

PUBLIC SUBMISSION:
REVIEW OF THE FLORA AND FAUNA GUARANTEE ACT 1988
CONSULTATION PAPER JANUARY 2017

Date: 26 March 2017

Submitter: [REDACTED] 3550.

Signature:

Submitter's Qualifications / Credentials: Bachelor of Applied Science Degree (Environmental Assessment and Land Use Policy); Certificate of Applied Science (Conservation and Resource Development); 38 years of experience in environmental and public land assessment, management protection and planning.

Abbreviations:

DELWP: Department of Environment Land Water and Planning.

PV: Parks Victoria.

EPBC Act: Environment Protection and Biodiversity Conservation Act.

FFG Act: Flora and Fauna Guarantee Act.

1.0 PREAMBLE.

The Victorian Government is reviewing the Flora and Fauna Guarantee Act 1988. This public comments submission is made as part of the public consultation process following the release of the consultation paper on the review. I also advise that due to time and resource restrictions this submission is made largely on the Summary paper and the Executive Summary of the Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper, without having substantially drilled into any detail.

2.0 SUBMISSION.

The Review consultation paper suggests improvements that "support a shift from reactive management to a more strategic focus on stopping decline before species become endangered" and that "The government will continue to support conservation efforts for the most endangered species and preventing extinctions will remain a priority". I generally agree with these premises. However in relation to the former part, whether or not reactive management or strategic focussing, or *both*, may apply in the future, there *must be real and proper intent and commitment* from government to adhere to adequate and best outcomes. Too often to date government has been found to be lacking in *real* commitment and *proper* implementation, and largely without proper compliance including adequate standards and controls. In relation to the latter part, the same issues apply, but that the statement that government conservation support will be for "the most endangered species" is of concern. So *other* endangered species, not being in the highest category of "most endangered", will be ignored? I suggest that *all* listed endangered species and communities are important. Further, does this reference to "endangered" disregard other categories of rare and threatened species and communities? Is this a lessening or degrading of the listing of species and communities by stealth? I

hope that the government is not trying to propose, by these wordings, to be able to “cherry pick” which endangered species (or communities) it will “attend” to.

I hereunder briefly discuss some issues on the five categories of the Review.

2.1 Setting the Direction.

- *Provide a clear direction for biodiversity outcomes by establishing achievable and measurable objectives and biodiversity targets.*

- I generally agree, in principle.

- However I am concerned that government (including its departments / agencies) may decide to “water down” objectives and targets including in relation to what is “achievable”, based on political issues, costs and budgetary issues, etc. Objectives and targets need to be objective (not subjective), permanent and defined in nature, as far as is practicable. Any extensive “flexibility” or “adjustability” may lead to exploitation, at the political whims of those in power.

- *Establish strong partnerships with Traditional Owners to best protect and manage Victoria’s biodiversity.*

- I don’t have any objections, in principle.

- However I would hope that this is not an exercise in political correctness. I believe that Aboriginal customs and traditions are important, but that any possible Aboriginal “rights” to traditionally hunt and fish should not in most cases override the imperative need to conserve and protect most / all endangered / threatened species and communities where required. If the intent to establish a partnership is to positively address this issue, then good. However whilst Aboriginal peoples may also (purport to) be in tune with and care for Country and in terms of their traditional values, are they suitably qualified or knowledgeable in *actual* conservation and environmental matters?

Example: I had previously contacted an Aboriginal group in regards to the environmental damage that DELWP was instigating in DELWP’s fuel reduction burns (so called “planned burns”) program and the impacts to listed threatened species – only for the Aboriginal group to decline to do anything except to have a ceremony welcoming the burns.

2.2 Coordination and Integration across Government.

- *Drive leadership and consistent consideration of biodiversity across government by strengthening the duty on public authorities and improving tools to support its implementation.*

- I generally agree, in principle.

- However I have some concerns. Refer also to item 2.1 above. DELWP, which has the FFG Act as one of its core statutes, apparently has displayed general disregard to the Act’s implementation or compliance. Some examples are given:

(a) DELWP’s current “planned burns” program. DELWP apparently does *not* undertake proper and appropriate assessment and planning for current FFG Act listed species or communities (or indeed for any flora and fauna) or for FFG Act threatening processes in (many of) its planned burns.

Requests to DELWP for public supply of its flora and fauna studies for the burns have been ignored. There is no apparent compliance to protection of current FFG Act listed threatened species or

communities, or attention to threatening processes. For example, DELWP rake-hoes around trees around the perimeter of planned burns areas – to protect its workers from the potential of burnt falling trees. But the FFG Act threatening process of the loss of hollow bearing trees is totally ignored – many hollow trees are destroyed in the process! Similarly the loss of coarse woody debris, another FFG Act threatening process, also occurs. DELWP must know about these outcomes, but completely ignores them. Etc. There is also apparently no public accountability. DELWP has refused provision of information to the public, and subsequent FOI applications result in DELWP proposing to delete the names of Officers. Letters to the Secretary DELWP resulted in the Secretary refusing to answer and passing the matters down to others to respond to. Similarly letters to the CEO of Parks Victoria (for planned burns in National or State Parks) similarly have not been responded to directly by the CEO, but passed down to other staff. It appears that all Executive Officers and underling public servants are immune to any legal compliance outcomes or other repercussions, and avoid public scrutiny. If DELWP is responsible for the implementation of compliance of the FFG Act, but itself may be breaching the Act, who will take DELWP to task for non-compliance (because DELWP will also surely not “take action against itself”)? These aspects need urgent consideration and address as part of the Review.

(b) Similar aspects also apply to legal compliance to the Federal EPBC Act. I referred apparent breaches of the EPBC Act to the Federal Department of the Environment, similarly in relation to DELWP planned burns and impacts to nationally listed threatened species. The Federal Department of the Environment has refused to date to take any compliance action against DELWP, and further refused to comment to and inform the public as the matter was “currently under investigation” (in fact it has been under investigation now for several years!). And to add public insult to public injury, DELWP has apparently recently applied to the Federal Department of the Environment to possibly obtain a general authority to undertake the planned burns under the EPBC Act. All requests by the public to obtain copies of DELWP’s application have been denied to date, by both DELWP and the Federal Department of the Environment. Without knowing the details of the application, if the application proposes to have a “general exemption” that will side-step proper assessment of potential impacts to all listed threatened species and communities for any given area, then it is *not* in the best conservation interests of those species and communities, nor in the public interest.

(c) DELWP apparently attempts to discard FFG Act and EPBC Act compliance requirements and the intents of these statutes, by claiming that the planned burns are “emergency” works essential for “saving human life and property”. Planned burns are *not* an *emergency situation*. Proper planning *must* be undertaken, including for listed threatened species and communities. A “general exemption” *cannot* also be properly implemented across the board for listed threatened species and communities. I suggest that the Review must look at guaranteeing compliance to definable standards, including by government, that it be a public process, and that full accountabilities are defined, and enforced.

(d) Another example is the recent proposed closure of a timber mill, where debate about “loss of jobs” verses the “plenty of possums” (Leadbeater’s Possum) that are claimed to be present – with these comments from a prominent Victorian politician! This is the nonsense mentality of some of our politicians. Yes, jobs are important, but not at the possible expense of driving a species to extinction. The Review *must* ensure that such improper post-legislation political interference must be safe-guarded against.

2.3 Strategic Approach to Biodiversity Planning and Species Listing.

- *Ensure ...better address climate change by shifting the focus from individual action plans to a landscape or area based approach.*

- I generally agree, in principle.

- However, given that different species may have quite varied and diverse micro requirements for survival and habitat, this approach may not be appropriate in some circumstances. I think that both individual action plans and landscape / area based approaches may be required. We are dealing with possible extinctions of species. There are no second chances.

- *Support a shared responsibility for achieving biodiversity outcomes by promoting collaborative planning processes that contribute to biodiversity targets and captures commitments to implementing actions.*

- Is this really possible? I understand there may be such processes currently in place, but that they may not be, or are not, effective. For example, VicRoads supposedly has biodiversity processes in place. However there have been many examples where these have been demonstrably and significantly inadequate. E.g.1. VicRoads Kilmore-Wallan Bypass. We the public clearly demonstrated the inadequacies of VicRoads Biodiversity Study for the EES (which by the way was also inadequately inputted into by DELWP), at the EES Hearing. E.g. VicRoads Western Highway Duplication. The EES was later found, post-EES determination, to be significantly flawed. Further, VicRoads subsequently undertook greatly increased impacts to that which had been "approved" in the EES. And all the time DELWP sat back and did nothing to address the original EES flaws, or the post EES additional impacts. The Review must consider issues of practicability and veracity etc. along these lines. And if there is to be shared responsibility, should there not be one government department that is fully responsible for compliance and to oversee accountability?

2.4 Habitat Protection and Regulation.

- *... Ensure the Act provides a strong deterrent to illegal behaviour and enables regulators to respond based on the seriousness of the offences.*

- I generally agree, in principle.

- However refer to items 2.1, 2.2 and 2.3 above. If government and its departments and agencies (including DELWP, PV and VicRoads) themselves breach the Act, including particularly serious breaches, whether being intentional or negligent or incompetent, then there *must* be proper processes in place for regulator response and for full public disclosure. It will also *not* be good enough to simply have a "strong deterrent" in place, if government is able to disregard / cover up the government's own breaches. And who will be the "regulator"? If it is DELWP, then will DELWP regulate and prosecute itself if it breaches the Act?

2.5 Accountability and Transparency.

Refer to items 2.1, 2.2, 2.3 and 2.4 above.

END.