



Environmental  
Defenders Office

**Submission to the 2022 Proposed Variation of the Code  
of Practice for Timber Production**

**15 March 2022**

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EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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### **Submitted to:**

Forestry Branch  
Department of Environment, Land, Water and Planning, Victoria

### **Lodged online**

<https://engage.vic.gov.au/2022-proposed-variation-code-practice-timber-production>

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## Introduction

Thank you for the opportunity to make a submission to the 2022 Proposed Variation of the Code of Practice for Timber Production (**the Code**). Our submission addresses:

1. Overarching comments on the Code, and the broader forestry regulatory framework in Victoria.
2. Specific comments on the 2022 proposed variation to the Code.

We also make a number of **key recommendations**, as follows:

**Recommendation 1:** Suspend native forestry operations in fire-affected native forests and unburnt areas serving as species-recovery refugia until such time as relevant rules and regulations, including the Code, are revised, taking into account the impacts of the bushfires and any relevant recommendations of the Major Event Review.

**Recommendation 2:** Undertake a comprehensive review of the Code to ensure that the environmental values that the Code seeks to protect are adequately protected by the management standards and procedures within the Code, applying best available science.

**Recommendation 3:** Introduce relevant provisions that would trigger a timely, comprehensive review of the Code following a future major event (e.g. bushfire, flood etc.).

**Recommendation 4:** Make all submissions to the 2021 proposed variation and the 2022 proposed variation to the Code publicly available.

**Recommendation 5:** Do not proceed with proposed changes to fire management zone clauses.

**Recommendation 6:**

- a) Update the greater glider management action in the management standards and procedures, consistent with the best available science.
- b) As part of a comprehensive review of the Codes, identify and address inconsistencies between relevant management actions in Action Statements prepared under the *Flora and Fauna Guarantee Act 1988* and the management standards and procedures under the Code.
- c) Ensure that any amendments to specific management actions within the management standards and procedures are based on the best available science, and are consistent with the principles of ESD.

**Recommendation 7:** Ensure that precautionary principle compliance standards are consistent with best available science, are developed having regard to input from the Conservation Regulator and the outcomes of the Major Event Review, and take into account the impacts of the 2019-2020 bushfires.

## 1. Overarching comments on the Code, and the broader forestry regulatory framework in Victoria

EDO is concerned that the 2022 proposed variation to the Code, and last year's 2021 variation,<sup>1</sup> have failed to adequately respond to the 2019-2020 bushfire season, which had catastrophic impacts on areas of Victoria's forests in the east of the State.

In Victoria, bushfires impacted more than 1.5 million hectares.<sup>2</sup> Over 450,000 ha of national parks and nature conservation reserves, 203,758 ha of special protection zones (**SPZs**) and 193,375 ha of forests protected by prescription are within the fire extent. Analysis indicates that 244 species have more than 50% of their modelled habitat within the burnt area, including 215 rare or threatened species and nine ecological vegetation classes (**EVCs**) with more than 50% of their extent burnt.<sup>3</sup>

In 2020, in the aftermath of the bushfires, the Victorian Conservation Regulator formed the view that:

*“the precautionary principle is currently triggered by risks of serious and irreversible damage to Victoria's biodiversity posed by timber harvesting operations in light of the 2019/20 bushfires, and the significant scientific uncertainty about the status of Victoria's biodiversity from these operations in this context.”<sup>4</sup>*

While the Conservation Regulator made recommendations to VicForests as to how it could implement precautionary measures to meet its regulatory obligations, it appears no steps have been undertaken to apply a precautionary approach more broadly across the regulatory framework and revise management standards and procedures (**MSPs**) accordingly.

Also following the 2019-2020 bushfires, the Commonwealth and Victorian Governments agreed to undertake a Major Event Review of Regional Forest Agreements (**RFAs**) in Victoria to assess the impacts of the fires and identify if future remedial actions need to be taken.<sup>5</sup> The Summary Report prepared as part of the Major Event Review highlights the substantial impacts that the bushfires have had in areas covered by Victoria's RFA regions, including impacts on the CAR reserve system, impacts on forest industries, impacts on matters of national environmental significance, social and other economic impacts and impacts on cultural and heritage values.<sup>6</sup>

In our submission to the Major Event Review we recommended that “*all native forestry operations in fire-affected native forests and unburnt areas serving as species-recovery refugia should be suspended,*

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<sup>1</sup> See <https://engage.vic.gov.au/code-practice-timber-production>

<sup>2</sup> Department of Environment, Land, Water and Planning, *Victoria's bushfire emergency: biodiversity response and recovery - Version 2*, August 2020, available at [https://www.wildlife.vic.gov.au/\\_data/assets/pdf\\_file/0030/484743/Victorias-bushfire-emergency-Biodiversity-response-and-recovery-Version-2-1.pdf](https://www.wildlife.vic.gov.au/_data/assets/pdf_file/0030/484743/Victorias-bushfire-emergency-Biodiversity-response-and-recovery-Version-2-1.pdf)

<sup>3</sup> Department of Environment, Land, Water and Planning, *Victoria's bushfire emergency: biodiversity response and recovery - Version 2*, August 2020, op.cit.

<sup>4</sup> See, for example, Victorian Conservation Regulator, *Precautionary measures in timber harvesting post to 2019/2020 Victorian bushfires – Regulatory Position Statement*, May 2020, available at [https://d3n8a8pro7vnm.cloudfront.net/gecoforests/pages/2363/attachments/original/1607375694/5132\\_-\\_Document\\_for\\_Release.pdf?1607375694](https://d3n8a8pro7vnm.cloudfront.net/gecoforests/pages/2363/attachments/original/1607375694/5132_-_Document_for_Release.pdf?1607375694)

<sup>5</sup> For more information about the Major Event Review, see <https://www.delwp.vic.gov.au/futureforests/what-were-doing/the-major-event-review-of-regional-forest-agreements>

<sup>6</sup> See [https://www.delwp.vic.gov.au/\\_data/assets/pdf\\_file/0023/542156/Summary\\_Report\\_May\\_2021\\_-\\_Accessible\\_Version\\_002.pdf](https://www.delwp.vic.gov.au/_data/assets/pdf_file/0023/542156/Summary_Report_May_2021_-_Accessible_Version_002.pdf)

pending the outcomes of the Major Event Review, including the implementation of any remedial actions recommended by the Major Event Review”.<sup>7</sup>

Given that the Major Event Review is yet to report, and no other substantial amendments to the regulatory framework have been made to specifically address bushfire impacts, we reiterate our earlier recommendation to suspend native forestry operations in fire-affected native forests and unburnt areas serving as species-recovery refugia until such time as relevant rules and regulations, including the Code, are revised, taking into account the impacts of the bushfires and any relevant recommendations of the Major Event Review.

**Recommendation 1:** Suspend native forestry operations in fire-affected native forests and unburnt areas serving as species-recovery refugia until such time as relevant rules and regulations, including the Code, are revised, taking into account the impacts of the bushfires and any relevant recommendations of the Major Event Review.

Even before the 2019-2020 bushfires, there were concerns about the adequacy of the regulatory framework for native forestry operations in Victoria.<sup>8</sup> Given the inadequacy of existing prescriptions, and in light of the significant impact of the bushfires on species and the CAR reserve system, it should not be expected that ‘business-as-usual’ can continue.

The Code is a key component of the regulatory framework for forestry operations in Victoria. It outlines the environmental standards for planning and conducting commercial timber harvesting operations, including in relation to the protection of soils, water, biodiversity, recreation, cultural heritage and visual amenity.

A comprehensive review of the Code is needed to ensure that the environmental values that the Code seeks to protect are adequately protected by the MSPs within the Code, applying best available science. A comprehensive review should:

- adopt the advice of the Conservation Regulator regarding the precautionary approach that should be taken post-bushfires;<sup>9</sup>
- incorporate any recommendations and remedial actions arising from the Major Event Review that are consistent with the broader regulatory framework for forestry operations in Victoria and the principles of ecologically sustainable development (**ESD**); and

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<sup>7</sup> See, Environmental Defenders Office, *Submission to Major Event Review for Victoria’s Fire Impacted Forests – Summary Report*, 31 August 2021, available at <https://www.edo.org.au/publication/submission-to-major-review-for-victorias-fire-impacted-forests/>

<sup>8</sup> See, for example Environmental Defenders Office, *Submission to Major Event Review for Victoria’s Fire Impacted Forests – Summary Report*, 31 August 2021, section 2.2, available at <https://www.edo.org.au/publication/submission-to-major-review-for-victorias-fire-impacted-forests/>

<sup>9</sup> See, for example, Victorian Conservation Regulator, *Precautionary measures in timber harvesting post to 2019/2020 Victorian bushfires – Regulatory Position Statement*, May 2020, op. cit.

- be done as soon as possible after the Major Event Review reports,<sup>10</sup> bringing forward the timeframe for the anticipated comprehensive Code review under the RFAs<sup>11</sup> (i.e. while the comprehensive review is required to be completed by the end of 2023, it can and should be undertaken earlier).

**Recommendation 2:** Undertake a comprehensive review of the Code to ensure that the environmental values that the Code seeks to protect are adequately protected by the management standards and procedures within the Code, applying best available science.

We also recommend introducing relevant provisions that would trigger a timely, comprehensive review of the Code following a future major event (e.g. bushfire, flood etc.). A trigger to require a review of the Code itself would provide the opportunity to consider whether the Code is still fit for purpose and consistent with the principle of ESD, and makes specific recommendations for Code amendments. We do not see this as duplicating the role of the RFA Major Event Review mechanism, as an RFA Major Event Review is focused on the RFA framework, and is limited to recommending remedial action. It also means that the Victorian forestry regulatory framework will be better able to respond to future events in a more timely, structured manner. It has been over two years since the 2019-2020 bushfires, and it appears there has still been no substantial analysis of whether the Code provisions remain fit for purpose, or subsequent amendments to the Code; this in itself highlights a failure of the regulatory framework.

**Recommendation 3:** Introduce relevant provisions that would trigger a timely, comprehensive review of the Code following a future major event (e.g. bushfire, flood etc.).

Finally, we also request that all submissions to the 2021 proposed variation and the 2022 proposed variation to the Code be made publicly available. This would be consistent with best-practice community participation, and would help all stakeholders and the community understand key issues leading into the anticipated comprehensive review of the Code.

**Recommendation 4:** Make all submissions to the 2021 proposed variation and the 2022 proposed variation to the Code publicly available.

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<sup>10</sup> We understand the Major Event Review Panel is in the process of drafting its final report for submission to the Commonwealth and Victorian governments, see <https://www.delwp.vic.gov.au/futureforests/what-were-doing/the-major-event-review-of-regional-forest-agreements>

<sup>11</sup> A comprehensive review of the Code is required to be done under the Victorian RFAs by December 2023, see, for example, d 33D of the East Gippsland Regional Forest Agreement, available at [https://www.delwp.vic.gov.au/\\_data/assets/pdf\\_file/0033/459924/East-Gippsland-RFA.pdf](https://www.delwp.vic.gov.au/_data/assets/pdf_file/0033/459924/East-Gippsland-RFA.pdf)

## 2. Specific comments on the 2022 proposed variation to the Code

EDO provides the following comments on the 2022 proposed variation to the Code.

Generally, in the first instance, we are concerned by recent reports in the media that several of the proposed changes may impact on legal proceedings currently before the Court.<sup>12</sup> The changes may be perceived as ‘special amendments’ designed to overcome ongoing legal challenges. This is not an appropriate way to implement sensible, evidence-based policy and regulations.

### 2.1 Clarifying fire management zone clauses to fix errors and reduce ambiguity in how harvest limits are measured

We do not agree that these proposed changes simply clarify rules and reduce ambiguity. Rather, the proposed changes would ‘move the goal posts’ in terms of calculating the rolling five-year average harvest. It does this by proposing a new concept - a ‘fuel hazard management unit’, which is proposed to be defined as:

*“fuel hazard management unit’ means an area of land of that description shown in the spatial information in the Fuel Hazard Management layer in the Victorian Spatial Data Library, published by the Secretary or delegate. A fuel hazard management unit typically encompasses several fire management zones across a broader landscape, region or district”.*

As the definition explains, this new fuel hazard management unit brings together several fire management zones and would, in practice, cover a larger area of land than a single fire management zone.

Under the proposed changes the rolling five-year average would be calculated within a fuel hazard management unit, rather than a single management zone. This could lead to an intensification of logging in a single fire management zone, as a larger base area will be used to determine any caps. As logging does not need to be spread evenly across a fuel hazard management unit, the limit for that fuel hazard management unit could be concentrated in a single fire management zone. This is essentially a weakening of current protections. We do not support this amendment.

**Recommendation 5:** Do not proceed with proposed changes to fire management zone clauses.

### 2.2 Moving the MSPs into the Code as a schedule, rather than having them sit separately as an ‘incorporated document’

While EDO does not have specific concerns about moving the MSPs into the Code, *per se*, we highlight the following two issues:

#### 2.2.1 Perverse outcome of proposed new paragraph on page 26

We are concerned that the proposed paragraph at the top of page 26 of the *Draft for Consultation - Code of Practice for Timber Production 2014 (amended 2022)* will have the perverse outcome of

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<sup>12</sup> See, for example, The Guardian, *Victorian logging rule changes will weaken protection for bushfire-prone areas, conservation groups warn*, 24 February 2022, available at <https://www.theguardian.com/australia-news/2022/feb/24/victorian-logging-rule-changes-will-weaken-protection-for-bushfire-prone-areas-conservation-groups-warn>

overriding relevant management actions, including the management action for the greater glider introduced in 2019 Greater Glider Action Statement.

The paragraph of concern reads (emphasis added):

*The Management Standards and Procedures are informed by relevant policy documents including policies relating to specific forest values such as threatened species, guidelines and strategies within forest management plans made under the Forests Act 1958 and Action Statements made under the Flora and Fauna Guarantee Act 1988. **The Management Standards and Procedures replace any directions relating to timber harvesting operations contained within these documents.***

While this policy position may be appropriate for historic Action Statements, where management actions within those Action Statements have been superseded by updated management standards in the MSPs, it may have the perverse outcome of overriding more recent Action Statements, particularly in circumstances where the MSPs have not yet been amended to reflect updated policy and best available science.

One example of this is the Action Statement for the greater glider, introduced in 2019.<sup>13</sup> The Greater Glider Action Statement contains a management action for timber harvesting as follows:

*“Retain at least 40% of the basal area of eucalypts across each timber harvesting coupe, prioritising live, hollow bearing trees, wherever a density of Greater Gliders equal to or greater than five individuals per spotlight kilometre (or equivalent measure) is identified. Note that this prescription replaces the existing requirement to establish a Special Protection Zone in cases where greater than 10 individuals per spotlight kilometre (or equivalent measure) are detected in the East Gippsland Forest Management Area.”*

Despite the sentence in the Action Statement that says “*this prescription replaces the existing requirement to establish a Special Protection Zone in cases where greater than 10 individuals per spotlight kilometre (or equivalent measure) are detected in the East Gippsland Forest Management Area*”, there has been some uncertainty as to how the management action in the Action Statement interacts with the management action in the MSP, including in relation to how the management standard in the Action Statement is enforced.

The proposed paragraph at the top of page 26 creates more ambiguity.

We note that a Fact Sheet available from the Conservation Regulator states:

*“Both prescriptions currently apply. While Intended Management Action 5 states that it replaces the prescription in the Code, the Code prescription, by law, will apply until such a time that the Code is reviewed and amended accordingly. VicForests has committed to implementing both prescriptions until relevant amendments are made”.*<sup>14</sup>

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<sup>13</sup> See [https://www.environment.vic.gov.au/\\_data/assets/pdf\\_file/0019/440371/267-Greater-Glider-2019-Action-Statement.pdf](https://www.environment.vic.gov.au/_data/assets/pdf_file/0019/440371/267-Greater-Glider-2019-Action-Statement.pdf)

<sup>14</sup> See [fact sheet](#)



The Consultation Report from the 2021 Code changes recognised that stakeholders questioned why the new management action recommended by the 2019 Greater Glider Action Statement was not included in the 2021 Code amendments.<sup>15</sup> The response included in the Consultation Report states:

*“The 2019 Greater Glider Action Statement prescription was not codified through these changes, as further consideration is being given to the needs of this species after the 2019-20 bushfires through the Major Event Review under Victoria’s Regional Forest Agreements and Threatened Species and Communities Risk Assessments. VicForests will continue to implement the Action Statement prescription as a policy requirement, and this will continue to be monitored by the Conservation Regulator, as part of routine compliance activities”.*<sup>16</sup>

It is our understanding that there has been no further (publicly expressed) policy decision made regarding the management action in the 2019 Greater Glider Action Statement, or a decision to abandon it. Further clarification is needed as to how the 2019 Greater Glider Action Statement and the MSPs are intended to interact, particularly in light of the paragraph intended to be inserted by the 2022 proposed changes to the Code.

Ultimately, it is disappointing that more than two years after the devastating 2019-2020 bushfires this issue remains unresolved and greater glider populations remain at risk due to inaction and uncertainty about the rules relating to their protection. We recommend that the greater glider management action in the MSPs be updated, consistent with the best available science.

While we have used the example of the greater glider to demonstrate the potential perverse outcomes from the inclusion of the proposed paragraph on page 26, other species may also be impacted. This once again highlights the need for a comprehensive review of the Codes, that includes an analysis to identify and address inconsistencies between relevant management actions in Action Statements prepared under the *Flora and Fauna Guarantee Act 1988* and the MSPs under the Code. Any amendments to specific management actions must be based on best available science, and consistent with the principles of ESD.

**Recommendation 6:**

- a) Update the greater glider management action in the management standards and procedures, consistent with the best available science.
- b) As part of a comprehensive review of the Codes, identify and address inconsistencies between relevant management actions in Action Statements prepared under the *Flora and Fauna Guarantee Act 1988* and the management standards and procedures under the Code.
- c) Ensure that any amendments to specific management actions within the management standards and procedures are based on the best available science, and are consistent with the principles of ESD.

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<sup>15</sup> Department of Environment, Land, Water and Planning, *2021 Proposed Variation of the Code of Practice for Timber Production - Public Consultation Report*, available at <https://engage.vic.gov.au/download/document/23824>

<sup>16</sup> Department of Environment, Land, Water and Planning, *2021 Proposed Variation of the Code of Practice for Timber Production - Public Consultation Report*, op.cit.

### **2.2.2 *Precautionary principle compliance standards***

We understand that moving the MPSs into the Code is being done, in part, to allow for new compliance standards for applying the precautionary principle to be introduced. We understand further public consultation on the proposed compliance standards will be undertaken later this year. We recommend that compliance standards be consistent with best available science, are developed having regard to input from Conservation Regulator and the outcomes of the Major Event Review, and take into account the impacts of the 2019-2020 bushfires.

**Recommendation 7:** Ensure that precautionary principle compliance standards are consistent with best available science, are developed having regard to input from the Conservation Regulator and the outcomes of the Major Event Review, and take into account the impacts of the 2019-2020 bushfires.

### **2.3 *Clarifying the requirements for protecting the Tree Geebung, a species of native shrub***

We do not think this change is justified and it risks being perceived as a 'special amendment' to overcome ongoing legal challenges. As recommended above, any amendments to specific management actions must be based on best available science, and be consistent with the principles of ESD.