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SUBMISSION

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

Terms of reference:

- (a) management of key threats to listed species and ecological communities;*
- (b) development and implementation of recovery plans;*
- (c) management of critical habitat across all land tenures;*
- (d) regulatory and funding arrangements at all levels of government;*
- (e) timeliness and risk management within the listings processes;*
- (f) historical record of state and territory governments on these matters; and*
- (g) any other related matter.*

EEG Inc has been working to protect the environment, forests and wildlife of East Gippsland since the early 1980s. We have a membership and supporter base of over 800 people.

We have clear evidence to show that threatened species and communities protection laws are not effective. This clear evidence should result in:

- strengthening of the current laws including rewriting plans so they are not ambiguous
- Recovery Plans must be clearly and strongly worded and enforced. The backlog of species and communities waiting to have protection plans written must be expedited as a matter of urgency
- better funding and resources for updating and administering Plans
- a newfound political will to ensure the laws are enforced and adhered to by government and private bodies, and
- the application of key recommendations of the Hawke review – especially the most glaring weakness - section 38 of the EPBC Act that allows

state agencies to be responsible for forest ecosystem protection. This must be removed as recommended due to overwhelming evidence of abuse of the RFAs at a state level.

The lack of adherence to the laws by both state and federal governments over the years means there is urgent 'catch-up' work to do and offsets to apply to counter the damage already done. Negligence at all levels of government has left many of Australia's uniquely adapted wildlife, plants and communities closer to vanishing each year.



Ignoring obligations or interpreting the laws to suit development, is as good as actively managing to bring about the extinction of Australia's species. This is what has been happening for decades – and still is. Government Ministers and many bureaucrats merely pretend to be concerned for our environment. But pointing to glossy documents and the odd poorly funded monitoring program is not achieving results.

Our group's despair and disgust for the way this government enacts its environmental policies and legislation, is held by an ever increasing number of Australians. Concern is not limited to tree-hugging protesters.

We have a massive archive of material which shows that the state and federal governments have not been protecting rare and endangered species in East Gippsland and elsewhere. But for years, our work to highlight this desperate situation has been spurned by governments. Documenting the bleedingly obvious yet again seems pointless. But we will persist.

State government contempt for threatened species legislation

Despite the Flora and Fauna Guarantee Act (FFGA) being drawn up in 1988, it has been abysmally implemented during that entire time.

The 2009 Auditor General's (AG) FFGA Performance Report

(http://www.audit.vic.gov.au/reports_publications/reports_by_year/2009/20090401_flora_fauna.aspx

and http://download.audit.vic.gov.au/files/flora_fauna_full_report.pdf) stated clearly that its processes and measures have been largely abandoned by DSE. The AG also identified a lack of resources as a major reason for non-implementation of the Act. The report also pointed out the lack of legislative power given to DSE and other government agencies to complete directives within Action Statements or review and update Statements that have been produced.

Lawyers for Forests' 2002 report on the FFG Act is also scathing of its lack of teeth and resourcing; http://www.lawyersforforests.asn.au/pdf/FFG_review.pdf

The EDO carried out an examination of the FFGA in 2012. It also found that many of the measures used to protect flora and fauna have never been used.

<http://www.edovic.org.au/law-reform/major-reports/wheres-the-guarantee>

Of the 768 species listed under the FFGA just over a third have had Action Statements written. Most of these are terribly out of date and obsolete. This gap between listed species and Action Statements is widening! The 2009 AGs report suggested that at the rate that Action Statements were being written it would take 22 years to develop one for all current listed species. Even those that do have Statements, there is no systematic assessment to measure their effectiveness.

Listed but no protection

Although being listed, where species and communities are identified in areas earmarked for destruction (through development or various land management decisions), they have been knowingly destroyed by government agencies and developers ... *because of a lack of an Action Statement*. This seems too convenient to be an oversight.

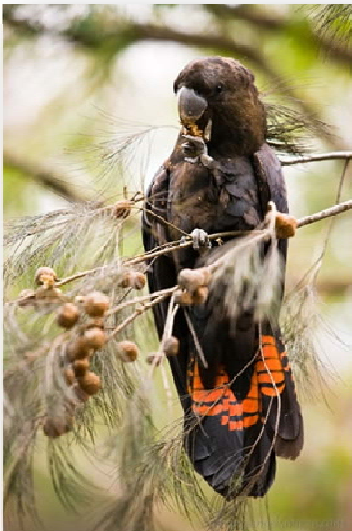


Figure 1. The endangered Glossy Black Cockatoo - acknowledged as threatened but continues to have prime habitat destroyed under the state's FFGA.

The most recent example is for the Glossy Black Cockatoo. About 200 ha of its prime cassuarina habitat was identified by pre-logging surveys which VicForests have been forced to undertake (thanks to a Supreme Court order in 2010). The birds were also identified feeding in forests dominated by the she-oaks which also supported old hollow bearing trees for nesting. VicForests clearfelled and burnt this massive stand of prime habitat at Wallagarah in the far east of Victoria because - we were told - *there is no Action Statement*. This species was listed 18 years ago!

Writing up Action Statements is a mandatory requirement of the FFGA (unlike the EPBC) but in the last year only one Action Statement has been written. Even those tighter sections of the FFGA (such as the minister *must* prepare action statements as soon as possible after a species is listed), are still being ignored.

Evidence of State disdain

Since the Baillieu state government snuck into power two years ago, the main administration of the FFGA has been taken from the environment minister and is now handled jointly by the Agriculture minister. This has made for a very cumbersome system resulting in time delays. The Minister for Agriculture, Peter Walsh favours developments, graziers, agriculture, land clearing, mining, hunters, prospectors and so on, over environmental considerations. His decisions over the last two years show this clearly.

Another telling piece of evidence of the state government's total disregard or disdain for the FFGA was highlighted by the evidence of the Secretary of the DSE, Greg

Wislon (under Labor), at the Feb 2010 Bushfire Royal Commission. He was unaware of the Auditor General's recommendation that the Secretary of the DSE report to the his Minister within 12 months of the AG's recommendations and how they were being implemented. He also was unaware of the government's response to the AG's report. The FFGA is regarded as an annoying impediment.

The scientific advisory committee now only receives possibly 6-7 nominations a year since the Baillieu government took office, rather than the previous 20-30 (pers comm). Premier Ted Baillieu seems to have handed his government over to miners and loggers to run. Its [Timber Industry Action Plan](#), released on 13 December 2011, could have been written by the logging industry at a bucks' party on steroids. It includes:

- *logging in parks and water catchments under the guise of 'ecological thinning'*
- *burning native forests for electricity*
- *extending current 5 year contracts to 20 year contracts*
- *massive compensation to 'customers' when the 20 year commitments can't be met*
- *changing laws so that protected species and habitats don't get in the way*
- *converting native forests into plantations suited for commercial use only*
- *converting prime agricultural land into plantations, even if under 40 ha*
- *eco-certification systems rendered useless*
- *VicForests to have power to set their own rate of logging (cut-out and get-out)*

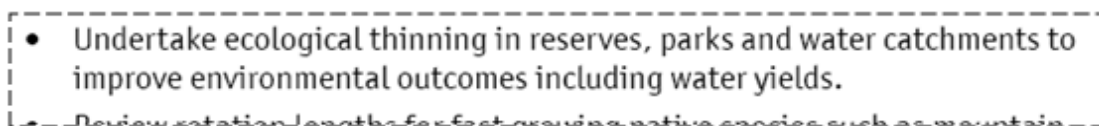
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- Undertake ecological thinning in reserves, parks and water catchments to improve environmental outcomes including water yields.

Figure 2. TIAP Priority 1.1, pg 6.

Earlier in 2012 Ted Baillieu's budget axed \$130.6 million from its environment department. This includes post- bushfire work and climate change programs. About 500 employees were sacked from the biodiversity and parks areas. An example of these cuts was seen at Horsham where a team of 10 people working to rescue and propagate endangered plant species were suddenly 'discharged'.

In comparison, every year the logging arm of government has enjoyed handouts and subsidies to the tune of millions of dollars.

**RFAs ensure forest annihilation –
unencumbered by legal obligations**



Figure 3. Diverse old growth forests supporting threatened species are clearfelled and converted to industrial woodchip crops through intensive management under the RFAs.

The EPBC Act hands all responsibility for forests to the states if they have RFAs in place. These forested areas that are demanded by the logging industry, of course, are the most valuable, rich, high yielding, and biologically intact. They grow on the most fertile sites with high rainfall and good growing potential. The logging agencies' agenda, supported financially and politically by state governments, is to clearfell and convert valuable

public forests into stands of commercially useful tree crops. The methods used to achieve this are

no different to those used in Indonesia for palm oil production. The RFAs condone this, and the Federal government of varying political persuasions over the years have been more than happy to ignore the immense destruction occurring under the states' RFA regimes.

Logging is the most severe and destructive management of forested public lands and water catchments imaginable. Forests are one of our last strongholds for so many rare and endangered plants and wildlife, yet are sacrificed behind a thin veneer of an RFA and its supposed 'sustainable' forest management.

During the RFA process for East Gippsland, the examination of Ecologically Sustainable Forest Management resulted in a damning report which was fully ignored when the RFA was signed. Despite government claims that East Gippsland is the most studied region in Australia, the lack of certainty of the effects of clearfelling was clearly spelled out. Predicting species responses to logging was impossible due to not knowing where species occurred or how they each cope with clearfelling of their habitat. ESFM should 'maintain forest ecosystems and vitality' and 'protect and maintain biodiversity' but the RFA was unable to ensure either of these due to lack of scientific data and knowledge.



The preliminary CRA reports admitted there are major gaps in knowledge, poor quality information and limited data, but there was little attempt to fill the gaps or improve the information/data base. Where information was lacking, computer generated species populations were sometimes produced from a desk in Melbourne to populate the region. This ignored things such as age of forest and logging history.

Protection zones for threatened species such as owls and quolls are commonly undersized. The RFA defers to the East Gippsland Forest Management Plan for species protection, but the FMP does not protect quolls or owls. Even its very

minimal concession to some species has been interpreted to favour logging (EEG vs VicForests Supreme Court case).

The FMP was at odds with the Flora and Fauna Guarantee Act's action statement for quolls which required 3000 individuals across the state to be given protection. The FMP allowed only 50 to receive protection in East Gippsland - its last stronghold! Department scientists have also admitted uncertainty about declining owl populations after clearfelling.

Threatened species is a very important issue which needs the precautionary principle applied, but this was ignored.

One conclusion reads 'old growth forest values are highly sensitive to harvesting, roading and wildfire' yet the RFA allows significant stands of remaining unprotected old growth to be subject to ... harvesting, roading and burning.

None of the agreement points have been adhered to by the state of Victoria, except to lift the cap on the volume of 'waste wood' that can be chipped and shipped. In the Tambo region in East Gippsland for instance the volume of woodchips and waste logs produced rose 700% the year after the RFA was signed!

When Bob Brown was arrested at Goolengook, logging was shown to have contravened the Heritage Rivers Act by destroying the protected buffer zones.

With the above examples of cowboy governing, any plans to hand responsibility to the state of Victoria would be to sacrifice already very ailing Victorian ecosystems. It would be an unforgivable act merely to keep the BCA from mounting an attack against Labor at the next Federal election. This is despicable governing.



Brown Mountain test case against the Victorian logging agency

This landmark case was initiated in 2009 by our group after the state logging agency VicForests and the DSE refused to abide by state laws that are to protect endangered species. Using the precautionary principle, the FFGA and various Codes and Plans that come under Acts that regulate logging, EEG proved that VicForests (and by inference previous logging managers for decades beforehand) had been ignoring their own laws and destroying thousands of hectares of critically important habitat for rare wildlife and plants.

We believed the logging agency had a legal obligation to protect listed species and those under the Forest Management Plan. As neither DSE nor VicForests were carrying out pre-logging surveys, they had no evidence of their presence and so could claim they were not logging threatened species or their habitat. When volunteers and qualified surveyors identified rare and threatened wildlife, VicForests then claimed they had no obligation to protect them, assuming a 40 mt buffer along the creek would suffice for the seven threatened species of wildlife.

The outcome of the four week Supreme Court case was that the logging agency *did* have a legal obligation. They were obliged to employ qualified biologists to survey areas to be logged. Even here, the state government agency has managed to reduce their obligations to a 'Mickey Mouse' minimum. Only VicForests determines which areas are surveyed, how much effort is put into surveying, and providing minimal resources and funds for survey teams over an ineffective time frame (rather than when species are easier to detect). When certain species are found, they protect nearby areas (usually already in no-logging zones like gullies) rather than the habitat where they were detected, or not at all – as per the Glossy Black Cockatoo incident cited above.

Even more damning was the response by the Baillieu government's minister for logging Peter Walsh. To get around the court orders, he announced plans to add a sentence into the FFGA which would exempt the government from protecting listed endangered species where the secretary deemed it was OK.

If a species has an Action Statement our state's endangered species act, it can be overridden by the Secretary of the DSE simply flicking his pen over a bit of paper!

The draft change reads:

“exclusion areas must be protected from timber harvesting operations... in accordance to the FFGA Action Statements ... (proposed newly worded insert) *unless it is determined by the Secretary that the requirements of the Action Statement do not apply...*” !!!

Large areas of Brown Mountain's old growth forest stands had been previously clearfelled and converted to tree crops, under the 1997 East Gippsland RFA. No federal intervention was deemed necessary as the states were trusted to protect vulnerable and valuable public lands, National Estate and endangered wildlife. Despite never honouring obligations under the RFA for reporting or reviews, despite these serious examples of neglect being detailed and sent to the federal env minister/s, the state government has persisted with the onslaught against our rare and threatened species, against laws and signed agreements.



Figure 4. The adjoining old growth forest at Brown Mountain which was clearfelled and burnt - also supported threatened wildlife such as Powerful Owls and Potoroos

Other examples of state obstructionism and unaccountability

1. wildlife survey data languishes

EEG has been asking where the information ends up from VicForests' surveys that are carried out. It seems that the survey information is very slow to get fed into the DSE's biodiversity system and made publicly available.

In the last piece of correspondence, the DSE tells us that:

DSE has a system in place to fast-track such records into the Victorian Biodiversity Atlas, however this is currently being reviewed to ensure it is as efficient and quick as we can make it.

The 'fast tracking' of the inclusion of new species records has been frozen for months. If it were a development application it'd be fast tracked in a couple of weeks.



And they think we're slow...

But the web based Biodiversity Interactive Maps here mapshare2.dse.vic.gov.au/MapShare2EXT/imf.jsp?site=bim are claimed to be based on the most recent 'approved information'. This is meaningless as we don't know how long it takes for information to be 'approved'. The Victorian Biodiversity Atlas (the old Wildlife Atlas is now very out of date) will be made publicly available in the next couple of months we were told 6 months ago. The public are being denied information about what has been detected on public land and where.

2. Significant removal of publicly available information about logging

Since the new Government in Victoria, we have seen:

- a) All logging information on Forest Explorer has been removed
- b) MAHP reports with detailed information about logging for individual coupes replaced by poor quality "audit" reports that have little information
- c) Coupe finalisation reports with detailed information for all returned coupes replaced by "audit" report with no information about individual coupes

3. Changed administrative arrangements for the management of State forest

Since the Administrative Order that handed over most responsibility for State forests to DPI, including the approval of TRPs, the Agriculture Minister has primary control over logging management!

4. ESFM undermined.

Since the Victorian ESFM was accredited, there have been enormous changes that have undermined it.

- a) Failure to complete Montreal sustainability indicator monitoring program
- b) Weakened audit system
- c) Transfer of resource estimation function from DSE to VicForests

- d) Dramatic reduction in size, funding and capability of Government Departments to monitor logging properly
- e) Fires have dramatically reduced the area of forest that can be 'sustainably' logged
- f) Administrative changes that have made FFG approval process more cumbersome (both DPI and DSE are now involved)
- g) Hiding behind "commercial in confidence" clauses to avoid public scrutiny of controversial logging proposals (eg. sale of 800,000 cubic metres of "waste" wood).



In their submission to the Sustainable Forest Timber review, Vicforests argue that sections of the SFT Act relating to sustainable forest management should be removed because they are "only aspirational" ie rather than strengthen the Act, they want it gutted.

While the previous Government made some effort to make more information about logging available to the public, the current Government appears to want to remove as much information about logging from the public gaze as possible.

5. New logging "audit" system is appalling

EEG has raised concerns about most of the audits released under the new audit program. None of these audits are focused on the protection of biodiversity - most of the items checked appear to be checks that paperwork has been completed correctly.



Due to the lack of funding, there is no interest or ability in conducting extensive field surveys of difficult to access coupes. One of the recent audits (Module 3 - Tactical Planning) was a farce, with most of the criteria being unable to be assessed. This was held up as evidence of the excellent standards being maintained by VicForests!

6. State gov't plans thwarted by Feds

The slapdash plans to aerially bait with 1080 over the top of prime Quoll habitat had to be overridden by the Federal department of Environment this year. Despite very clear evidence, the state government refused to acknowledge that it would impact on the highly endangered meat eating marsupial, the Spot-tailed Quoll. Ted Baillieu is still promising he will have the decision overturned. He is also determined to return beef cattle into the Alps National Park after also being forced to remove them thanks to the commonwealth laws overriding the state.

Australia's biodiversity

Australia has an unparalleled opportunity for conserving a significant part of the world's biodiversity. Australia is the only mega-diverse nation on Earth that has the economic ability to protect biodiversity, and that doesn't have the population pressures

that compete with biodiversity protection for land use in other countries. We are responsible for one of only 17 'mega-diverse' countries that collectively hold around two thirds of the world's biodiversity.

We have more species of higher (vascular) plants than 94% of countries on Earth, and more non-fish vertebrate animals than 95% of the world's countries. We have more species of mammals than 93% of countries, more birds than 79% of countries, more amphibians than 95% of countries, and more reptiles than any other country on Earth. There is no other refuge for them when their habitat is gone.

Since European settlement, 83 species of higher plants have become extinct, and we have the worst record for higher plant extinctions of any country on Earth. We have also sent extinct 43 animal species. We have the worst record for mammal extinctions on Earth – the 19 mammal extinctions make us worse than any other country or continent. We have also sent 21 species of birds and at least 4 frogs extinct. In total, we have sent 126 species of plants and animals out of existence in just 200 years.

The species which are listed as rare, threatened or endangered are also in their hundreds if not thousands since the last biodiversity census and we easily outdo the rest of the world for reptile and amphibians in danger.

Of the 1790 species listed as threatened under the EPBC Act, only 666 have a recovery plan. The percent is similar under the Victorian government's FFG Act. Of those awaiting a Recovery Plan, many are critically endangered. This is an appalling situation, made even more appalling by the plans to weaken the EPBC Act.



Little has changed since Howard era country.

Current policies and legislation, state commonwealth and international

State and commonwealth lists of our most threatened species and communities are extremely conservative and need updating.

The EPBC Act is totally inadequate to deal with the many urgent actions necessary to protect those species and communities lucky enough to be listed. This can only be deliberate. It ensures there is no conflict with development and extractive industries. This shocking display of poor funding arrangements and a system designed to be ineffective is appalling. But there is also now an urgent need to add climate pressures into the picture. This is a critical new component to the environmental equation and inexcusable that it is being ignored. Denial of the impacts is shameful in the extreme. Australia is not a debt-ridden developing

The Convention on Biological Diversity (CBD) is an international legally binding treaty. In 2002, Australia and other parties adopted the 2010 Biodiversity Target. It was to

reduce the rate of biodiversity loss at all levels. Australia has dismally failed to achieve its commitment to this Target. There is simply no political will and no funding.

The EPBC Act was reviewed by Dr Allan Hawke and found to be lacking in many areas. The Government has not made a formal response to the recommendations that came out three years ago. It has suggested informally however, that many of the necessary improvements won't be made. The survival of entire species is so serious, it must be treated as a *critical* matter, not a political matter.

The missing link – FUNDING

It is clear that the Commonwealth government is disinterested in environmental protection where it might impinge on development, mining or logging. Lip service and glossy documents are not effective. Decent funding is urgently needed. The \$1 billion over 6 years is a start, but this must be increased 10 fold if the government is to meet its legal – and moral - obligations. With the impacts of climate change, floods, mega-fires and drought, we have an ever increasing crisis of our biodiversity and ecosystems – on all levels, not just those which are rare or endangered.

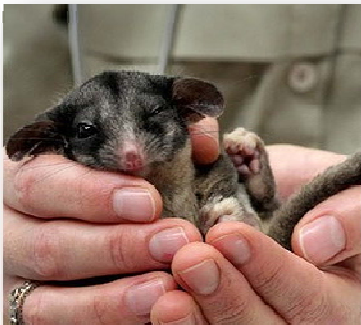
EEG believes there must be a public enquiry into the effectiveness of current legislation to protect our native species and rare communities.

We would like to give verbal evidence to this current Senate enquiry.

The five F's

Threats to our biodiversity are increasing. The major Fs: forestry, fragmentation, farming, ferals and fire, can now be joined by fracking – as well as climate FEVER.

The EPBC Act must be strengthened, not ditched!



Jill Redwood
Coordinator

20th December 2012

