



Australia is one of a very few biologically mega-diverse developed countries on the face of this Earth.

The array of natural ecosystems and their component species is simply breathtaking, making Australia one of the most important and exciting places in the world for the long-term conservation of biological diversity.¹

Dear Senators,

Re: The effectiveness of threatened species and ecological communities' protection in Australia

Thank you for the opportunity to make a submission on this important issue.

This submission is made jointly on behalf of three community environmental groups, Friends of Leadbeater's Possum Inc., Healesville Environment Watch Inc. and MyEnvironment Inc. All three groups are based in Healesville, at the foot of the Great Dividing Range. However, we operate over a wider area adjacent to the forested Victorian Central Highlands, where the research arm of the Victorian Department of Sustainability and Environment (DSE) recently identified 19 vertebrate species as "High priority"².

The submission addresses a number of issues relating to the Inquiry's Terms of Reference (a, b, e, f and g) and referencing in particular two locally endemic species with whose protection we have extensive first-hand experience, the Round-leaf Pomaderris (*Pomaderris vacciniifolia*) and Leadbeater's Possum (*Gymnobelideus leadbeateri*).

(a) management of key threats to listed species and ecological communities

The land use of the forests within the known distribution of Leadbeater's Possum includes forest where timber harvesting is permitted³. Known threats to the species include habitat degradation associated with forestry activities, including clear-fell logging and post-fire salvage logging.

Logging within the range of the possum is subject to the Central Highlands Regional Forest Agreement (1998) under which (Para. 47) the Commonwealth accredits Victoria's forest

¹ Letter from Humane Society International to the Prime Minister, signed by 500 UNEP Global Laureates, 20 November 2012

² Arthur Rylah Institute for environmental research, A New Strategic Approach to Biodiversity Management, September 2011

³ Australian Government, Leadbeater's Possum (*Gymnobelideus leadbeateri*) Recovery Plan, July 1997

management system, including the Forest Management Plan and the Flora and Fauna Guarantee Act 1988. The RFA also reaffirms the state and federal governments' "commitment that species in the Central Highlands for which Recovery Plans or Action Statements have already been prepared will have all recommended actions completed or significantly advanced" (Para. 58).

Section 38 of the Environment Protection and Biodiversity Conservation Act 1999 has the effect of exempting "an RFA forestry operation that is undertaken in accordance with an RFA," from the provisions of the Act.

In the Central Highlands we therefore have an extraordinary situation in which a key threat, clear-fell logging, to the ongoing survival of a threatened species, Leadbeater's Possum, appears to be exempted from the very provisions of the EPBC Act intended to protect species.

(b) development and implementation of [action statements⁴ and] recovery plans

- After listing, it can take several more years for an action statement/recovery plan to be written, approved and adopted. Currently less than half of species listed under the Victorian FFG Act have a completed Action Statement⁵.

According to the Victorian Auditor General, "*Action statements are the primary tools in the Act being used to protect and conserve threatened flora and fauna. However, the effort directed to listing threatened species and processes has not been matched by effort to develop action statements, to monitor the implementation of actions, or assess their effectiveness. The gap between listed items and items with action statements continues to widen.*"⁶

In the case of *Pomaderris vacciniifolia*, Healesville Environment Watch Inc., successfully applied for FFG listing in April 2008 and it was gazetted in February 2009. A first draft Action Statement, generated by the DSE's ABC system, was forwarded in April 2010. No completed statement or further draft has been received to date.

- Action statements are generally written by knowledgeable scientists and others but may be poorly constructed so that they do not give effective protection. They can be subject to interpretation and challenged in unintended ways that favour development and exploitation over conservation.

The Leadbeater's Possum Action Statement (#62), was adopted in 1995 and further developed as a federal Recovery Plan in 1997. The Forest Management Plan (FMP) for the

⁴ In this submission, it is assumed the State level Action Statement is effectively the same as the Federal Recovery Plan.

⁵ Environment Defenders Office (Vic), **Where's the Guarantee?** March 2012, Table B p. 12

⁶ Victorian Auditor General's Office (VAGO), **Administration of the Flora and Fauna Guarantee Act 1988**, April 2009

Central Highlands followed in 1998. Although the FMP is supposed to give effect to the Action Statement there are significant differences between the two documents. For many years the differences were overlooked and there appears to have been a general working assumption that logging operations were expected to comply with both. This assumption continues to be reflected on VicForests' website.

However, in 2011, MyEnvironment commenced legal action in the Supreme Court, seeking to prevent logging of alleged Leadbeater's habitat in Toolangi State Forest. In its defence VicForests argued that it is required to comply with the Action Statement only through the Management Plan, and that the AS imposes no independent obligations. Justice Robert Osborn accepted VicForests' argument, although his decision is now subject to appeal.

The differences between the two documents were documented by senior Biodiversity and Scientific Officers of the DSE⁷. Briefly, the differences are –

1. The FMP includes a footnote limiting "hollow-bearing trees" to only three species;
2. The FMP omits two classes of forest, mature ash forest and mixed age ash forest where the oldest age class is mature, which are excluded from logging under the AS.
3. The FMP omits protection of Zone 1 elements that exist in Zone 2 areas.
4. Interpretation of loss of Zone 1 attributes which would allow rezoning to Zone 2.

The DSE experts recommend that, "the wording in the Action Statement is followed". An additional difference is that the FMP triples the density requirement for wattles in Zone 1B.

The MyEnvironment case has demonstrated that the effect of these differences is to allow logging in potential Leadbeater's Possum habitat where it might otherwise be excluded. It is worth noting that since the Supreme Court hearing, photographs have been obtained by motion sensor camera (see attachment), showing an active colony of Leadbeater's Possum just 70 metres from an area of the coupe that would have been logged if MyEnvironment had not prosecuted its case, and is still likely to be logged if the appeal fails.

If the Court of Appeal finds that VicForests is obliged to comply with the Action Statement then further issues of interpretation arise. While acknowledging that the interpretation preferred by MyEnvironment is open to it, Justice Osborn found for VicForests. This illustrates the problem that Action Statements are written by experts who do not necessarily have legal drafting skills. It is only when a case comes to court that the wording is tested and the MyEnvironment case is the first time an Action Statement under the FFG Act has been tested at the level of the Court of Appeal.

If ultimately the Court of Appeal concludes that VicForests' operations are not independently obliged to comply with the Action Statement, then the question arises whether such logging conducted to that standard properly complies with the Commonwealth Recovery Plan, which contains identical zoning provisions to those in the Action Statement. If not, what action needs to be taken to address the compliance failure?

⁷ Geoff Brown, Steve Smith & Lindy Lumsden, **Survey Standards: Leadbeater's Possum** (12 January 2012)

- Once the Action Statement or Recovery Plan has been written it may or may not be implemented; funding required for implementation may not be available. No one effectively ensures, supervises or monitors implementation.
- No one is held accountable for failure to implement an action statement or for failure of an implemented action statement to protect the threatened species.

In Victoria all Cool Temperate Rainforest is excluded from logging. But the DSE does not routinely supervise compliance and seems to take action only when reports of breaches are submitted by third parties, if then. Even then, effective compliance action is not pursued, as recently noted by the Victorian Auditor General⁸.

- Action Statements and Recovery Plans are not reviewed and updated.

According to the Environment Defenders Office (updating the 2009 VAGO Report) of 270 completed Action Statements, 80 have been identified for review. 15 have been reviewed⁹.

A prime example is the Leadbeater's Possum Action Statement (#62), which has been in effect since 1995. In 2003 it was "prepared for web publication" but otherwise remained substantially unchanged. After the loss of 43% of the species' habitat in bushfires in February 2009 the Recovery Team met to commence an urgent review of the Action Statement and a "draft for comment" was circulated in 2011. To date the review has not been completed and the 1995 version remains in effect.

TOR (e) timeliness and risk management within the listings processes;

- Under current legislation, (i.e. the Victorian Flora and Fauna Guarantee Act 1988 and the federal Environment Protection and Biodiversity Conservation Act 1999) not all endangered or threatened species are protected – only those that have been listed.

Of 2,200 species on the DSE "Advisory lists", only 599 are listed under the FFG Act¹⁰. This means that many threatened species are not protected simply because they don't appear on the relevant list.

- There is no automatic process for a threatened species to be listed, or even assessed; assessment and listing depend on somebody submitting an application.

⁸ VAGO, *Administration of the Flora and Fauna Guarantee Act 1988*, April 2009 and *Effectiveness of Compliance Activities: Departments of Primary Industries and Sustainability and Environment*, October 2012.

⁹ Environment Defenders Office (Vic), **Where's the Guarantee?** March 2012, Table B p. 12

¹⁰ Ibid.

According to DSE staff, in the early years of the FFG Act the Department was actively involved in nominating species and FFG Officers were specifically employed for this purpose¹¹. In those years, most nominations were made by these specialist officers. Since that time the Department has been progressively de-resourced, staffing levels reduced and priorities revised. The result is that the academics and professionals with the requisite knowledge to complete the application are so overwhelmed they have no time to do so. Most recent applications appear to be from individuals with a passion for the subject or with a skilled knowledge base in a relevant area. If there is no such individual available and involved, an endangered species can remain undocumented and unlisted for years.

This was the case with the Victorian endemic shrub, *Pomaderris vacciniifolia*, which in 2008 was unlisted in spite of being reduced to a population of as few as 350 mature plants. Healesville Environment Watch successfully prepared and submitted an application for FFG listing which was gazetted in 2009.

- Once an application has been made for a species to be listed, the process of approval can take years.

After the successful FFG listing of *Pomaderris vacciniifolia* in 2009 (and the Black Saturday fires, see below), application was made for listing under the federal EPBC Act in May 2009. In March 2010 confirmation was received that the nomination was eligible and would be forwarded to the Threatened Species Scientific Committee.

In October 2010 HEWI received a request to assist with obtaining signed Licence Deeds for personal communications cited. In March 2011 we were advised the “species is still under assessment” but there had been progress. In July 2011 we were told it was still under assessment and assured that when it is listed we would be notified. To date, after 3 ½ years, no further notification has been received.

- There is no emergency listing process, so a newly discovered species, or one that suddenly becomes critically endangered as a result of a catastrophic event remains unprotected until the process, no matter how protracted, has been completed.

In 2008 most of the recorded occurrences of *Pomaderris vacciniifolia* were within a 20 kilometre stretch of the Healesville-Kinglake Road, from Chum Creek, through Toolangi, to Castella. In the Black Saturday bushfires of February 2009 almost all specimens in Chum Creek and Castella were destroyed. Accordingly when the application for EPBC listing was submitted a request was made for urgent consideration and a letter was sent to Minister Peter Garrett requesting his support. The Species Listing Section replied that there is no legal scope within the Act to include urgent late nominations.

As noted above, to date the process has still not been completed.

¹¹ Environment Defenders Office (Vic), **Where's the Guarantee?** March 2012, p. 10

TOR (f) the historical record of state and territory governments on these matters;

- Governments tend to support development and exploitation over conservation, even though they publicly espouse the importance of biodiversity protection.

A review of the Flora and Fauna Guarantee Act in 2002 concluded that ‘the existing regulatory and policy framework for the protection of threatened species in Victoria is in need of a major overhaul.’ A number of recommendations to improve the Act resulted from this review, but no amendments to the Act were made¹².

In November 2009 the state government issued a white paper¹³ but this has not been pursued by the Baillieu government, elected in 2010. In contrast the Coalition has pursued policies which actively undermine environmental protection, such as enabling VicForests to offer long term supply contracts of up to 20 years¹⁴ and its flagged review of the Sustainable Forests Timber Act 2004¹⁵.

TOR (g) any other related matter.

- In practice the main practical value of Action Statements and Recovery Plans appears to be that they are invoked by vested interests, government agencies and governments to claim that species are protected, even when the intended protection is not effective and the species continues to decline.

Whenever the operations of the Victorian government’s logging enterprise are questioned the standard response from the government, VicForests and their supporters is that native forest logging is highly regulated and subject to strict controls, even though it is widely recognised and a matter of public record that the regulations and controls are ineffective.

Although Leadbeater’s Possum has been “protected” by an Action Statement/Recovery Plan since 1995, its habitat has continued to be impacted by clear-fell logging and bushfires and its population is in catastrophic decline.

To summarise, in the words of Professor Tim Flannery, “*We list a species as endangered; it takes years to write up an action plan for it; then there’s no funding for the action plan and then no-one monitors the outcome anyway. That is ridiculous – that’s the route to failure. We actually need to be accountable. At the moment no-one’s accountable for failure*”¹⁶.

The Overall Objective of the Leadbeater’s Possum Recovery Plan (1997) is given as, “To

¹² VAGO, **Administration of the Flora and Fauna Guarantee Act 1988**, April 2009 p. 2

¹³ Victorian Government Department of Sustainability and Environment, **Securing Our Natural Future, A white paper for land and biodiversity at a time of climate change**, DSE Melbourne, November 2009

¹⁴ The Hon. Peter Walsh, **Media Release: Coalition gives certainty to timber industry**, 13 December 2011

¹⁵ DPI, **Review of the Sustainable Forests (Timber) Act 2004, Draft Report**, August 2012

¹⁶ Prof. Tim Flannery, ABC News, 19 November 2012

downlist Leadbeater's Possum from endangered to vulnerable within 10 years based on the IUCN (1994) criteria". On IUCN criteria it is more likely after fifteen years that the species' listing will be upgraded to Critically Endangered in the near future. Clearly, the Plan to protect Victoria's Marsupial Emblem, like so much other threatened species and ecological communities' protection in Australia, has not been effective. In August 2012 Professor David Lindenmayer, who has studied the species and its habitat for almost 30 years, resigned from the Recovery Team, because he could, "no longer be part of such a highly ineffective body that is unable to appropriately protect Leadbeater's Possum"¹⁷. Unless major changes are implemented soon Professor Lindenmayer believes, "We are going to monitor Leadbeater's Possum to extinction"¹⁸.

The necessary changes are possible. In discussing the threat of allowing the so-called super trawler to operate in Australian waters Federal Environment Minister Tony Burke said, "The principle is really simple: when the law doesn't allow you to provide the level of environmental protection you believe you should, you change the law."¹⁹

If we fail to make those changes and allow the Leadbeater's Possum to follow the Thylacine and the Christmas Island Pipistrelle into extinction – we are all accountable.

Yours faithfully,

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¹⁷ David Lindenmayer, **Letter to Hon. Ryan Smith, Victorian Minister for Environment and Climate Change**, 22 August 2012

¹⁸ David Lindenmayer, **Making himself extinct: 'absolute disgrace' prompts Leadbeater's possum scientist to quit**, quoted in The Age, 12 September 2012

¹⁹ **When the law falls short, you change the law**, on PM with Mark Colvin, ABC Radio, 11 September 2012



THE KINGLAKE "VETERAN"

In 1988 20-30 mature plants were recorded north of the Kinglake-Healesville Road west of the Melba Highway intersection. Most of these were later destroyed by bulldozing of a firebreak and subsequent recruits were killed by slashing and by deer browsing.

By 2006 only 2 plants remained, including the oldest known individual, a massive but sterile 6m tall veteran confidently aged at 67 years in an area unburnt since the 1939 wildfire. The veteran was reported to have fallen over but to have survived. However when it was re-located in August 2008 it was confirmed to be dead (top photo). There were 2 younger plants close by.

The remains of the veteran were completely destroyed by the bush-fires in February 2009. A sea of germinating seedlings has recently been detected at the site, so strong recovery is hoped for.



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A NEW GARDEN PLANT?

Very few specimens of the Round-leaf Pomaderris are known to have been grown in cultivation. However there is some evidence that young plants that are regularly pruned can be successfully "shaped" and will continue to flower. Other species of Pomaderris are grown as attractive garden specimens.

Some success has been achieved in growing the plant from cuttings and transplanted seedlings. The plant has been grown from seed.

It is hoped that in the near future plants will become available from local suppliers. **Note that it is illegal to take cuttings or collect seed from plants on public land without a permit.**

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ROUND-LEAF POMADERRIS



TOOLANGI'S TREASURE

The Round leaf Pomaderris (*Pomaderris vacciniifolia*) is found only in Victoria. Two thirds of the sites where it was found were destroyed in the "Black Saturday" bush-fires in February 2009. Toolangi is now virtually the only place to see this special flower.



Local VIP under threat

VERY INTERESTING POMADERRIS THREATENED WITH EXTINCTION

There are at least 70 different species in the genus Pomaderris. The Round-leaf Pomaderris (*Pomaderris vacciniifolia*) is endemic to Victoria, meaning it is not naturally found anywhere else. Historical records exist for the plant from the Warrandyte and Eltham areas through Kinglake, Castella and Toolangi to Chum Creek. Records also exist at Tyers, Toongabbie and Cowwar.

In recent decades concern has risen that the plant is apparently failing to reproduce successfully, possibly due to browsing of young plants by deer, rabbits and native herbivores. Tall and exposed specimens are prone to blow over in high winds. Bark damage due to deer rubbing their antlers and insect damage have also been recorded. As it is often found growing on roadsides and under power lines (as it does around Toolangi) it is also subject to damage from weed spraying, roadside slashing and drain clearing.

By 2006 the continued survival of the species was uncertain and David Cameron, Senior Botanist at the DSE, recorded the sobering possibility that the total population of mature plants might be as low as 140. In October 2006 David led a survey to record the population at Chum Creek, assisted by members of Healesville Environment Watch Inc. and the Field Naturalists' Club.

N-S PIPELINE HIGHLIGHTS HAZARD

During committee hearings for the proposed North-South Pipeline in April 2008 consultants for the Pipeline Alliance announced that the plant had been found on the pipe's route in Castella. When HEWI representatives heard that the plant was not protected under any legislation an application for listing under the State's Flora and Fauna Guarantee Act was prepared, using



Pomaderris vacciniifolia

Large shrub with weak spreading branches, 2-3.5 m, no part with simple hairs.

Uncommon. LEAVES thin, elliptic, mostly 1-2 cm x 6-12 mm, smooth glabrous dark-green above, pale-greyish beneath with minute stellate tomentum. veins inconspicuous. FLOWERS creamy with fine pedicels, in small leafy panicles, petals present, ovary prominent with stellate hairs, style just cleft.

Costermans, 2005



material compiled by David Cameron. The application was successful and the listing was gazetted in February 2009. Federal EPBC listing is now being considered.

In the flowering season (September/October) of 2008 a number of sites, some with good numbers of specimens, were recorded.

Sadly, the fires in February 2009 destroyed almost all specimens at Castella and Chum Creek. Toolangi is now the only remaining place with a substantial population of the plant, including the oldest known living specimen, "Walter" (photo below). There is encouraging evidence of regeneration at several of the burned sites.



Victoria Government Gazette

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Flora and Fauna Guarantee Act 1988 ADDING ITEMS TO THE LIST OF TAXA AND COMMUNITIES OF FLORA AND FAUNA WHICH ARE THREATENED

The Governor in Council under section 10(1) of the **Flora and Fauna Guarantee Act 1988**, adds the items listed in the Schedule below to the list of taxa and communities of flora and fauna which are threatened.

Schedule ITEMS TO BE ADDED TO THE LIST OF TAXA AND COMMUNITIES OF FLORA AND FAUNA WHICH ARE THREATENED

Treubia tasmanica
Pomaderris vacciniifolia

Dated 18 February 2009
Responsible Minister
GAVIN JENNINGS
Minister for Environment and Climate Change

Treubia
Round-leaf Pomaderris

RYAN HEATH
Clerk of the Executive Council



The first captive Leadbeater's Possum, Melbourne Zoo, 1961



Kasia, died in Toronto Zoo in 2010

LOST AND FOUND

Leadbeater's Possum was first described in 1867 from specimens collected in the Bass River area (east of Westernport Bay). It was named after John Leadbeater the museum taxidermist who prepared the specimens. Over the next forty years only two additional animals were collected and by then much of the vegetation in the area had been cleared and the swamps drained for agriculture. In 1960 the species was declared 'almost certainly' extinct. Early the following year, Eric Wilkinson, who had conducted fauna surveys for several years, rediscovered the possum at Cambarville and Tommy's Bend, near Marysville, in the Central Highlands, a region where the animal had not previously been recorded. Since then it has been recorded at many other localities, all of which are threatened by logging and/or bushfires. As we marked the 50th Anniversary of Rediscovery in 2011 the population was declining. There may now be as few as 1000 Leadbeater's Possums left in the wild.

BECOME A FRIEND OF LEADBEATER'S

Friends of Leadbeater's Possum Inc. was established in 2004 to give a voice to these amazing but elusive forest animals. Leadbeater's Possum habitat is impacted by timber harvesting (including salvage logging), bushfires, fire prevention activities (burn-offs and firebreaks) and climate change.

We aim to help Leadbeater's survive in the wild by encouraging public awareness, supporting conservation efforts, providing nest boxes and emergency winter feeding, research programs and effective conservation strategies and policies.



Friends of Leadbeater's Possum Inc.

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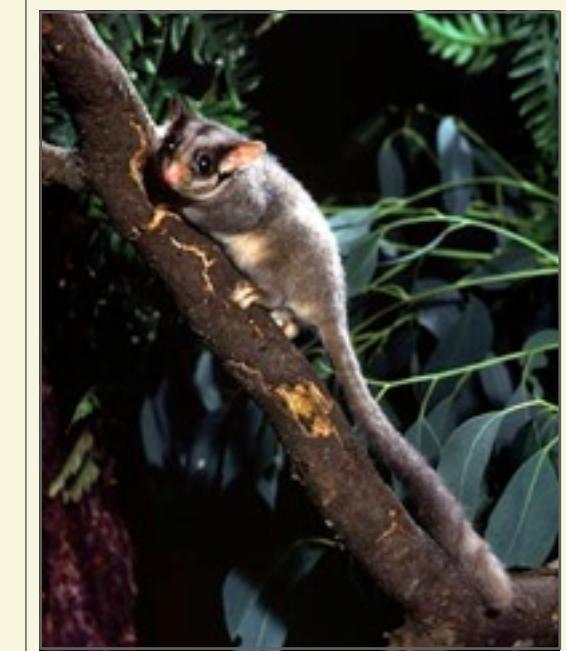
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LEADBEATER'S POSSUM



VICTORIA'S FAUNAL EMBLEM

Leadbeater's Possum (*Gymnobelideus leadbeateri*) is found only in Victoria. It has always been uncommon and for many years was thought extinct. Much of its habitat in the Central Highlands forests was destroyed in the "Black Saturday" bushfires in 2009.





Gymnobelideus leadbeateri

Distribution: Central Highlands of Victoria

Length: head-body 15-17 cm, tail 14.5-18 cm.

Weight: 120-160g.

Distinguishing features: prominent dark, mid-dorsal stripe, club-shaped tail

Diet: sap from wattles, insects, honeydew

Voice: Distinctive alarm call “ch-ch-chirr”, like a scolding bird

Conservation status: Listed as “endangered” under the Commonwealth EPBC Act, on the Advisory List of Threatened Vertebrate Fauna in Victoria, and on the IUCN Red List and as “threatened” under the Victorian Flora and Fauna Guarantee Act.



Local VIP under threat

VERY IMPORTANT POSSUM AGAIN THREATENED WITH EXTINCTION

Since its rediscovery in 1961, Leadbeater's Possum has been recorded at more than 300 localities in a restricted area in the Ash forests of the Central Highlands of Victoria. In the 1980s a colony was identified in Mountain Swamp Gum at Yellingbo, in the Yarra Valley. Another population was detected in Snow Gum Woodland at Lake Mountain in 1993.

Small family groups build their nests of shredded bark in tree hollows. They spend most of their time in the nest, sleeping during the day and returning several times each night. Suitable hollows are found only in very large old trees and take many decades to develop. The trees are often dead and already in decay before they contain suitable nest sites. Each group establishes several nests in suitable hollows within its territory, moving periodically between them.

CONNECTIVITY

In addition to large old eucalypts that provide nest sites, Leadbeater's also need a dense understory, usually of wattles (*Acacia* spp.), in which they feed on sap oozing from cuts, which the possums create and maintain. They also forage for honeydew and insects. Although related to the gliders they have no gliding membrane (the generic name *Gymnobelideus*, means ‘naked dart’ in reference to this), so they move around the understory by running along and leaping between branches and cannot cross gaps greater than a metre. They therefore rely on the **connectivity** of a dense understory to allow them to move around their territory between feeding and nesting sites.



After the 1939 bushfires in the Central Highlands large numbers of decaying stags (large hollow-bearing trees) among regrowth forest provided suitable habitat allowing the population of Leadbeater's Possum to grow. By the end of the 20th century natural decay and collapse of the old and dead trees meant that suitable nesting sites were being lost at a rate of 4% each year and a population crash was predicted. Clear-fell and salvage logging, which tend to result in regrowth stands of trees all the same age, also lead to loss of, and fragmentation of, habitat. The creation of roads and firebreaks further disrupts connectivity, making it impossible for the possums to move around.

Bushfires have a catastrophic impact on Leadbeater's populations and

habitat. The fires in 2009 destroyed 42% of habitat and a number of known groups, including the colonies at Lake Mountain. Nest boxes and feeding stations were established to help the few remaining animals survive but the last three were taken into captivity in 2012. Climate change is likely to produce a hotter, drier climate in which similar devastating fires will be more severe and frequent.

Friends of Leadbeater's Possum is playing an active role in working and advocating to ensure the long-term survival of this very endearing and special animal.



Motion Sensor Photographs of Leadbeater's Possum taken near Gun Barrel Coupe, Toolangi, 2012



above: Animal emerging from nest hollow in “stag”

Animal using its tail
to carry nesting
material into hollow



Two animals
socialising near
nest entrance

