested patches; maintenance of vegetation buffers around habitat patches excluded from harvesting; protection of existing hollow-bearing trees with appropriate buffers; adequate recruitment of hollow-bearing trees; maintaining preferred food tree species as dominant canopy trees; and minimal use and adequate containment of regeneration burns. Clearfelling should be avoided, as well as timber harvesting in climate or post-fire refuges.

Protect all habitat likely to be climate change refuges, including sites buffered against desiccating conditions (e.g. sheltered and/or on south-facing aspects), under future climate change scenarios. Where possible, maintain or establish connectivity with other habitat in order to facilitate movement.

For all species, Code prescriptions must be determined that achieve each of the conservation and recovery actions in its Conservation Advice, being the actions found by the Commonwealth Threatened Species Scientific Committee and the Commonwealth Minister to be required for the species’

¹⁰ As above, n1.

¹¹ For example, see [Greater Glider Conservation Advice](#) p18-19, 42-46; [Yellow-bellied Glider conservation advice](#) pp18, 36-39.

¹² [Greater Glider Conservation Advice](#) p18-19.

persistence and recovery. For species with very recent Conservation Advices, this is even more critical. In this respect, it is notable that the Greater Glider Conservation Advice was published in July 2022 upon its listing as Endangered, and for the Yellow-bellied Glider in March 2022 upon its first listing.

Fifth, the literature or further information prepared by highly-qualified scientists from the Scientific Advisory Committee (**SAC**) or Arthur Rylah Institute (**ARI**), and the subject of independent review. This is important in particular for species without recent Conservation Advices, or where further specificity is required to determine the prescriptions that would meet the conservation and recovery actions in a Conservation Advice.

For example, for the Yellow-bellied Glider, the Conservation Advice first identifies, with specificity, the characteristics of habitat critical to the survival of that species, as including:¹³

- large contiguous areas of floristically diverse eucalypt forest, which are dominated by winter-flowering and smooth-barked eucalypts, including mature living hollow-bearing trees and sap trees (see Appendix A);
- areas identified as refuges under future climate change scenarios;
- short or long-term post-fire refuges (i.e., unburnt habitat within or adjacent to recently burnt landscapes) that allow the species to persist, recover and recolonise burnt areas;
- ...
- areas in which some trees have evidence of use for sap extraction by yellow-bellied glider (south-eastern).

It then states:¹⁴

Habitat meeting any one of the criteria above is considered habitat critical to the survival of the yellow-bellied glider (south-eastern), irrespective of the abundance or density of the species or the perceived quality of the site. Forest areas currently unoccupied by the yellow-bellied glider (south-eastern) may still represent habitat critical to survival, if the recruitment of hollow-bearing trees in the future could allow the species to colonise these areas and ensure persistence of a population. **Whenever possible, habitat critical to the survival of the species should not be destroyed or modified.**

It is apparent that Code prescriptions for the Yellow-bellied Glider must protect all habitat falling within the above identified criteria. Some, such as “areas in which some trees have evidence of use for sap extraction by yellow-bellied glider (south-eastern)” and “short or long-term post-fire refuges (i.e., unburnt habitat within or adjacent to recently burnt landscapes)” are capable of direct application as a prescription. Limited expert scientific input may be required, for example, to identify the buffer on burnt areas that ought be protected as “adjacent”, and to clarify which low fire severity classes constitute ‘unburnt’ within fire areas. Others, such as “areas identified as refuges under future climate change scenarios” (necessary for both the Greater and Yellow-bellied Glider) will require highly-qualified

¹³ [Yellow-bellied Glider conservation advice](#) p8.

¹⁴ [Yellow-bellied Glider conservation advice](#) p8.

scientists to map the refuge areas, including by reference to current literature¹⁵, and with independent review, for protection by prescription.

Similar situations arise for other species with stated conservation and recovery actions in Conservation Advices.

It is of note that DELWP committed to working to identify refuges as part of its bushfire biodiversity response.¹⁶ That response identifies the importance of protecting refuges. Such work is a valuable input to informing prescriptions in the new Code, including to achieve conservation and recovery actions in Conservation Advices for fire-affected species. All species identified by the State or Commonwealth as priority species for targeted management as a result of the black summer bushfires require protection of refuge habitat, including via prescription in the new Code, and irrespective of whether work has concluded to prepare a post-bushfire Conservation Advice for the species.

The literature and further information prepared by highly-qualified scientists from SAC or ARI, and the subject of independent review, is also of critical importance for prescriptions:

- directed to appropriate silviculture techniques, in this regard it is apparent from the literature that Mixed Species Forests in Victoria ought not be the subject of even-aged silvicultural techniques (clear-felling, seed-tree retention, variable retention 1 or 2), because Mixed-species Forests do not naturally occur in even-aged stands and silvicultural techniques must mimic ecological processes to avert permanent conversion.¹⁷ On the same ecological basis, for Ash forests, no more than one third of each coupe should be subjected to even-aged silviculture.¹⁸ The Code must be modernised to reflect the weight of scientific opinion in this respect and only permit single tree selection or small group selection harvesting in Mixed Species forests, and no more than one-third even-aged silviculture in Ash;
- protection of Ecological Vegetation Classes and important or rare forest types which may not be the subject of listing because they do not fall within the definition of an taxa or community;
- that actually achieve protection of old growth forest, based on the ecological features of that forest. The definition of old growth forest as currently applied is far too narrow to protect the overwhelming majority of ecological old growth forest, as understood by the weight of scientific opinion (and, even narrower than the source materials and assessments informing the first RFAs and Forest Management Plans). The exceptionally narrow definition of old growth forest that is applied has resulted in no, or minute, protection actually occurring on the ground as a result of the government's commitment to protect old growth forest, despite the government stating that 90,000ha would be protected by that announcement. Plainly,

¹⁵ By way of example only, see Wagner, B., et al, 2020, 'Climate change drives habitat contraction of a nocturnal arboreal marsupial at its physiological limits', *Ecosphere*, 11(10), p13 Figure 4, which maps a refuge area for Greater Glider under climate change scenarios.

¹⁶ [Victoria's bushfire emergency: biodiversity response and recovery Version 2 August 2020](#), p72-73.

¹⁷ Smith, A., 2019, [Second Expert report in Federal Court of Australia Proceeding Friends or Leadbeater's Possums Inc v VicForests VID1228/2017](#), p4-6; [First Expert report in Federal Court of Australia Proceeding Friends or Leadbeater's Possums Inc v VicForests VID1228/2017](#), p 18, 24-25, 46; [Joint Expert Report of Dr Smith and Dr Nitschke in Supreme Court proceeding WOTCH Inc v VicForests SECI 2020 00373](#), p3-4.

¹⁸ [Joint Expert Report of Dr Smith and Dr Nitschke in Supreme Court proceeding WOTCH Inc v VicForests SECI 2020 00373](#), p3-4.

Code prescriptions must be strengthened so that this commitment actually protects forest with ecological old growth features in the real world, not just on paper.

What outcome, on the ground, must the prescriptions achieve?

Prescriptions should continue to protect both sufficient areas of important habitat on a 'quota basis' across the landscape¹⁹ and detections of both individuals and specified habitat types in coupes. *Both* require strengthening having regard to current information, and to achieve the standard of recovery. For all species, prescriptions must, at a bare minimum, protect all individuals, habitat critical to the survival of the species²⁰ and fire and climate refuges.

For many species, the area-based prescription does not exist at all, and needs to be developed alongside a detection-based prescription, in light of the matters to be considered above and directed to achieving species recovery.

It is notable that for species such as large forest owls, there are known deficiencies in the achievement of the area-based prescription. There are both too few Owl Management Areas and many that do exist have had their habitat value severely compromised by bushfire, some by repeat fire in short succession.

There must be both improved prescriptions (both area and detection-based), and strict adherence to both to ensure the prescriptions on paper actually confer the required protection on the ground.

On the ground in the forest under a new modernised Code, forest-dwelling species should persist and improve in the wild, retain their capacity to adapt to environmental change, recover so their conservation status improves, and biodiversity should be protected, conserved, restored and enhanced.²¹

Please direct any questions or response in relation to this submission to Natalie Hogan, Lawyer at Environmental Justice Australia, at Natalie.hogan@envirojustice.org.au.

Yours faithfully



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¹⁹ Such as, for Owls POMAS, SOMAs, MOMAs, or for Leadbeater's Possum, the Leadbeater's Possum habitat SPZ system applied to certain forest types within its range.

²⁰ For Leadbeater's Possum in this regard, see, for example, Woinarski, J. (2019), [Expert report in Federal Court of Australia Proceeding Friends or Leadbeater's Possums Inc v VicForests VID1228/2017](#), p 22-23 at [77]-[83]. See also at [58(d)], and [60]-[68].

²¹ *Flora and Fauna Guarantee Act 1988*, s4.