

The Wilderness Society Victoria
Submission to Inquiry into
Ecosystem Decline in Victoria



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Summary

Australia is in the midst of a species extinction crisis. The failure of the wider environmental framework (including the Environment Protection and Biodiversity Conservation Act (Comm), Flora and Fauna Guarantee Act (Vic)) includes failure to address habitat loss, fragmentation and other stresses that reduce ecosystem resilience and increase the vulnerability of biodiversity to additional impacts such as bushfire, and turn around threatened species declines.

The 2019-2020 fires have substantially increased extinction risk for a range of species and propelled further ecosystem decline. The threat of future fires of this nature further increases extinction risk. Yet there has been no substantive policy or legislative reform that counters this increased risk by more strongly regulating environmentally damaging activities, or setting clear steps to address species and ecosystem declines.

These failures impact us all, and citizens have a right and responsibility to be involved in decisions that will affect the use and health, and the state and benefit, of the environment.

The Inquiry is encouraged to consider the limits to climate adaptation, and the need for urgent global emissions reduction, as well as Victoria's responsible contribution to achieve this through ecosystem protection and restoration.

Logging continues to impact on the survival of threatened species with numerous forest-dependent flora and fauna being pushed ever closer to extinction due to logging-induced habitat loss. Other logging impacts include loss of large old hollow bearing trees, rainforest sites of significance, impacts on water quality and quantity and loss of forest carbon.

The health of Australia's ecosystems and landscapes is inextricably linked to recognition of the rights and interests of Traditional Custodians in all aspects of land and water management, as well as decision-making in relation to their traditional lands and waters, regardless of current land tenure. Greater financial support from governments is required for the continuation of Indigenous cultural and land management practices, and the continued removal of legislative, institutional and policy barriers to these practices.

About The Wilderness Society

The Wilderness Society is an Australian, community-based, not-for-profit, non-governmental environmental advocacy organisation. We work to safeguard our sources of clean water and air, to tackle devastating climate change, to create a safe future for life on Earth, and to give a better world to our children.

The Wilderness Society Vic (TWSV) has a long-standing interest in forests, bushland and other environments across Victoria. For decades, TWSV has advocated for improved protection and management of important areas, in line with conservation science, community interest, the changing profile of logging and other industries, dialogue with Traditional Custodians and the critical need to protect and restore fragmented landscapes, particularly in order to build resilience in the face of the impacts of climate change.

1. Ecosystem decline in the context of climate change

Climate change is widely acknowledged as one of the largest systemic threats to biodiversity in Australia. Research predicts dramatic environmental change due to climate change, with significant impact on many ecosystems supporting Australian biodiversity, with the potential to overcome species' ability to adapt by 2070.¹

It is well acknowledged that effective land management can help minimise the scale of climate change by sequestering carbon in the landscape and also help landscapes adapt to the changing climate.²

Protecting and restoring Victoria's ecosystems will make an important contribution to limiting global warming to below 1.5 degrees, assisting fire management and will deliver biodiversity and other benefits for people and nature. Legislation that ends broad-scale land-clearing, deforestation and degradation of native forests is an essential part of protecting Australia's land carbon stores and mitigating climate change.

We recommend the Inquiry consider the limits to climate adaptation, and highlight the need for urgent global emissions reduction, as well as Victoria's responsible contribution to achieve this through ecosystem protection and restoration.

RECOMMENDATION 1

That the Commonwealth and Victorian state governments recognise the increasing risk to ecosystems, species and of natural disasters under climate change scenarios, and take urgent action to set strong targets that would limit warming to 1.5 degrees (in line with the Paris Agreement) and play a constructive role internationally on meeting this goal.

RECOMMENDATION 2

That State government appoint a Chief Biodiversity Scientist for Victoria, in line with the recommendation in the 2018 State of the Environment report.

2. Traditional Custodian Rights and Interests

The Wilderness Society recognises the rights and interests of Traditional Custodians in all aspects of land and water management, as well as decision-making in relation to their traditional lands and waters, regardless of current land tenure.

The Wilderness Society supports an ongoing process of consultation and negotiation between governments and Traditional Custodians that recognises and supports Traditional Custodian decision-making processes across the spectrum of tenure and management arrangements.

¹ Dunlop et al (2012) *The Implications of Climate Change for Biodiversity, Conservation and the National Reserve System: Final Synthesis* CSIRO Climate Adaptation Flagship, Canberra

² For example, see <https://www.csiro.au/en/Research/LWF/Areas/Landscapes/Forests/Sequestering-carbon-in-soil-and-vegetation>

The Wilderness Society further notes the need for culturally appropriate negotiation, agreement-making and consultation with Traditional Custodians as determined by Traditional Custodians, and believes that Victorian legislation, management plans and other mechanisms related to the protection and management of the environment should enshrine the principles of free prior and informed consent as the basis of participation by Traditional Custodians.

Legislation and government protocols need to ensure free, prior and informed consent by Traditional Custodians, as consistent with the UN Declaration of the Rights of Indigenous Peoples, for both mechanisms involving the protection of places or values, as well as mechanisms relating to actions or activities that may impact those places or values.

In this submission, Wilderness Society has generally avoided suggesting specific mechanisms for the recognition of Traditional Custodian rights and interests, but is supportive of such mechanisms and believes these would properly be established by direct negotiation and consultation with Traditional Custodians.

Traditional management practices

Indigenous people have undertaken traditional cultural practices, including activities such as fire management, for thousands of years. These management practices have interacted and influenced the ecology and natural values of much of Australia. Consequently, the health of Australia's ecosystems and landscapes is inextricably linked to the continuation of Indigenous cultural and land management practices. Traditional forms of management can enhance the resilience of ecosystems and protect biodiversity, while resilient ecosystems can in turn assist the ongoing ability of Indigenous peoples to practice their culture.

Traditional Custodians never ceded sovereignty over their homelands and the enforced separation of Traditional Custodians from their country has been one of the root causes of injustice, suffering and deprivation of Aboriginal people.

While traditional management is the primary template for land and natural resource management in Australia, the arrival of Europeans over 200 years ago brought dispossession, degradation of country, introduced pest species and native species declines.

These impacts have undoubtedly affected the ability of Traditional Custodians to implement traditional management and pass on knowledge—however strong knowledge still exists, and is being implemented and revived, for example for cultural burning practices through the Firesticks Alliance.³

The Wilderness Society is supportive of traditional management practices, as well as continued and expanded financial support from governments, and the continued removal of legislative, institutional and policy barriers to these practices.

Environmental protection and Traditional Custodian rights and interests

In general, Wilderness Society supports the following perspective in relation to the intersection between environmental protection and Traditional Custodian rights and interests. These are not intended as a prescriptive list but rather a general perspective to provide context for recommendations made in this submission.

³ Firesticks Alliance. See <https://www.firesticks.org.au/> Accessed 27 April 2020

Protected area legislation, formal and informal protections, management plans, partnership agreements established between Traditional Custodians and governments, and other protections should:

- Provide for the permanent preservation of the area or value's natural condition and the protection of the area's cultural resources and values, to the greatest possible extent;
- Provide for the management of the area or value, as far as practicable, in a way that is consistent with any Aboriginal and/or Torres Strait Islander tradition or custom applicable to the area or value, including any tradition or custom relating to activities;
- Where applicable, provide for the appropriate presentation of the area's cultural and natural resources and their values; and
- Ensure that any use of the area or value is ecologically sustainable and in accord with the previous priorities, recognising that as a result of the present state of the environment, and the climate change crisis, protections are required to meet urgent biodiversity objectives. In a context of new problems and new challenges (including vegetation clearance, habitat fragmentation, invasive pests and native species decline) management of protected areas and values should, as appropriate, include both traditional management and contemporary management methods, where the rights of Traditional Custodians are recognised in respect to traditional knowledge and management practices.

RECOMMENDATION 3

That environmental protection and management involve a fundamental first step of governments and land managers recognising the rights and interests of Traditional Custodians in all aspects of land management and decision making in relation to their traditional lands, regardless of current land tenure. This may involve a range of mechanisms, including recognition of title and handback of lands, joint and co-management arrangements, state land rights legislation, treaties and regional agreements, Indigenous Land Use Agreements (ILUA's), affirmative action employment and education policies, 'Pay the rent' schemes and Indigenous Protected Areas.

RECOMMENDATION 4

That the State government ensure legislation, institutional arrangements, policies and arrangements are in place to appropriately engage Traditional Custodians in all aspects of land and water management, and Traditional Custodians are properly resourced to do so.

RECOMMENDATION 5

That the State government increase resourcing for existing and expanded traditional management and cultural burning, particularly the development of longer term, secure program funding for stable employment.

RECOMMENDATION 6

The Commonwealth, states and agencies recognise Traditional Custodian authority over cultural knowledge and its application in cultural and ecological management, including management of cultural intellectual property according to traditional law, and to control any earnings derived from it.

RECOMMENDATION 7

This inquiry is encouraged to engage directly with Traditional Custodians and their representatives in regards to rights, aspirations and management regarding lands waters and ecosystem decline, restoration and protection.

3. Bushfires 2019-20

In addition to devastating impacts on life, property and the community, the 2019-2020 bushfires have had a significant impact on many of Australia's most important and biodiverse landscapes. More than 11 million hectares of land burned across the country over a period of about six months, impacting more than a billion animals.

While fire is a regular feature of many Australian ecosystems, there are number of aspects of the 2019-20 fire event that are significant when evaluating the environmental impact:

- The total extent of the fires;
- The large proportion of habitat burnt at a regional or landscape level;
- The large loss of rainforest and other previously long unburnt areas.

In Victoria, the fires burnt around 1.5 million hectares of land, approximately 78% of the State's remaining Warm Temperate Rainforest, and 215 threatened species had more than 50% of their statewide habitat burnt⁴.

It is clear current approaches to fire management are reaching their limits, and greater community understanding of those limits, changes to bushfire management—and action to address climate change is required.

Australia is in the midst of a species extinction crisis. The failure of the wider environmental framework (the Environment Protection and Biodiversity Conservation Act (Comm), Flora and Fauna Guarantee Act (Vic) meant the overall impact on wildlife and ecosystems from the 2019-2020 bushfires was higher than it should have been, because habitat loss, fragmentation and other stresses have reduced ecosystem resilience and increased the vulnerability of biodiversity to additional impacts such as bushfire.

4. Forests and logging

Logging continues to impact on the survival of threatened species with numerous forest-dependent flora and fauna being pushed ever closer to extinction due to logging-induced habitat loss. Other logging impacts include loss of large old hollow bearing trees, rainforest sites of significance, impacts on water quality and quantity and loss of forest carbon.

Formal research, recovery plans, and other evidence highlights the significant impact of habitat loss for forest-dependent species and the need for additional habitat protection, via dedicated reserves, greater prescriptions and rapid transition to a plantation based industry. Species such as the Leadbeater's Possum, Greater Glider, Spot-tailed Quoll, Long-footed Potoroo, Smoky Mouse, Powerful Sooty & Masked Owls, Glossy Black-Cockatoo, Spotted Tree Frog, Large Brown Tree Frog, Barred Galaxias, Orbost Spiny Crayfish and Tree Geebung are regularly identified as icon species facing the ongoing loss of habitat due to logging.

⁴ Victoria's bushfire emergency: biodiversity response and recovery Version 2 August 2020
https://www.wildlife.vic.gov.au/_data/assets/pdf_file/0030/484743/Victorias-bushfire-emergency-Biodiversity-response-and-recovery-Version-2-1.pdf

As outlined in section 3 (Bushfires), the 2019-20 bushfires impacted over one million hectares of forest in Victoria and 215 threatened species had more than 50% of their statewide habitat burnt⁵. Extensive areas of fire impacted forests are in a vulnerable state and need recovery, yet logging operations are being undertaken in both fire impacted forests and more broadly in the habitats of fire impacted species such as the Greater Glider.

Of particular concern is the commencement of clearfell logging operations in East Gippsland, a region where three quarters of state forest was burnt in 2019-20. Despite assessment not yet occurring for post-fire threatened wildlife populations and recovery, logging has commenced in known habitat for the Powerful Owl and Long-footed Potoroo. In addition, State logging agency VicForests is currently proposing 102 new logging coupes for the region.⁶

After a fire, many trees that have been burnt may look dead, but will resprout in the following months, and must not be logged as they are vital to the recovery of habitat for species such as Greater Gliders. Introducing heavy logging machinery to burnt areas kills many plants regrowing on the forest floor, tree fern populations are known to crash, while fungi and nutrients may take a century or longer to recover and there is increased risk of soil erosion and water quality impacts.

So-called salvage logging is the practice logging recently burnt forests to extract fire affected trees. It is a highly damaging form of logging. This is because fire affected forests need time and care to recover, not a second round of damage through intensive logging operations.

The ecological impacts of salvage logging are well recognised:

A major body of scientific research spanning hundreds of studies from Australia and around the world over the past 20 years shows that so-called post-fire "salvage logging" is the most damaging form of logging in native forests.

Its impacts can last for decades or centuries and seriously impair the recovery of animal, bird and insect populations. With so little intact forest left, this will spell disaster for native wildlife (Professor David Lindenmayer, ANU).⁷

A link has also been established between logging itself and bushfire risk. Logging practices have been shown to increase the severity of bushfires in wet forests⁸, while it has been concluded that extensive logging over large areas can contribute to a change in vegetation state at landscape levels and increase risk of high severity fire⁹.

In November 2019, the Andrews government recognised the need for reform and announced an end to native forest logging by 2030, and interim measures to protect some areas of forest. While a positive step, the reforms do not go far enough quickly enough to avoid serious damage to forest ecosystems and push species closer to extinction. Given the announcement was made prior to the 2019-20 bushfires, and their impact on threatened species populations and log availability - there is now an urgent need for further reform. At the heart of the problem is unsustainable wood supply volumes in the period to 2030, including a contract setting minimum extraction volumes enshrined in special legislation for a single company - forcing logging operations into high conservation value (HCV) forests.

⁵ Victoria's bushfire emergency: biodiversity response and recovery Version 2 August 2020

https://www.wildlife.vic.gov.au/_data/assets/pdf_file/0030/484743/Victorias-bushfire-emergency-Biodiversity-response-and-recovery-Version-2-1.pdf

⁶ Proposed Timber Release Plan - August 2020.

<https://www.vicforests.com.au/planning-1/proposed-timber-release-plan-august-2020>

⁷ Lindenmayer D (2020) Post-bushfire logging makes a bad situation even worse, but the industry is ignoring the science.

ABC News. See

<https://www.abc.net.au/news/2020-01-29/logging-bushfire-affected-areas-australia-increases-fire-risk/11903662> Accessed 27 April 2020

⁸ Taylor C, McCarthy M, Lindenmayer D (2014) Nonlinear Effects of Stand Age on Fire Severity. Conservation Letters Volume 7 Issue 4 Pages 355-370 <https://conbio.onlinelibrary.wiley.com/doi/full/10.1111/conl.12122>

⁹ Lindenmayer D, Hobbs R, Likens G, Krebs C, and Banks S (2011) Newly discovered landscape traps produce regime shifts in wet forests. PNAS September 20, 2011 108 (38) 15887-15891 <https://www.pnas.org/content/108/38/15887>

RECOMMENDATION 8

The 2030 transition to end native forest logging be brought forward, including releasing worker transition support before 2024, revising the pulplog contract to Nippon Opal (Australian Paper) to immediately reduce pulplog volumes, and investing support for a more rapid transition of the sawn timber sector.

RECOMMENDATION 9

In light of the extensive impact of the 2019-20 bushfires on the forests and wildlife of the East Gippsland region, and uncertainty over the status and recovery of threatened species populations - logging operations should remain suspended across the region.

RECOMMENDATION 10

Reform the old growth forest identification tool, currently used in the field by both the OCR and VicForests, to ensure the presence of a minority of regrowth trees does not rule out the classification of an entire stand, and thereby permit clearfelling.

RECOMMENDATION 11

Ensure so-called 'Immediate Protection Areas' are scientifically based, rapidly established, and are in high conservation areas.

RECOMMENDATION 12

While regrettably positive the Greater Glider has been FFG listed, protections for this species were weakened in the East Gippsland region under the Action Statement - where the species is now in dire need following the 2019-20 bushfires. Greater Gliders above a threshold density formerly had a 100ha Special Protection Zone from logging, logging can now take place when Greater Gliders are detected. The Action Statement for the species must be revised, given the impacts of the bushfires, and the well-known vulnerability of the species to logging.

RECOMMENDATION 13

That an immediate moratorium be put in place regarding logging operations in areas of high tourism potential, such as those currently proposed by VicForests in the vicinity of the Sea to Summit trail in East Gippsland, a multi-use trail committed to by government in 2018. All unlogged coupes currently scheduled or proposed along the length and breadth of the trail must be paused, and removed from logging plans or schedules, and VicForests must be formally directed to discontinue the repeated practice of scheduling or planning coupes in the vicinity of the Sea to Summit trail.

5. Recognising multiple forest values

Forests and other natural environments have many values, supporting diversity of plants and wildlife, providing clean water and air, opportunities for recreation and respite, and important cultural heritage for First Nations.

Clearfell logging operations extract logs from high conservation areas to the great detriment of other values. There is growing awareness of the need for recognition of other values in forest protection and management for the benefit of the whole community.

RECOMMENDATION 14

That the Victorian and Commonwealth governments support the Great Forest National Park and Emerald Link visions, including through investment in infrastructure underpinning the visions, protection of natural and heritage values and appropriate public, stakeholder and Traditional Custodian engagement.

Great Forest National Park

Just 90 minutes north-east of Melbourne, stretching from Kinglake to Mt Baw Baw and north-east up to Eildon, the Great Forest National Park is a community led vision to protect endangered forests and wildlife while giving Melburnians an escape from the concrete jungle. The Traditional Custodians of these forests and surrounds include the Wurundjeri Woi Wurrung, Taungurung, Gunaikurnai and Bunurong/Boon Wurrung people.

The Great Forest National Park is an opportunity for Victoria's State Government to invest in the state's environmental future and show the world what first-class parks management looks like.

Overland walking tracks, family accommodation in eco-lodges and opportunities to see spectacular scenery from your mountain bike or your cross-country skis – all of this will make for a jobs-rich reserve system and deliver real economic returns to the region. With more than three million people visiting the region annually already, there's plenty of interest in what nature-based tourism has to offer both daytrippers from Melbourne and international visitors.

As the world moves toward a carbon trading future, protecting some of the most carbon-dense forests on the planet is an economic opportunity that the State Government can not afford to ignore.

In 2017, the Nous Group assessed the regional employment potential of creating the Great Forest National Park. For an investment of just \$45million, the proposed Great Forest National Park would draw almost 380,000 extra visitors a year to the Central Highlands, add \$71 million annually to the local economy and generate 750 jobs with a little private investment. Even without private investment, government simply declaring the national park, improving park infrastructure and visitor management, and establishing the Healesville-to-Eildon hiking trail could generate 520 jobs, attract an extra 242,000 visitors a year and add \$48 million annually to the economy in 10 years' time and growing¹⁰.

For more info see: www.greatforestnationalpark.com.au

Emerald Link

In far east Victoria, the last unbroken forest on mainland Australia links snowy alpine peaks to untouched coastlines. Ancient rainforests of Gondwanic origin intermingle with 500 year old eucalypts, supporting a diversity of wildlife and enormous untapped opportunities for recreation and nature based tourism.

East Gippsland's Emerald Link is working with local communities towards a vision of better awareness, protection and management of the diverse environments of the region and associated investment in job opportunities to sustain regional economies into the future. With improved

¹⁰ Great Forest National Park An Economic Boon.

https://www.greatforestnationalpark.com.au/uploads/1/5/5/7/15574924/great_forest_national_park_-_economic_boon_press-medium.pdf

¹¹ Great Forest National Park: economic contribution of park establishment, park management, and visitor expenditure.

https://www.greatforestnationalpark.com.au/uploads/1/5/5/7/15574924/nous_report_2017_-_edit.pdf

management and greater investment, the outstanding natural beauty of East Gippsland's Emerald Link can become a world-class conservation tourism destination.

The organisations supporting the Emerald Link recognise the long and ongoing connection of the region's Traditional Owners and their continuing custodianship of the land and waters, and continue to seek dialogue regarding Traditional Owner rights and aspirations.

Following the 2019-20 bushfires, which had devastating impacts for communities in the region, and also impacted many important forests areas - there is an opportunity for the recovery effort to focus investment to support nature based tourism, and other sustainable long term employment that recognises and celebrates the incredible natural and heritage values of the region.

The Andrews government commitment to establishing a new Sea to Summit trail is a welcome step, and there is enormous potential for further investment in recognition of the natural and heritage values of the region.

Further info: <https://www.emeraldlink.com.au/>

Ecosystem Accounts

We are supportive of the development of ecosystem accounting, to better recognise the multiple values of forest and other ecosystems, and avoid destructive activities that do not serve in the public interest.

RECOMMENDATION 15

The Victorian government establishes a system of economic environmental accounts, by 2022, in line with UN international standards, as per the recommendation in the 2018 State of the Environment Report.

6. Forest Carbon

In the face of climate catastrophe, Victoria's forests can play a positive role in removing carbon pollution from the air, nourishing us with clean air and safe, clean drinking water.

Victoria's Ash forests are particularly carbon-rich, storing more carbon per hectare than any other forest in the world and act as giant storage banks for carbon if they are not logged. The financial opportunity in carbon credits is significant, including to the State following establishment of a Federal system, or through voluntary markets.

RECOMMENDATION 16

The Victorian state government support development of carbon accounting and policies that include forests, as an aspect in better managing Victoreian native forests for a diversity of non-timber values.

7. Species decline

As already mentioned in section 3 (Bushfires), Australia is in the midst of a species extinction crisis. The failure of the wider environmental framework (including the Environment Protection and Biodiversity Conservation Act (Comm), Flora and Fauna Guarantee Act (Vic) are failing to address habitat loss, fragmentation and other stresses that reduce ecosystem resilience and increase the vulnerability of biodiversity to additional impacts such as bushfire, and turn around threatened species declines.

Professor Graeme Samuels, in the recent Interim Report for the Independent review of the EPBC Act found¹²:

The EPBC Act is ineffective. It does not enable the Commonwealth to effectively protect environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.

The way the EPBC Act operates means that good outcomes for the environment cannot be achieved under the current laws. Significant efforts are made to assess and list threatened species. However, once listed, not enough is done to deliver improved outcomes for them.

In the main, decisions that determine environmental outcomes are made on a project-by-project basis, and only when impacts exceed a certain size. This means that cumulative impacts on the environment are not systematically considered, and the overall result is net environmental decline, rather than protection and conservation.

The EPBC Act does not facilitate the restoration of the environment. Given the state of decline of Australia's environment, restoration to improve the environment is required to enable future development to be sustainable.

Key threats to the environment are not effectively addressed under the EPBC Act. There is very limited use of comprehensive plans to adaptively manage the environment on a landscape or regional scale. Coordinated national action to address key threats—such as feral animals—are ad hoc, rather than a key national priority. Addressing the challenge of adapting to climate change is an implied, rather than a central consideration.

This failing is system-wide and relates to inadequacies in the wider policy architecture as well as failures of implementation. These failures remained unaddressed because political decision-makers were unwilling to engage in the scientific reality of biodiversity declines.

In the context of the operation of the EPBC and FFG Acts, Victoria's ability to protect and restore biodiversity values in the context of growing climate impacts such as increased bushfire risk is severely limited by many of the systemic inadequacies including:

- Inadequate enforcement
- Inadequate recovery planning and implementation, including assessment of existing climate and likely future impact;
- Permitting degrading activities within important habitats already under pressure from climate change impacts;
- A lack of regulation and triggers for reassessment and iteration of planning;
- Inadequate independent data; and
- Inadequate cumulative impact assessments.

While recent revisions to the FFG Act, and work on subsequent implementation are a welcome step, destructive activities continue in threatened species habitats, loss of high conservation value forests, old trees and other native vegetation - while declines to species population and viability continue to be inadequately addressed.

Implementation and resourcing of FFG reforms remains an issue, for example only 14% of Victoria's more than 2000 threatened species currently have action statements.

¹² Independent review of the EPBC Act - Interim Report Executive Summary
<https://epbcactreview.environment.gov.au/resources/interim-report/executive-summary>

The 2019-2020 fires have substantially increased extinction risk for a range of species and propelled further ecosystem decline. The threat of future fires of this nature further increases extinction risk. Yet there has been no substantive policy or legislative reform that counters this increased risk by more strongly regulating environmentally damaging activities, or setting clear steps to address species and ecosystem declines.

RECOMMENDATION 17

Further reform of the environmental framework, and its implementation, is required if ecosystem decline is to be addressed - including to ensure:

- A. A zero destruction framework for primary, remnant, old-growth or high-conservation value forests and bushland;
- B. Strict protection of threatened species habitats and threatened ecological communities.
- C. Safeguarding freshwater ecosystems, including from extractive and industrial processes;
- D. Rapid and appropriate responses to bushfire and other significant events impacting the viability or condition of threatened species, communities and other natural values.

RECOMMENDATION 18

The Victorian government establishes a standing disaster fund that can make rapid-post disaster funding allocations for environmental recovery as required.

RECOMMENDATION 19

It is imperative that Victoria has a legal and regulatory system that can cope with the inevitable events such as bushfire yet to come, particularly in a climate change context. Effective laws would include:

- A. Proactive responsibilities to ensure hazard (such as bushfires) mapping and modelling as an essential component of planning and assessment for environmental values, including identifying priority actions to mitigate risk as a result;
- B. Provisions to ensure decision-makers in disaster response have appropriate access to information (including mapping) of fire sensitive values
- C. Major disaster provisions that trigger full ecological audit/s of impacts on environmental, sites and values including restoration requirements
- D. Provisions to suspend existing activities and approvals that might affect bushfire-impacted environmental sites and values
- E. Clarification of disaster response arrangements involving the suspension of categories of environmental approval, and requirements for clear and transparent public reporting, including timeframes.

8. Conservation regulator

There is currently no independent regulator to enforce environmental laws controlling logging, clearing, destruction of important habitats, habitat features, natural and heritage values and threatened species. While the appointment of an internal departmental regulator has been a positive step, a fully independent regulator such as the EPA as an independent watchdog for pollution, would better ensure industries comply with environmental laws relating to habitat, species and other environmental and heritage values.

RECOMMENDATION 20

Victoria needs a new, independent, well resourced conservation regulator to police logging, deforestation and destruction of habitat and environmental and heritage values.

9. Community rights and participation in decision making for all

The health of Australia's environment impacts us all and Australia's citizens have a right and responsibility to be involved in decisions that will affect the use and health, and the state and benefit, of our environment.

The Wilderness Society fundamentally believes that:

- A functioning environment is an essential component of a functioning Victoria and ongoing community health;
- Communities have a right to be meaningfully involved in decisions which impact the environmental systems that support them (i.e. planning, assessment and review), including open standing provisions, merits review of decisions, citizen-suit provisions and protections for costs associated with legal proceedings held in the public interest; and
- Communities should have free and comprehensive access to data and information about the environmental systems that support them and all information relevant to a government decision on an action which could harm the environment.

The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) sets out public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and transboundary environment. It focuses on interactions between the public and public authorities.

As far as we are aware, no Australian jurisdiction is currently a party to the Convention. However, the Convention provides a solid framework to establish strong and meaningful community rights in relation to environmental regulation.

RECOMMENDATION 21

The Victorian government should become a party to the Aarhus Convention; and enshrine community rights to information, participation and review in environmental legislation and all subsidiary instruments in line with the provisions of the Aarhus Convention.

Public participation in decision making includes a range of activities, both at the formative and implementation stages of decision-making processes (including the making of regulatory instruments).

Public participation is most effective when communities and individuals are engaged early and consistently throughout regulatory processes (e.g. decision-making, planning), including to verify post-approval compliance.

There are significant benefits to be gained by having comprehensive participation and accountability provisions set out in law. They include better community understanding and buy-in when consulted at early stages of a planning process leading to reduced conflict at later stages; more robust assessment when a range of perspectives are considered; more robust and accountable decision-making due to the very existence of accountability and review measures in law (even though these are rarely exercised); and greater chance that environmental outcomes will be delivered as intended with both government and community oversight.

The Wilderness Society strongly believes that Victoria's environmental legislation and regulation must:

- enshrine strong public participation provisions, including early engagement and public participation provisions at all key stages to inform decisions under the legislation,
- require that decisions are to be informed by community engagement, including taking all public submissions into account, providing statements of reasons for decisions, and demonstrating how public feedback affected the final outcome; and
- Properly recognise the important role ENGOs play in these processes, speaking on behalf of nature and their memberships.

To participate effectively in environmental affairs, information about the environment held by public and private authorities must be accessible in an open and transparent way.

RECOMMENDATION 22

To participate effectively, all relevant information about a proposed action or a decision under environmental legislation must be transparent and readily available to the community. Examples include providing reasons for decisions; mandatory notice of decisions and appeals (or rights to appeal) to all interested parties; and avoiding information asymmetry between the community, development proponents and other stakeholders.

Recently, the Victorian government has flagged an intention to consider the weakening of environmental laws, or third party rights, or both in response to recent legal proceedings in relation to logging operations breaching Victoria's environmental laws.¹³

Community review and enforcement rights to uphold environmental laws are fundamental to the public interest. The experience in jurisdictions with these rights demonstrates that, overwhelmingly, merits review proceedings and enforcement rights initiated by members of the public to uphold public environmental laws are done so legitimately in the public interest and generate important public environmental benefits.

Open standing for the public to seek judicial review of government decisions under environmental laws and regulations, and the right to take environmental breaches to court, means that any person can ensure that key decisions impacting biodiversity and the environment are made according to the law.

¹³ Review To Protect Victoria's Forests, Jobs And Timber Industry
<https://www.premier.vic.gov.au/review-protect-victorias-forests-jobs-and-timber-industry>

This ensures increased public confidence in decision-making and environmental outcomes, and independent oversight of government action improves decision-making, public accountability and deters corruption. Good third party enforcement rights has been cited as key to good recovery outcomes for threatened species in the United States.

RECOMMENDATION 23

Victoria's environmental laws enshrine:

- A. 'Open standing' provisions for any person to seek merits or judicial review of government decisions, or to enforce a breach, or anticipated breach, of environment law through third-party enforcement provisions in line with global best practice; and
- B. Protection for costs in public interest legal proceedings including limiting upfront cost orders that deter the community exercising legal rights; improving clarity and certainty by allowing preliminary decisions on whether a matter is in the public interest; and use of public interest costs orders (i.e. protective costs orders) in those cases.