

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

4 March 2022

Dear Minister D'Ambrosio,

Re: Proposed amendments to the CFL Act and the Code of Practice for Timber Production

We write to express our grave concerns at proposed changes to laws governing codes of practice under the *Conservation, Forests and Lands Act (CFL Act)*. These proposed changes will, in our view, have the effect of undermining protections for Victoria's native forests including threatened species that rely on those forests as habitat.

We therefore call on you to withdraw the proposed amendments to the CFL Act and the Code.

As explained below, we urge you to -

1. Withdraw the CFL Amendment Bill from Parliament, subject to further consultation on changes contained within it. Alternatively, we urge adoption of further amendments as proposed in this correspondence.
2. Withdraw the proposed amendments to the *Code of Practice for Timber Production* to maintain existing public safety conditions, which are imperative in the context of growing bushfire risks to regional communities.

Specifically, we refer to changes to section 31 of the CFL Act introduced by you into Parliament and proposed changes to the *Code of Practice for Timber Production (the Code)* recently made public.

We understand these amendments are intended to -

- Enable the design and implementation of compliance standards, to be made by the Department (under authority of the Minister or Secretary), for the current purpose of setting out in detailed form the application of the precautionary principle in particular forestry circumstances,
- Constrain independent challenge and/or review of application of the precautionary principle to logging operations,
- In regard to the recent proposed changes to the Code, open up fire management zones for more logging which will substantially exacerbate fire risks to regional communities
- Effectively provide for sweeping changes not only to how logging is regulated, but potentially to the conduct of conservation governance under the CFL Act more generally. This includes a shift away from a transparent rules-based approach to environmental and resource governance

Proposed amendments to the CFL Act: introducing a 'god power' into timber harvesting

Clause 3(3) of the Conservation, Forests and Land Amendment Bill proposes to incorporate into the Act provisions under a new subsection 31(4) enabling a Code of Practice to include discretionary authority on the Minister or Secretary (paragraph (a)) and effectively defer to

the Minister or Secretary on any aspect of the content or administration of a Code of Practice (paragraph (b)). The latter power is broad, largely unfettered, and extraordinary.

The intention of these amendments to the Act is to enable the making of compliance standards, specifically for application of the precautionary principle for logging operations, in whatever broad set of circumstances are seen as necessary.

It is likely that a wide range of circumstances will need to be considered in the making of any compliance standards and consequently various instruments will need to be made under that program. Indeed, we anticipate the need for the making and re-making of relevant instruments (compliance standards) over time as circumstances change.

Exercise of these powers would enable a substantial shift of rule-making on conservation matters, notably application of precaution, to the authority of the Executive, subject to high degrees of political or administrative expediency and obscurity. This would have the effect of permitting the exercise of practically unchecked executive or administrative power, potentially without any recourse even to decisions or conduct being informed by appropriate science.

A further effect would be to subvert third-party rights to ensure application of general rules (such as the role of precaution in protecting threatened species) are adhered to by way of legal challenge. All of that purportedly is to occur under the banner of 'certainty' for logging interests.

The legislation provides no role or link to scientific or expert advice in triggering changes or thresholds for change and opens the door for largely arbitrary political decisions with little public scrutiny.

Given the historic pattern of conduct and practices of VicForests, other regulated operators and the Environment Department, we are concerned these powers will be used in order to facilitate more logging, at the expense of biodiversity and threatened species protections. That dynamic has been fully and rigorously exposed through legal proceedings over recent years.

A further key question is why the Executive, through yourself as the Minister, or the Secretary, should have the definitive power to determine compliance of a person (a regulated entity in this instance) with a legal standard (in the present instance the precautionary principle). Through administratively codifying the precautionary principle in what is likely to be an abundance of cases and circumstances, the outcomes will be cumbersome, opaque and, we assert, lacking independence and susceptible to regulatory capture.

In many other contexts, formulation of legal standards across particular circumstances and applications is outside of the direct responsibility of executive government, such as in the purview of administrative tribunals or panels. At the very least such decision-making is amenable to independent administrative review by way of tribunals (by way of merits review of original decisions). This type of mechanism can and should apply to the exercise of powers proposed in the amendments.

For example, the exercise of powers under the proposed section 31(4) of the Act that produces compliance standards applying the precautionary principle in particular circumstances can and should (in our view) be subject to the review jurisdiction at VCAT. Further amendments to the Bill can achieve that outcome. That outcome would allow for independent scrutiny and review of any compliance standard made, with the attendant

benefits of that type of process, including public accountability, trust, independent reconsideration, and full and robust testing of evidence, science, and law.

We have attached proposed further amendments for your consideration.

Code amendments of February 2022

Amendments proposed to the *Code of Practice for Timber Production* include provisions to change how logging can occur in relation to bushfire management zones which were developed and applied in response to one of the 2009 Victorian Bushfires Royal Commission recommendations. Zones that are managed specifically to protect human life and property and to reduce the speed and intensity of fires are placed close to towns which are at a greater risk to bushfires. The new large 'Fuel Hazard Management Units' have been introduced into the code. These units cover hundreds of thousands of hectares and amalgamate zoned areas for the calculation of percentage limits.

By calculating the limit over a large area, then allowing that limit to be logged anywhere, the even distribution of logging limits is not ensured. Under the proposed changes, fire management and mitigation options may be impacted in areas logged intensively. In this way, the clause change will effectively reverse measures put in place after the Black Saturday fires following the Bushfires Royal Commission recommendations to mitigate risk to lives and assets.

The fire zone logging limits appear to have been dramatically increased by a re-shuffle of the wording. There appears to be a change from the 1% calculation being based on the GMZ or SMZ in that zone to 1% of the combined GMZ and SMZ in that zone. Furthermore the 1% limit over 5 years appears to have been converted to a 5% limit over 5 years.

Following the devastating 2019/2020 bushfires and given the current pressures faced by biodiversity in Victoria generally, any proposed changes to the Code should be aimed at strengthening laws and protections for communities, forests, and wildlife. We are concerned the proposed changes to the CFL Act and the Code will lead to significant weakening of protections. We look forward to your urgent response to this matter.

Yours sincerely,



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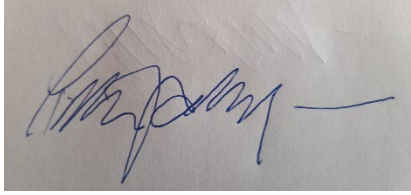


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