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**To: THE SENATE STANDING COMMITTEE
ON ENVIRONMENT AND
COMMUNICATIONS**

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

Date of submission

19/03/2021

Dear Senate Standing Committee,

Thank you for the opportunity to make a submission regarding the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020. The Bill seeks to amend the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Regional Forest Agreements Act 2002*, to clarify that forestry operations covered by a Regional Forest Agreement are exempted from Part 3 of the EPBC Act.

Who is Warburton Environment?

Warburton Environment is based in the Upper Yarra region of the Central Highlands of Victoria. The organisation was incorporated in 2008 as a not-for-profit non-government community organisation dedicated to protecting the forests of the Central Highlands of Victoria.

Statement of Purpose

Facilitate links and networking, exchange and interaction within the community to support protection and restoration of ecosystems in the Central Highlands.

Provide a space and opportunity for refining and promoting the vision of, and transition to sustainable development – through all forms of learning and public awareness.

Develop strategies at every level in the community to strengthen capacity and action towards protection and restoration of ecosystems in the Central Highlands.

What are Warburton Environment's concerns with the proposed amendment?

Warburton Environment is greatly concerned on the impact this proposed amendment will have on the many threatened and endangered species that live in the forests of the Central Highlands and elsewhere in ecosystems across Australia.

The proposed amendment whereby the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Regional Forest Agreements Act 2002* will allow forestry operations covered by a Regional Forest Agreement to be exempted from Part 3 of the EPBC Act will result in acceleration of species decline and possible extinction.

In particular- we have concerns about EPBC Act Part 3, Subdivision C-Listed threatened species and communities clauses 18, 18A and 19.

This submission will focus on one of a species of particular concern to our group, the impact this exemption will have on the [IUCN Red list Critically Endangered Tree Geebung *Persoonia arborea*](#) which is found across a limited area in the wet sclerophyll Mountain Ash forests of this region.

The literature demonstrates that in three generations, this tree has had its population reduced by 80% - due primarily to logging and fire and is now critically endangered and at real risk of extinction.

This Bill if passed, will undoubtedly result in the Victorian Government state owned logging company, VicForests behaving in an even more cavalier manner than they already do regarding threatened and endangered species. The Victorian State Government Regulator, The Office of Conservation Regulation (OCR) has shown no appetite for enforcing any regulations or penalties on VicForests contractors despite multiple breaches of the Victorian Timber Code of Practice.

Protection of these species is not being enforced at the State level. If timber harvesting operations under the RFA are exempted from the EPBC Act Part 3 then there will be little hope for these threatened and endangered species as current regulation to protect them is not happening at the State level in any meaningful way.

As the Committee is no doubt aware, there are multiple court cases currently underway in Victoria against VicForests because of the ongoing destruction of habitat that is vital for the survival of these species. Grassroots community groups such as Warburton Environment are having to take action to challenge the lack of protection of threatened and endangered species that are being adversely impacted by timber harvesting operations across Victoria. This is predicated on strong scientific evidence that logging is having a major impact on species survival plus further studies that have found that post logging regrowth has higher flammability and increases risks to communities and the surrounding forests for decades after harvest.

The CFMMEU stated in a media release dated 09/12/20 that greens groups are waging "outrageous and disingenuous smear litigation to shut down timber communities". This in itself an outrageous claim as the litigation is to protect threatened and endangered species. Conservation groups are urging state governments to fast track transition for these workers. In Victoria the Andrews Labor government has earmarked a \$120 million dollar transition fund to aid timber workers and millowners to transition /retrain yet are not releasing the funds causing distress and uncertainty within the industry.

If there were adequate and enforced Environmental Protection Laws at State , Territory and Federal levels that actually protected the threatened and endangered species- litigation would not be necessary.

The need for **increased NOT decreased** protection is even more critical after millions of hectares of forested areas were destroyed by the Black Summer bushfires. In East Gippsland for example, 80% of the forests were impacted with much of the Greater Glider habitat destroyed leaving pockets of refugia in the Central Highlands some of the last intact habitat for these endangered creatures- the largest glider on the Earth. Yet these very forests are being heavily logged right now with no/inadequate buffers put in place and VicForests are only being held to account by Citizen scientists having to survey and detect these creatures in order to protect them. This same process is applied to protect Leadbeaters possums, Powerful owls, Sooty owls and Tree Geebung amongst other species.

THE IUCN REDLIST CRITICALLY ENDANGERED TREE GEEBUNG *Persoonia arborea*

1. Tree Geebung is a large shrub or small tree growing to a height of about twenty metres. It has alternate, oblanceolate and minutely hairy leaves to 10 centimetres long and 16 millimetres wide. It produces cream flowers in summer which develop into an ovoid drupe to about 14 millimetres long and 12 millimetres wide. The seed is encased within a hard seed coat and appears to have substantial longevity within the soil.
2. Large mature plants (19 to 21 centimetres diameter near the base of the trunk) have been aged using radiocarbon dating at between 170 to 510 years old with a radiocarbon age of 240 +/- a standard deviation of 60 (Mueck et al. 1996).¹
3. Plants thought to be up to about 150 years old will flower but only produce a small number of flowers each (i.e. tens of flowers per plant). Only relatively large specimens, thought to be older than 150 years old, flower prolifically (i.e. produce thousands of flowers per plant).
4. The plant is fire sensitive (i.e. is generally killed by bushfire) and is considered an obligate seed regenerator, with seeds stored in a soil seed bank. The longevity of the soil seed store is unknown, but given the difficulties experienced in getting seed to germinate and the prolific germination observed after a disturbance event, it is considered to persist for considerable periods of time, at least in the order of decades. Seedlings have been observed in association with soil disturbance (e.g. along tracks) and after fire.
5. The species is often associated with the margins of the ecological vegetation classes (EVC) Cool Temperate Rainforest (EVC 31) and Wet Forests (EVC 30).
6. Tree Geebung is endemic to the central highlands of Victoria.

Outcomes of logging on documented Tree Geebung

Warburton Environment has recently completed conducting a survey of outcomes in recently harvested coupes known to have contained Tree Geebung prior to harvesting (detections are from DELWPs Forest Protection Survey Program and Warburton Environments citizen scientist surveyors). Of 22 coupes surveyed to date, known to have contained 238 Tree Geebungs, 202 were killed (they

were no longer present), 19 damaged, and only 17 survived intact. A critically endangered tree that has been identified pre-harvest and is supposed to be protected has managed to still achieve a **death /damage rate of 93% with only 7% surviving intact or undamaged** after logging has occurred.

Most of the surviving trees are in one cut coupe called ‘Billowcase’ and are unprotected by any buffer. This coupe was incinerated last week as part of VicForests/ DELWP’s ‘regeneration burns’ and as stated earlier Tree Geebungs are very fire sensitive and are unlikely to survive the high intensity fires that are ignited with Flash 21 , a Napalm like accelerant to stimulate a bushfire. ³

Unfortunately, OCR’s regulation of VicForests’ compliance with the Tree Geebung management prescription and Cl 2.2.2.10 of the Code has been spectacularly unsuccessful to date.

Mandatory prescription in the ‘Management Standards and Procedures for timber harvesting operations in Victoria’s State Forests 2014’ (the Management Standards) is an incorporated document to the ‘Victorian Code of Practice for Timber Production 2014’ (the Code). Within Appendix 3 of the Management Standards the extract below depicts the management actions to be undertaken by VicForests when Tree Geebung specimens are identified within the field.

FMA	Common name	Scientific name	Management
Central Highlands FMAs	Tree Geebung	<i>Persoonia arborea</i>	Protect mature individuals from disturbance where possible.

Extract from the Management Standards, highlighting the Management actions for the threatened Tree Geebung within the Central Highlands FMAs.

Unlawful destruction of Tree Geebung specimens in the Federal Court

A ruling in the Federal Court of Australia on 27th May, 2020, by her Honour Justice Mortimer, found that the inadequacy of VicForests to both identify and protect mature Tree Geebung specimens within Victoria’s Central Highlands breached the Code under Clause 2.2.2.2 ‘The Precautionary Principle’.

Below are just some of the paragraphs taken directly from her Honour Justice Mortimer’s decision:

1188. Clause 4.3.1.1 of the Management Standards and Procedures requires VicForests to: [a]apply management actions for rare and threatened flora identified within areas affected by timber harvesting operations as outlined in Appendix 3 Table 14 (Rare or threatened flora prescriptions).

1189. For the Tree Geebung (*Persoonia arborea*), Table 14 provides that in the Central Highland region, VicForests is required to: protect mature individuals from disturbance where possible.

1196. It is clear, and I find, that VicForests failed to detect any Tree Geebungs, including Tree Geebung which could be described as “mature”, in its preparations for the harvesting of Skerry’s Reach. Instead, what happened was that a member of the public found them and reported them to DELWP and VicForests. That occurred once forestry operations in the coupe were already underway. This is an illustration of the inadequacy of VicForests’ surveys of coupes for all sorts of biodiversity values. This kind of evidence supports the conclusions I have reached on VicForests’ non-compliance with cl 2.2.2.2.

1197. I accept, as VicForests submits at [385] of its closing submissions, that the obligation in Table 14 is conditioned so that it applies “where possible”. I accept, as VicForests submits, that this “affords a degree of latitude, no doubt recognising there will be operational constraints on retention in some circumstances”. The problem for the application of that latitude here is that VicForests gave no evidence of any “operational constraints”. It gave no evidence of why the snig tracks, operationally, needed to destroy two Tree Geebung. It gave no evidence of what “operational constraints” led to the significant damage demonstrated in the videos and photographs. It gave no evidence about how those constraints were so unavoidable that damage to trees of this threatened flora species that take 100 years to reach maturity, and live for more than 400 years, was reasonably or practically unavoidable. Instead, the evidence shows VicForests did no surveys, was only alerted to the presence of the Tree Geebung because of Mr McKenzie’s work, and then, in my opinion, made half-hearted efforts to “protect” the detected trees, and failed in those efforts.

1198. I find VicForests did not comply with its obligations under cl 4.3 and Table 14 in respect of the Tree Geebung in Skerry’s Reach coupe. I reject VicForests’ brief argument about substantial compliance, on the basis that even if that is what is meant by the submissions I have referred to above, what occurred in Skerry’s Reach was not substantial compliance.⁴

Conclusions

The following conclusions have been made from the investigation of the status of the Tree Geebung specimens by Warburton Environment citizen scientists within the Central Highlands:

1. During the logging operations or the post-logging regeneration burn, the Tree Geebung specimens that had been both previously identified by the FPSP and the Warburton Environment survey teams, 85% had been completely destroyed (no evidence remained of their presence), 8% had been damaged and 7% are intact.
2. VicForests have failed to protect Tree Geebung specimens from disturbance, as per appendix 3 of the Management Standards, and have therefore breached the Victorian Code of Practice for Timber Production 2014.
3. OCR (DELWP) have failed on many occasions to regulate VicForests for their ongoing unlawful logging operations when it comes to the protection of the rare Tree Geebung (*Persoonia arborea*) within the Central Highlands Forest Management Areas.
4. The OCR needs to give VicForests clear directions to take urgent steps to identify the true number of Tree Geebung in a coupe prior to commencing harvest operations in any coupe located in the Wet Forests of the Central Highlands, and to retain an adequate vegetative buffer (ideally 50 metres) around each identified Tree Geebung.

Ultimately the amount of forest being logged must be limited with the expansion of protected areas. Expanding the size of protected areas has the benefits of increasing populations of large older trees, promoting biodiversity and eventually expanding the old-growth estate (where the risk of high-severity fire is reduced).⁵

If native forest logging is to continue, Warburton Environment strongly appeals for increased protection for these listed threatened and endangered species rather than relaxed regulation.

This proposed amendment will see a reduction in the current protective measures which given the ever increasing list of extinctions occurring in Australia, are patently inadequate. Our evidence has demonstrated that the Victorian logging agency is not complying with the current State code and the regulating body OCR is failing to act even when breaches are identified and reported.

Professor Graeme Samuel released his review of the EPBC Act on 27/01/21. His commentary was damning in that without urgent changes, much of Australia's unique threatened and endangered species will be driven to extinction as existing laws are failing. **Specific recommendations for reforms were made regarding strengthening national environmental standards that are to be legally binding on the states and territories. Furthermore, Prof. Samuel recommends these new standards are applied to existing Regional Forest Agreements (RFAs).**

The current laws are allowing ongoing destruction of threatened and endangered flora and fauna and Australia has already lost enough species. This proposed amendment is the absolute opposite of these recommendations and will only accelerate species extinction.

Is this the kind of legacy this Senate committee would like to be associated with by Australian voters?

Kind regards,

Karina Doughty, President

Nic Fox, Vice- President

Dr. Jenny Conway, Secretary

Warburton Environment agrees to our submission being made public and look forward to the findings of this inquiry.

References

1. Mueck S, Ough K and Banks JCG 1996. How old are Wet Forest understories? *Australian Journal of Ecology* 21(3), 345-348.
2. DEPI 2014. *Advisory List of Rare or Threatened Plants in Victoria – 2014*. Victorian Government Department of Environment and Primary Industries. East Melbourne, Victoria.
3. Response to Victoria's Air Quality Statement: The problem of industrial logging burns in state forests, Dr. Chris Taylor.
4. The Federal Court ruling from her Honour Justice Mortimer can be read in full at the following link: http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/704.html#_Ref27666326
5. Hidden collapse is driven by fire and logging in a socioecological forest ecosystem David B. Lindenmayer and Chloe Sato, The Australian National University, Canberra, ACT 2601, Australia. Edited by Alan Hastings, University of California, Davis, CA, and approved March 29, 2018.