



1 February 2012

Review of the Code of Forest Practice for Timber Production
Forests and Parks Division
The Department of Sustainability and Environment
East Melbourne Vic 3002 or

BY email: Forestry.Code@dse.vic.gov.au

- 1 This submission is made by Lawyers for Forests Inc ("**LFF**").
- 2 LFF is a not for profit organisation incorporated in October 2000. It is an association of voluntary legal professionals working towards the protection and conservation of Australia's remaining old growth and high conservation value forests.
- 3 LFF writes this submission in response to the Proposed Variation to the Code of Practice for Timber Production 2007¹ ("**the Review**").
- 4 In summary:
 - 4.1 The Review proposes amendments to the Code of Practice for Timber Production 2007 ("**the Code**").
 - 4.2 In particular, the amendments propose to give the Secretary to the Department of Sustainability and Environment ("**the Secretary**") the power to exempt logging operators from complying with Action Statements ("**Action Statements**") prepared under the Flora and Fauna Guarantee Act 1998 (Vic) ("**FFG Act**") ("**the Proposed FFG Act Exemption**"). In effect, the Review proposes to amend the Code to give the Secretary the power to approve the logging of endangered species habitat that would otherwise be protected.
 - 4.3 The Victorian Forest Management System (including the Code and the FFG Act) does not adequately protect Victoria's endangered species. For example,

¹ DSE, October 2011.

Action Statements have not been prepared for a significant proportion of Victoria's endangered species, and nor are they properly enforced.²

- 4.4 The operation of the Victorian Forest Management System was considered in detail by Justice Osborn in *Environment East Gippsland v Vicforests*³ (“**the EEG Case**”). Amongst other things his honour determined that:
- 4.4.1 Vicforests had not complied with the Long Footed Potoroo Action Statement in that the Action Statement called for a Special Management zone to be provided on detection of a Potoroo, yet none had been provided.
- 4.4.2 The Victorian Forest Management System required Vicforests to undertake surveys for the Large Brown Tree Frog and Large Brown Tree Frog, prior to logging commencing, when none had been proposed.
- 4.4.3 The Victorian Forest Management System required Vicforests to undertake a review of Forest Management zones and re-evaluation of the management areas for Powerful Owls and Sooty Owls, prior to logging commencing.
- 4.5 In the EEG Case, and after a robust examination of the Victorian Forest Management System (and in particular the FFG Act and Action Statements and whether they were being properly implemented in the Brown Mountain region of Victoria), Osborn J determined that they were not being properly implemented.
- 5 Notwithstanding this, rather than respond to the EEG Case in an appropriate way (and address the deficiencies in the implementation of the already weak FFG Act and Action Statements) the Review proposes the opposite response – that is to further water down the operation of the FFG Act and Action Statements, by proposing to introduce the Proposed FFG Act Exemption.
- 6 This is simply unacceptable, and as a result, the changes outlined in the Review are strongly opposed by LFF.
- 7 Further:
- 7.1 The Government, in the Review documentation, asserts that the existing requirement that logging is conducted in accordance with Action Statements does not have sufficient regard to:
- 7.1.1 The impact that sustainable timber operations in an area will have on the long-term conservation status of a listed threatened species or at a landscape level.

² See Lawyers for Forests, Review of the FFG Act, November 2002, (http://lawyersforforests.asn.au/pdf/FFG_review.pdf).

³ [2010] VSC 335.

- 7.1.2 The area of public land that has already been preserved for conservation purposes (including for the protection of a protected species).
- 7.1.3 Other environmental regulations that timber harvesting operations and associated activities are conducted under.
- 7.2 These purported justifications, are, with respect, unfounded. One of the main purposes of the FFG Act and Action Statements is to ensure that the first two matters are considered. For example, whether or not there is adequate protection for a species in other areas is often a relevant factor in applying Action Statements, as is the impact of logging operations on a particular species. Finally, and turning to the third purported justification, the FFG Act and Action Statements are the primary means by which the protection of endangered species is sought to be achieved – and other aspects of the Victorian Forest Management System do not incorporate sufficient endangered species protection mechanisms.
- 7.3 There is a lack of transparency and accountability in the way that the Proposed FFG Exemption would operate. For example:
 - 7.3.1 A proposal, by the Secretary, to grant a Proposed FFG Exemption, is not required to be advertised, and public submissions are not invited.
 - 7.3.2 The decision, by the Secretary, to grant a Proposed FFG Exemption, is not subject to analysis or input by an independent scientific body or experts. In short, it would be based on political considerations and not scientific considerations.
 - 7.3.3 No reasons are required to be published.
 - 7.3.4 No notice of the making of a decision is required.
- 7.4 As a result, LFF has no confidence that the Proposed FFG Exemption would be exercised in a manner which ensures the adequate protection of Victoria's endangered species.
- 8 Given the above, the Victorian Government is urged to abandon the amendments to the Code, and in particular, not to amend the Code to include the Proposed FFG Act Exemption.

Andrew Walker
Lawyers for Forests

Andrew.Walker@vicbar.com.au
c/- Greens List
205 William Street Melbourne 3000
0418106750