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Patron: *The Honourable Linda Dessau, AM*
Governor of Victoria

Submission on review of Flora and Fauna Guarantee Act 1988

Thank you for the opportunity to comment on the review of the *Flora and Fauna Guarantee Act 1988*. This is a very important piece of legislation as Victoria is the most cleared state in Australia, and we have already had many extinctions, with many more plants, animals and fungi endangered. Victoria has already lost 18 species of mammal, 2 birds, 1 snake, 3 types of fish, 51 plants, as well as an undocumented number of invertebrates and fungi. Many more species are listed under the FFG Act, and even more species should be under consideration like those on the various DELWP Advisory Lists (Rare or Threatened Plants 2014, Threatened Vertebrate Fauna 2013 and Threatened Invertebrate Fauna 2009).

Additionally to this there is continued loss and fragmentation of habitats and threatening processes of weeds, feral animals, diseases, fire and climate change. For some animals such as the Leadbeater's Possum, Greater Glider and Sooty Owl, logging also remains a threatening process. If the forest remained unlogged there would be an immediate economic benefit of \$7.5 million per annum and 760 jobs created (NOUS group report, 2017), as well as benefits of improved water quality and quantity for Melbourne's water supply and that of our food bowl in the Goulburn-Murray catchment and those of increased carbon sequestration. The saving of forests and replanting the forests will help mitigate climate change. This is important as climate change will increase the frequency and severity of fire, droughts and floods.

The FFG Act 1988 definitely requires revision because in the legal case of *My Environment vs VicForests* (2012-2013) the Act failed to protect the Leadbeater's Possum. Also there has been a failure in keeping preparation and revision of action statements for all listed species up to date for all listed species. The current Act also does not have timeframes or monitoring required. Also many government departments and industries are exempt from the Act.

In the revision the government has suggested in:

- Section 4.1 that there should be goals that relate to restoration and enhancement of biodiversity. This is fine, but it is not possible to restore the fungi and invertebrate balance of an area, so restoration and enhancement should not come at the expense of conserving what we already have.
- Section 4.2 clarify and strengthen the existing duties on public authorities. This does not go far enough. There should not be overlays such as the Regional Forest Agreements which give exemptions to VicForests to log in potential Leadbeater's Possum habitat, or urban development to be allowed on good remnant vegetation in the endangered Victorian Volcanic Plains Grasslands.
- Section 4.4 provide criteria to define critical habitat. This has not been successfully used under the current Act, for example the case of *My Environment vs VicForests*, however methods to define current and future critical habitat have been successfully used in Europe and the United States, so areas of critical habitat should be identified by an independent Scientific Advisory Committee. The Minister should then be obliged to conserve this critical habitat, for example, conserve Mountain Ash forests from logging to protect the critically endangered Leadbeater's Possum.
- Section 4.4 establishing an offence to damage habitat of threatened species or communities without a permit. Exemptions to damage threatened species or communities should not be given to private land holders or industry, for example VicForests destroying rainforest in East Gippsland.

- Section 4.4 the ability for the illegal removal of native vegetation to be enforced under the Act. This is good, there needs to be enforcement under the FFG Act and not just the Native vegetation clearing rules, however the penalties need to be a deterrent, there needs to be civil as well as criminal enforcement and it needs to be overseen by an independent authority.
- Section 4.5 expanding standing for the community to seek judicial review of decisions made under the Act and seeking injunctions in court to prevent/halt a breach of the Act. This will improve accountability and transparency under the Act and allow for third parties to engage in the processes and decisions under the Act.

There are some important items missing from the review.

- Section 4.1 incorporation of the precautionary and environmental restoration principles. The Act needs to be followed immediately even if all the scientific data is not available. This is especially important under climate change.
- Section 4.3 a more comprehensive enabling framework to establish landscape action plans. Individual threatened species action plans should still exist under the Act and can be supplemented with landscape action plans.
- Section 4.4 a mandatory decision to be made by the Minister with respect to designation of mapped critical habitat. If a species is threatened the Minister should be obliged to protect critical habitat.
- Section 4.4 protected flora controls should apply on both private and public land and apply to industry as well. The Regional Forest Agreements should not permit logging in critical habitat for threatened species.
- Section 4.5 the creation of a new independent authority to monitor and enforce the FFG Act, and to undertake prosecutions. This would assist in enforcing the Act and implementing monitoring.

The following changes made in the FFG Act review should not be supported.

- Section 4.1 lack of requirement for guarantee. The abandonment of the guarantee would be a downgrading of the Act, especially for individual threatened species.
- Section 4.3 the lack of a requirement for action statements for all listed threatened species, action statements are essential in determining the necessary recovery plans for a threatened species, and inspire community groups to become involved in their recovery. For example supplementary feeding of Helmeted Honeyeaters and revegetation of Yellingbo Nature Conservation Reserve by the Friends of the Helmeted Honeyeaters.
- Section 4.3 priority actions would be published following the publication of conservation advices. This gives the impression it will be developed for multiple species rather than individual species. Individual threatened species action statements need to continue to enable recovery of those species.
- Section 4.4 there should not be exemptions to native vegetation clearing for road and rail construction. Government authorities should have to apply for permits too.

Therefore the review of the FFG Act 1988 should require government authorities and industries including logging to comply to the Act. The Minister needs to intervene when important species or habitats are under threat. There needs to be an improved range of enforcements available including civil and criminal, with high penalties and proper monitoring. There needs to be biodiversity targets and timelines with programs for threatened species protection and recovery. The actions should be published so the community can review government decisions, and for the community to be able to initiate legal action to prevent/halt damage to threatened species.

If these steps are taken the critically endangered faunal emblem, the Leadbeater's Possum should be able to recover if there is not another landscape fire that drives it to extinction. Forestry should have to comply with the FFG Act, and not be permitted in Ash forests, the habitat for the Leadbeater's Possum. The

Regional Forest Agreements should be scrapped to allow for populations of the Leadbeater's Possum to recover by having sufficient and unfragmented habitat.

We trust that our submission will be considered along with all other submissions, accordingly and we look forward to the positive outcomes from Flora and Fauna Guarantee Act Review.

Yours Sincerely

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