

Submission to Flora & Fauna Guarantee Act Review

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Background and Context

Aboriginal land management systems, at the time of European colonisation, appear to have been stable and sustainable, in contrast to the colonial ad hoc approach which bends to the dollar. The Aboriginal approach was to use and modify the local environment to supply their needs. The colonial approach, which can hardly be described as a system of land management, is to destroy the native environment so as to deny native people a means of survival, and exploit the natural ecosystems as fast as possible in order to maximise profits. The British did extremely well out of this pillage, in the short time it lasted, and that legacy lives on. In the memory of Australia's current colonial governments the best way to manage an economy is by allowing lawless piracy and theft, and to disregard the consequences.

As with the whaling, sealing, pastoral, mining, timber and property speculation industries in Victoria, there is a history of large scale lawlessness, corruption and lack of governance. The current speculative urban development industry continues this tradition. Even today, some degree of accountability in protection of native species is only obtained by dedicated unpaid community group efforts.

The colonial approach has led us to now having officially recognised a couple of thousand or so (no-one knows how many) threatened species. This is in the context of governments promoting a rapidly expanding human population, and failing to control most feral animals and an ever-growing number of exotic invasive plant species; and governments indicating a growing willingness to abandon even the pretence of biodiversity protection.

In other words we have already seriously damaged most native ecosystems, and the depletion of native ecosystems will continue as a legacy of changes already initiated, such as predators introduced, pollinators exterminated, etc. No-one will know why some of these changes are occurring, except perhaps some Aboriginal people with long memories. But we can stop initiating degrading processes, such as inappropriate fire regimes, logging of native forests, spraying toxic chemicals, etc., to prevent further cascades of extinction.

The Flora and Fauna Guarantee Act 1988

The FFG Act is a very limited Act in that that it only (theoretically) protects species when they are approaching extinction (or are already extinct e.g. Pig-footed Bandicoot is listed as threatened under FFG Act). The FFG Act also provides for recovery of species. The government's suggestion that the natural environment is too expensive to be worth protecting i.e. the triage approach to species preservation, is ludicrous in the extreme, and shows how far removed from reality our governments and bureaucracies have become. Triage would guarantee extinction of all native species.

In past times, despite the FFG Act and the Wildlife Act, when advanced tree ferns were popular consumer items, truckloads of tree ferns were coming out of East Gippsland, some at least from public forests, but there was no certainty as to the origin of most of these plants. According to the Victorian government the ferns were coming from Tasmanian salvage harvesting operations. And, many of these tree ferns were sold untagged i.e. without a ticket of certified origin. An article in *The Age* of 10 March 1999 reported, "In 1999, the UK took

91 per cent of all fern trees imported from Australia, Victoria being the single largest supplier.” Most transplanted tree ferns die within a few years.

The Victorian Flora & Fauna Guarantee Act does need some changes but major problems are to do with failure to implement the Act in a practical and legal manner. Pre-logging and pre-burning flora and fauna surveys are not being done by so-called responsible authorities, and mandated provisions, such as timely writing of Action Statements and Management Plans for threatened species, are ignored.

The FFG Act, apparently, is predicated on the assumption that an Action Plan and Recovery Plan will restore threatened species, and those species will then be able to survive without further assistance. This is clearly not the case for many species. Threats may be ongoing e.g. predation by cats. Or the recovery process may be extremely slow, difficult to establish, and requiring ongoing intervention e.g. restoring native grasslands in the face of continuing weed invasion, loss of native pollinators, native grazers, native predators, soil disturbers, etc. That is why long term, well-funded management plans must be put in place.

While the FFG Act, fully implemented, would be useful in protecting species and habitats from extinction, other policies and legislation are needed to maintain natural ecosystems in a healthy state. By natural ecosystems is meant systems indigenous to a particular locality. If sustainable agriculture (including tree plantations for wood production) and grazing was practiced and there was a good land management and planning regime, native ecosystems would be stable and native flora and fauna would not become threatened.

There are conflicts between the Victorian Wildlife Act 1975 and the FFG Act 1988. Six deer species are apparently protected in Victoria under the Wildlife Act 1975, although I can find no specific reference to deer in that Act. However the Wildlife Act does say that ‘all’ wildlife is protected under the Act. The FFG Act, in contrast, defines flora and fauna as species indigenous to Victoria.

Under the FFG Act, degradation caused by feral horses is listed as a threatening process. Deer cause similar kinds of degradation. How deer came to be protected in Victoria might make an interesting avenue of investigation. Deer are not protected in Queensland, South Australia, Western Australia or the Northern Territory.

Proposed changes to the FFG Act

Revised objectives (p.36 Consultation Paper)

The proposal to abandon protection of all species is an abnegation of responsibility, to Victoria and the world, and makes a complete farce of the Flora and Fauna Guarantee Act. The net result will be development of a triage system which depends on how much money is allocated to protection of species, which of course will be extremely little, although the bureaucratic managers will be very highly paid and get a hefty bonus every time they allow a threatened species to slip into extinction without arousing too much public angst. That is the way the system is already evolving. Australia is a world leader in this kind of behaviour.

Revised objectives (p.37 Consultation Paper)

The discussion paper suggests that ‘protecting, restoring and enhancing biodiversity’ could become a new goal in the FFG Act.

I support the inclusion of protecting and restoring biodiversity as a goal. I wouldn't use the word 'enhancing' as it is redundant and is a 'buzzword' with no meaning due to its excessive and inappropriate use by departmental spin doctors (who should all be quietly sacked as they are an obstruction to dialogue).

The discussion paper suggests securing the greatest possible number of threatened species and communities in the wild in the context of climate change.

This is muddle-headed. The FFG Act is backstop legislation, brought into play where other legislation and policies have failed. If the government wants to subsume all biodiversity protection under the FFG Act it should say so. Instead it would be better not to create threatened species. By enacting sustainable planning laws, sustainable biodiversity strategies, and so forth, the need for an FFG Act will diminish and even disappear.

The discussion paper suggests facilitating the involvement of Traditional Owners.

I would use the word encourage rather than facilitate. I support the concept, but there is no indication of how this will be done in practice.

I would also add 'encouragement of community groups to become involved in biodiversity protection' as a separate item.

The discussion paper suggests improving the management of biodiversity by developing and sharing knowledge and monitoring biodiversity outcomes to enable adaptive changes to approaches are necessary

More gobbledegook. Much more and better education is needed about native biodiversity and native ecosystems, but it is probably better dealt with under other Acts.

The discussion paper suggests in addition to revised objectives, a further potential improvement is that the Act require the establishment of statewide biodiversity targets.

If state-wide biodiversity plans and policies are in place, are included in planning legislation, and are effective, they don't need to be included in the FFG Act.

Revised objectives (p.38-39 Consultation Paper)

Coordination and integration across government

Public authorities should be required to act consistently with the provisions of the FFG Act, and any plans and regulations made under it. This means that if in the circumstances a species or community is threatened, the preservation of that species or community takes precedence over every other consideration.

Revised objectives (p.47 & 49 Consultation Paper)

The proposal to drop the requirement for action statements for all listed threatened species is a deadly spawn. Action statements are fundamental in establishing adequate recovery plans for threatened species. Action statements also inspire communities to protect their local places. Protection of species is critical to Aboriginal culture (totemic ancestors etc) which our colonial governments pretend to respect.

The proposal to publish a list of priority actions for each listed threatened species is problematic if it relies on the Department's outdated data, which does not incorporate the latest information about the presence or absence of species, or illegal vegetation removal.

Revised objectives (p.52 & 53 Consultation Paper)

The proposal for adoption of common assessment methodology – based on IUCN criteria – for listing and obligation to maintain a single comprehensive list of threatened, species, communities and threatening processes, would create consistency that currently does not exist, but would depend on regular updating of data which also does not happen at present.

Revised objectives (p.57 Consultation Paper)

The proposal for introduction of new criteria to broaden the concept of critical habitat in Regulations seems to be a good idea, but critical habitat also needs to be protected.

The proposal to require the Secretary to establish a program to identify and map proposed critical habitat on both public and private land also seems to be a good idea, but will not mean much unless the critical habitat is protected.

Ditto for the proposal to include a permitting regime for activities that may damage critical habitat. What are the criteria for assessment? What outcomes are sought?

The proposal to establish a new offence to damage habitat of threatened species or communities without a permit will be useful, particularly if broadened to include private land and all industries.

Revised objectives (p.58 & 61 Consultation Paper)

The proposal to remove the current requirement for permits for destruction of protected flora in many cases where currently required, such as road and rail construction does not warrant support. The recent Western Highway duplication is a fine example of how destructive it is not to have public authorities subject to at least the same vegetation clearance and biodiversity protection controls as ordinary individuals.

Revised objectives (p.63 Consultation Paper)

Proposal for illegal removal of native vegetation to be prosecuted under the FFG Act (pg.63). Unless this is a specific species threat it would be better left under other Acts. It just needs public education and adequate enforcement.

Proposed improvements to compliance and enforcement of the FFG Act habitat controls which includes increased penalties, tiered suit of enforcement tools and possibly, a civil enforcement regime

Also needs public education and diplomacy. We have to be careful about how extending the FFG Act to private land is implemented, as anything seen by land owners as arbitrary or an unwarranted imposition is likely to face a backlash, and unintended consequences. This means creating a better educated public, by explaining the concepts of biodiversity and ecosystems and their importance thoroughly, beginning at a very early age. In my experience, most Victorians, and most Victorian politicians, are completely unable or unwilling to understand these concepts.

Revised objectives (p.65 Consultation Paper)

Proposals to improve accountability and transparency under the FFG Act including third party standing for judicial review and seeking injunctions, as well as requirements to provide information on implementation of the FFG Act to the public

Standing rights should also be extended so that they include merits review of important decisions (not internal merits review as proposed) and accompanied by costs protections in accordance with international best practice

Other Issues to be addressed

Express incorporation of the precautionary principle needs to be included in the FFG Act. As Environment Justice Australia has stated, “The precautionary principle is a fundamental pillar of modern environmental law, which ensures that lack of full scientific certainty cannot be relied on as a reason to postpone appropriate measures to prevent serious or irreversible loss or damage.”

A mandatory decision to be made by the Minister with respect to designation of mapped critical habitat, where it is necessary to the listing and protection of a species under the FFG Act.

Amendments are needed to ensure that protected flora controls apply on both public as well as private land and are binding and enforceable against industries such as forestry, and all public authorities.

Last but Not Least

Funding must be provided under the Act according to the need to protect threatened species and communities. If land management and planning laws are adequate there will be no threatened species or communities so funding for the FFG Act will not be needed. It is a self-healing process.

References.

- Review of the FFG Act 1988 Consultation Paper* 2017
- Auditor-General’s Report 2009 *Administration of the Flora and Fauna Guarantee Act 1988*
- Environmental Justice Australia Briefing Paper* 13 March 2017
- Flora & Fauna Guarantee Act 1988
- DELWP Flora & Fauna Guarantee Act 1988 *Threatened List* December 2016
- DELWP Flora and Fauna Guarantee Act 1988 *Processes List* December 2016
- Advisory List Threatened Plants Vic DELWP 2014
- Advisory List Threatened Vertebrate Fauna DELWP 2013
- ‘*The Land Boomers*’ Michael Cannon, Melbourne University Press 1966
- ‘*Pagans in the Promised Land*’ by Steven T. Newcombe 2008