



Committee Secretary
Senate Standing Committees on Environment and Communications
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19 March 2021

Dear Standing Committee members,

**Re: Environment Protection and Biodiversity Conservation Amendment
(Regional Forest Agreements) Bill 2020**

Thank you for the opportunity to make a submission on an issue of great importance to our group. Friends of Leadbeater's Possum Inc. is, of course, the Applicant in the case successfully taken in the Federal Court to which this bill seeks to respond.

Friends of Leadbeater's Possum Inc. is a community ENGO based in Healesville, Victoria. We conduct field activities such as stag-watching, nest-box provision and placement, supplementary feeding and habitat regeneration and identification, as well as education and advocacy. Our group, whilst advocating primarily for Leadbeater's Possum, sees it as a "flagship" species. Decline in its habitat is decline in an entire ecosystem and affects all the other species that rely on the forest for survival, including listed threatened species such as the Greater Glider.

Leadbeater's Possum was described by Frederick McCoy in 1867, on the basis of two skins collected in swamp forests in the Bass River area of West Gippsland. Over the next few decades only a few additional specimens were identified and the forests in which they were found were drained and cleared. By 1921 all known habitat was lost and the species was assumed extinct.

In spite of extensive searches in the 1930s and 1940s, it was not until 1961 that the species was rediscovered by Eric Wilkinson in Mountain Ash (*Eucalyptus regnans*) forest at Cambarville and Tommy's Bend, near Marysville in the Victorian Central Highlands. Since then it has been found to be patchily distributed in montane Ash (*E. regnans*, *E. delegatensis* and *E. nitens*) forests in the same general area¹. Smaller populations have also been found in the remnant Sedge-rich *Eucalyptus camphora* Swamp at Yellingbo in the Yarra Valley (1986) and in sub-Alpine Snow Gum (*E. pauciflora*) areas (1995). The former, a Genetically Distinct and Significant population, appears to be the last representative of the original Gippsland swamp forest population, as described in 1867.

¹ The mountain ash forest ecosystem of the Central Highlands has itself been assessed as Critically endangered on IUCN criteria (Burns *et al.*, **Ecosystem assessment of mountain ash forest in the Central Highlands of Victoria, south eastern Australia**, Austral Ecology 2014)

The species has not been widespread or numerous in historic times and has one of the most restricted ranges (appx. 70kms x 80kms) of Australian native mammals. It is the only mammal endemic to Victoria and in 1971 was proclaimed the state's faunal emblem. It was included on Schedule 1 as "Endangered" under the Endangered Species Protection Act 1992 and was transferred under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

In 1995 an Action Statement was published under the Victorian Flora and Fauna Guarantee Act 1988 and it was adapted as the federal Recovery Plan two years later (1997). The Overall Objective of the Recovery Plan was "to downlist Leadbeater's Possum from endangered to vulnerable within 10 years."² The first Specific Objective of the Recovery Plan was the establishment of a permanent reserve system and the first "Recovery Action" was to set up a Recovery Team.

It was not until October 2008 that the Leadbeater's Possum Reserve System was finally announced, after a decade of difficult negotiation with the native forest logging industry. Barely three months later, in February 2009, the Black Saturday bushfires burned through 35% of the species' range and 45% of the dedicated reserve. The entire population on the sub-Alpine Lake Mountain plateau, only discovered in 1995, was destroyed and it is estimated that around half the population was lost overall.

In 2012 Professor David Lindenmayer (ANU) and Dr Dan Harley (Zoos Victoria), the two leading authorities on the species applied for it to be listed as "Critically endangered". The Threatened Species Scientific Committee (TSSC) ultimately supported the application and in April 2015 Minister Greg Hunt announced the uplisting. In describing the Committee's advice as "clear and unequivocal", Minister Hunt confirmed the ongoing decline in the population and conservation status of the possum. A few months later the Minister announced a Threatened Species Strategy with Leadbeater's Possum identified as a species requiring "emergency intervention". An Action Plan was formulated which promised "A revised Recovery Plan will be completed by mid 2016, driving action to turn around the decline of the Leadbeater's Possum".

Progress on the Recovery Plan was halted following intervention by a logging industry group, the Australian Forest Products Association (AFPA), demanding review of the species' conservation status. Lacking scientific merit, this application was ultimately rejected by the TSSC and the Critically Endangered status of *Gymnobelideus* was confirmed by Minister Sussan Ley on 22 June 2019. However, as at the current date, the revised Recovery Plan has still not been released.

The decline of Leadbeater's Possum continues. The species is now listed in the top 10 mammals in the world requiring conservation intervention³ and the 7th Australian mammal most in danger of extinction within twenty years⁴.

In recommending the listing of Leadbeater's Possum as Critically Endangered in 2014, the TSSC also advised –

the most effective way to prevent further decline and rebuild the population of Leadbeater's

² In fact 20 years later, in 2015, Leadbeater's Possum was uplisted to Critically endangered – a clear indication that existing legislation, regulations and prescriptions were failing.

³ Zoological Society of London EDGE of Existence list - <https://www.edgeofexistence.org/species/species-category/mammals/search-species/gymnobelideus/>

⁴ Geyle *et al.*, **Quantifying extinction risk and forecasting the number of impending Australian bird and mammal extinctions**, Pacific Conservation Biology, 20 April 2018

possum is to cease timber harvesting within montane ash forests of the Central Highlands.

To date, this advice has been ignored and logging of the ash forests by the state-owned corporation, VicForests, continues to destroy critical habitat.

Over the years, Friends of Leadbeater's Possum has commented on VicForests' proposed amendments to Timber Release Plans (TRPs), we played an active role in the Forest Industry Taskforce and we applied to the Minister for an Interim Conservation Order. None of these attempts to engage with industry and government has produced tangible results.

Regrettably, in 2017, we felt the only remaining option was to initiate a legal challenge to the ongoing unsustainable logging of Leadbeater's possum's critical forest habitat. This was not a "radical" act but one of desperation. Our case in the Federal Court, Friends of Leadbeater's Possum Inc. -v- VicForests, was heard in June 2019 with Judgment delivered on 27 May 2020⁵ and Final Orders pronounced on 24 August 2020.⁶

Our evidence revealed, among other things, that VicForests' ongoing logging is having, and will have, a Significant Impact on Leadbeater's Possum and Greater Gliders, both Federally listed threatened species.

In her second reading speech, Senator McKenzie explains that her Bill will make it "explicitly clear" that "compliance matters are to be dealt with through the state regulatory framework". We consider that this amounts to nothing less than abrogation of the Commonwealth's duty to protect Matters of National Environmental Significance (MNES).

The speech argues that "it would be completely impractical" to have "forestry operations cease to be covered by the exemption from Part 3 of the EPBC Act" because of "rare, minor breaches". In fact the breaches identified by Justice Mortimer were neither rare nor minor. Breaches were found to have occurred, or be likely to occur, in every one of the 66 impugned coupes and to have had, or be likely to have, Significant Impact on federally listed threatened species.⁷

Senator McKenzie claims "All of Australia's commercial forest operations covered by RFAs are certified compliant with world's best sustainable forest management practices". This is clearly not true. VicForests has repeatedly failed over many years to obtain certification by the Forest Stewardship Council (FSC), which is widely accepted as the best and most credible standard.

In quoting employment statistics, the Senator deliberately conflates the native forest logging sector with the forestry industry as a whole. In fact, native forest logging is only a small part of the industry with most jobs being in the plantation sector which also produces the most fibre, the most timber and the most economic activity.

Senator McKenzie appears to include forestry in a category of "already strong industries". She talks about, "the economic success of this sustainable industry". These assertions are unfounded, at least in relation to the Victorian native forest sector. The Victorian native forest industry has been in

⁵ <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0704>

⁶ <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca1199>

These important documents are available on the Federal Court's website (as above) but, for the committee's convenience, are attached and form part of this submission.

⁷ See Table 14 of the May 2019 judgment.

decline for more than a decade, in terms of production, sales and employment. The economic performance of VicForests has been poor at best, with so little profit that in most years (11 out of 16), no dividend has been paid to the state treasury. In its most recent Annual Report (2019-20), VicForests declared a loss of more than \$7.5m⁸. This is not “economic success”. In 2019 the Victorian government publicly acknowledged that native forest logging is not sustainable⁹ and announced that it will stop by 2030¹⁰.

Senator McKenzie claims her Bill, “does nothing more than seek to remove uncertainty from the intersection of the EPBC Act and Regional Forest Agreements”. This uncertainty could equally be removed by repealing s 38 of the EPBC Act (and s 6(4) of the RFA Act), so that the industry would be in no doubt that it is required to comply with national environmental legislation as any other person or corporation operating in public forests is required to do.

The Explanatory Memorandum to this Bill, circulated on the authority of Senator McKenzie, quotes the Interim Report (June 2020) of the Independent Review of the EPBC Act (the Samuel Review):

The Commonwealth should retain the ability to intervene in project-level compliance and enforcement where egregious breaches are not being effectively enforced by the accredited party.” (page 55).

It appears that this is precisely what the current Bill seeks to avoid.

The final Report of the Samuel Review goes further:

The Review considers that Commonwealth oversight of environmental protections under RFAs is insufficient and immediate reform is needed. The National Environmental Standard for MNES should be immediately applied and RFAs should be subject to robust Commonwealth oversight.” (page 107)

It is clear that the current Bill seeks to remove any Commonwealth oversight which is already insufficient. It is the opposite of the immediate reform Professor Samuel found is needed.

Friends of Leadbeater’s Possum considers that this Bill is misconceived. It is intended to undermine the operation of the Environment Protection and Biodiversity Conservation Act, to make the native forest logging industry unanswerable to the Commonwealth and to negate the Commonwealth’s obligation to protect matters of Environmental Significance where they occur in native forests subject to logging. As such, it should not be supported.

Yours faithfully,

Steve Meacher
President

⁸ See attached compilation of figures from VicForests’ published Annual Reports

⁹ Native logging to end in 2030, The Weekly Times, 8 November 2019

¹⁰ Securing the future for forest industry workers, The Hon Dan Andrews MP, Media Release, 7 November 2019