

# Comment on the Review of the Flora and Fauna Guarantee Act 1988

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There are a number of positive changes in the proposed changes in the review, including the following points:

- Setting measurable objectives and biodiversity targets
- Partnering with Traditional Owners to best protect and manage Victoria's biodiversity
- Aligning the Act with international standards through a common national approach for assessing and listing threatened species
- Tightening the regulations so they act as a stronger deterrent to illegal behaviour
- Improving accountability and transparency in the administration of the Act

There are several specific comments and changes suggested below:

## **Apply to private land**

The FFG Act should be tenure blind, much like the EPBC Act, that is, it should apply as effectively on freehold/privately owned land as it does on publicly-owned land. Many construction, development and adverse management activities occur on private land and have a great influence on the outcomes of conservation initiatives and protection enacted through the FFG Act. The FFG Act should apply to threatened flora, fauna (other than fish) and communities.

## **Critical habitat**

It is understood that Critical Habitat has only been invoked once under the Act, then was revoked later. Critical Habitat nominations and determinations should be able to be made by people (eg. the public) other than the Secretary. Interim Conservation Orders should be broadened so that it can be applied to other important habitats.

## **Species and threatened community process**

It is well understood that the process for listing threatened flora and fauna under the FFG Act is arduous, overly bureaucratic and too slow. The process for listing species listed as endangered and vulnerable under the various Victorian advisory lists should be of a particularly higher priority to list.

## **Significant impacts on FFG Act listed species and communities**

Currently, there is no known procedure for determining if a proposed land use, development or other actions will have significant impacts on FFG Act listed species and communities. There is no incentive for proponents to avoid or minimise impacts and there are no known consequences for the removal of FFG Act listed species and communities, other than permit conditions applied by a DELWP officer. There should be measurable and preferably quantitative guidance on determining if an action will have significant impacts on FFG Act listed species and communities. There could also

be a link with the revised native vegetation regulations around requiring statements to avoid and minimise impacts, and subsequent offset requirements.

### **Criteria for determining threatened communities**

Currently, there is no criteria or method for determining if a threatened community is present at a site. Assessing listed communities under the EPBC Act must undergo a rigorous evaluation of site characteristics to verify if a community is present or not. The revised FFG Act should provide guidance on determining if threatened communities are present at a site or not.

### **Species Distribution Modelling**

*The comments below were made as a part of the native vegetation review, but are included here also due to their relevance to the FFG Act.*

There should be mandatory reporting of a location of a threatened species discovered through studies where there is currently no modelled habitat present. There is no clear rationale as to why areas will be able to be removed from distribution models but not obliged to add.

The unintended consequence of aiming for a consistent, non-biased approach, is that species that may not be present at a site need to be offset unless proven otherwise. But at a number of sites, species which may be present don't require offsetting but can be volunteered to be offset or included in species distribution models. The risk of not requiring proponents to offset for species which is known to occur at a site is the loss of species and their habitat. The risk of needing offsets for a species which is modelled at a site but through studies has shown not to be present, is uncertainty. Whilst flexibility for altering the distribution models, this may not always be possible and then a proponent ends up paying a hefty price for a mapping error.

A suggestion for managing the circumstances where a plant or animal species has been identified where there is currently no modelled habitat present, could be managed through the Victorian Biodiversity Atlas (VBA) and/or the soon-to-be released Biodiversity Information Portal. An attribute field could be added to the VBA form to include details on the habitat of a threatened species not included in the modelling.

Currently, changing species distribution modelling is an arduous process for both external parties and DELWP staff and is not easily apparent to people wishing to improve biological datasets.

### **Over-reliance on modelled data**

*The comments below were made as a part of the native vegetation review, but are included here also due to their relevance to the FFG Act.*

Smaller applications or lower levels of impact may still remove threatened species which are listed under FFG Act or EPBC Act. Basic pathway applicants may be given the false sense of security that they don't need to undertake flora and fauna studies because the risk mapping infers there is nothing to be worried about. Applicants can be exposed to the risk of removing threatened species through the DELWP permitting process for which there is no FFG permit or no EPBC Act approval, resulting in possible fines, major delays and unnecessary losses of threatened species.

There have been numerous cases where Location A sites contain threatened species which are either known or not known in the Victorian Biodiversity Atlas. This is a major theme picked up in the commentary from individuals and organisations in the native vegetation review phases.

Site-based surveys should be required, even in Location A sites where there is a moderate to high likelihood of FFG Act (and EPBC Act) species or communities likely to be present, to minimise risk to applications.