

SUBMISSION TO THE REVIEW OF THE *FLORA AND FAUNA GUARANTEE ACT, 1988* (Vic).

INTRODUCTION

1. This submission is made by Lawyers for Forests Incorporated (**LFF**).
2. LFF is a not for profit voluntary association of legal professionals working towards the protection and conservation of Australia's native flora and fauna, and in particular, old growth and high conservation value forests.
3. The LFF has previously produced an extensive review of the *Flora and Fauna Guarantee Act 1988* (Vic) (**FFG Act**), being the *Review of The Flora and Fauna Guarantee Act 1988* (Vic), Lawyers for Forests, November 2002 (**LFF FFG Act Review**).¹
4. Many years have passed since the FFG Act first came into force, and since the LFF FFG Act Review. Notwithstanding this, the FFG Act remains in substantially the same form as it was in in 2002.
5. It is time to review the operation and effectiveness of the FFG Act, and LFF:
 - a. Supports the Government's initiative to undertake a review of the FFG Act; and

¹ The LFF FFG Act Review can be downloaded at:
http://www.lawyersforforests.org.au/wp-content/uploads/FFG_review.pdf

- b. Welcomes the release of the *Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper* (**Consultation Paper**), and invitation to comment on it.
6. This submission responds to the issues raised in the Consultation Paper.
7. LFF's detailed response to the issues raised in the Consultation Paper is set out in the attached table.
8. The Consultation Paper sets out a number of positive reforms, and LFF commends the Government for considering these reforms. In particular, the following reforms are positive:
 - a. The proposal to establish a set of principles (**"Proposed FFG Act Principles"**) to guide the exercise of discretion.
 - b. The proposal to specify times within which "conservation advices" and "priority actions" must be prepared.
 - c. Proposals to increase Government accountability and transparency, by publishing key decisions on line.
 - d. Proposals to increase public participation in decision-making processes by, for example, expanding standing for the community to seek judicial review of decisions made under the FFG Act, and to seek injunctions in Court to prevent or halt a breach of the FFG Act.
9. However:
 - a. In many instances the commitment is limited to investigating certain possible reforms further, or the

proposed reforms do not go far enough, or aspects of the proposed reforms are unclear.

- b. The logging of Victoria's native forests has a significant detrimental impact on Victoria's threatened species and communities. Despite this, logging is effectively exempt from the operation of the FFG Act.
 - c. This issue is not addressed in the Consultation Paper. It should be – and logging operations, and the various Codes, Plans and Guidelines governing logging operations should be prepared, approved, and implemented, in accordance with the requirements of the FFG Act.
10. Finally, the greatest impediment to effective implementation of the FFG Act has been the lack of resources and funding dedicated to this purpose. Ultimately any reform of the FFG Act is likely to be of limited utility unless sufficient resources and funding is directed to implementing the Act.

Summary of Response to Consultation Paper.

11. In summary:
- i) LFF supports the proposal to update the objectives of the FFG Act.² However LFF does not support the proposal to remove the guarantee.
 - ii) LFF supports the proposal to implement state-wide biodiversity targets.³ However, the targets must be based on independent scientific advice, and set at an appropriately

² Refer to the attached table, issue 1.

³ Refer to the attached table, issue 2.

high level. The targets should also be the subject of public consultation. And, a suggested public consultation process is set out in the attached table⁴ (**LFF Proposed Consultation Process**).

- iii) LFF supports the proposal to establish the Proposed FFG Act Principles to guide the exercise of discretion.⁵ However:
 - a. The content of the Proposed FFG Act Principles will be critical. And, LFF has set out the matters which the principles should address in the accompanying table.
 - b. The Proposed FFG Act Principles should be overarching and mandatory considerations for decision makers to take into account, when making decisions under the FFG Act, and other relevant legislation, including the P&E Act, *Conservation Forests and Lands Act 1987*, and *Environment Effects Act 1978*.
- iv) LFF supports the proposal to improve coordination and integration across government, and in particular supports the proposal to amend the FFG Act to clarify that the FFG Act applies to Government Departments as well as public bodies, and strengthen the existing duties on public authorities, including Government Departments.⁶ However:
 - a. As set out above, the Proposed FFG Act Principles should be overarching and mandatory considerations for public bodies (including Government Departments)

⁴ The LFF Proposed Consultation Process should be followed, as set out in the attached table, refer issue 8.

⁵ Refer to the attached table, issue 3.

⁶ Refer to the attached table, issue 4.

to take into account when making decisions under the FFG Act, and other relevant legislation, including the P&E Act, *Conservation Forests and Lands Act 1987*, and *Environment Effects Act 1978*.

- b. Public bodies (including Government Departments) should be required to comply, as opposed to act consistently, with the objectives and principles of the FFG Act. Nor is it appropriate that public bodies (including Government Departments) potentially have an ability to avoid complying with their duties under the FFG Act, if they conflict with other existing obligations, as foreshadowed in the Consultation Paper.

- v) LFF supports the proposal to consider establishing an independent advisory committee (**“Proposed Advisory Committee”**) to provide advice to the Minister.⁷ However, there should be a process, that is, the LFF Proposed Consultation Process, whereby:
 - a. Public consultation is undertaken in the preparation of or any amendment to key strategies and documents under the FFG Act. (Relevantly, under this process, the Minister would first prepare or amend key strategies and documents under the FFG Act, and then give notice of the preparation of or amendment to the key strategy, actions and documents. This suggestion is in recognition of the fact that these key strategies and documents should be prepared as a matter of urgency, and should not be delayed as a result of needing to

⁷ Refer to the attached table, issue 8.

- first undertake a public consultation process).
- b. The Proposed Consultation Committee has a role in considering those submissions, including if necessary, conducting a public hearing to consider submissions.
 - c. The Proposed Consultation Committee then provides advice to the Minister, and the Minister is obliged to consider that advice. (In short, LFF proposes a process similar to the process adopted under the Planning and Environment Act 1987 (**“P&E Act”**) for Planning Scheme Amendments).
- vi) LFF supports the proposal for “conservation advices” and “priority actions” to be prepared within a specified time after listing.⁸ However:
- a. The “specified time” should be set out in the FFG Act. This should be extended to include the preparation of conservation advices and priority actions for currently listed threatened species, communities and threatening processes, where Action Statements have not been prepared.
 - b. The FFG Act should state that:
 - i. Conservation advices must include information on a species ecology, its distribution and key threats to its survival.
 - ii. Priority actions must list the actions necessary

⁸ Refer to the attached table, issues 9,10.

to ensure the protection of the species, in order of priority.⁹

- c. It is not clear whether the combination of conservation advices and priority actions are intended to replace Action Statements. This should be clarified.
- d. In any event:
 - i. There should be a mechanism in place to ensure that individually listed threatened species and communities are protected, and threatening processes, are managed. Whether this is via Action Statements, or a document under another name, is neither here nor there.
 - ii. The Action Statement, or replacement document, should:
 - 1. Include information on a species ecology, its distribution and key threats to its survival.
 - 2. List the actions necessary to ensure the protection of the species, in order of priority.
 - iii. There is currently no obligation to monitor the

⁹ Action Statements currently must set out what has been done to conserve and manage that taxon or community or process and what is intended to be done and *may* include information on what needs to be done, (refer section 19(2) of the FFG Act). This is a serious deficiency of the FFG Act. It should be mandatory, and not discretionary, to include information on what needs to be done to protect and conserve the species, community or to halt the threatening process.

species, community or threatening process after Action Statements are completed. Nor is any proposed under the Consultation Paper. A mandatory obligation to implement Action Statements (or their replacement) and review their effectiveness should be included in the FFG Act.

- iv. Further, existing Action Statements do not currently incorporate the elements that should be required in the making of conservation advices and priority actions. They should be updated so that they do incorporate these elements. The LFF Proposed Consultation Process should also be followed in this process of updating existing Action Statements.

- vii) The proposal to adopt a landscape or area-based response to the implementation of the Biodiversity Plan is generally supported.¹⁰ However, Action Statements, or a replacement document, should continue to be prepared and set out the necessary measures to ensure the preservation of individually listed threatened species or communities, and the management of threatening processes.

- viii) LFF supports the proposal to investigate criteria to guide when the Minister may seek advice from the Proposed Advisory Committee, and thresholds to trigger mandatory action.¹¹ This would be an important initiative, and LFF

¹⁰ Refer to the attached table, issue 11.

¹¹ Refer to the attached table, issue 12.

urges the Government to implement it. The criteria would also benefit from a public consultation process, that is, the LFF Proposed Consultation Process.

- ix) LFF generally supports the proposal to reform the process for listing threatened species, communities and threatening processes.¹² Again, the proposal to establish criteria for defining threatened species, would benefit from a public consultation process, that is, the LFF Proposed Consultation Process. Otherwise, the process for the public nomination of threatened species, communities and processes should remain, as contemplated in the Consultation Paper.
- x) LFF generally supports the proposed reform of the mechanisms for declaring critical habitat, and the making of interim conservation orders.¹³ However:
 - a. The proposal to establish criteria to define and broaden the concept of critical habitat, would benefit from a public consultation process, that is, the LFF Proposed Consultation Process.
 - b. There should be a mechanism for the public to make nominations for critical habitat.
- xi) LFF supports the proposal to reform the compliance and enforcement mechanisms available under the FFG Act.¹⁴
- xii) LFF believes a new offence of damaging the habitat of a

¹² Refer to the attached table, issue 13.

¹³ Refer to the attached table, issue 15.

¹⁴ Refer to the attached table, issue 16.

listed threatened species and community should be implemented.¹⁵ However, the offence should extend to private land, similar to offences under the *Environment Protection Biodiversity and Conservation Act 1999* (Cwth) (**EPBC Act**).

- xiii) LFF supports proposals to improve accountability and transparency under the Act.¹⁶ However:
 - a. Written reasons should also be provided.
 - b. LFF also believes that the public should have the right to enforce provisions of the Act, with VCAT as the forum.
 - c. The Consultation Paper contemplates an internal merits review of some important decisions. The right of review should be to an independent body – such as VCAT.
 - d. Extending enforcement rights to the general community would not only broaden the resource base for taking action, but would also empower people and allow those interested to take an active role in the protection of Victoria’s most threatened and endangered species.

Conclusion

12. The devil is always in the detail. So, while a number of initiatives are positive, ultimately the effectiveness of the FFG Act will

¹⁵ Refer to the attached table, issue 17.

¹⁶ Refer to the attached table, issue 18.

depend on the final wording of the amended legislation, and political will and resources directed at implementing it.

13. LFF therefore reserves the right to comment further on any amended legislation, and also seeks a commitment from Government to implement the FFG Act, as amended.

RESPONSE TO ISSUES RAISED IN THE CONSULTATION PAPER				
Issue No.	Issue raised in Consultation Paper	Ref	Consultation Paper proposed reforms	LFF response to the proposed reforms
1.	Revise objectives	4.1.1	<p>The objectives of the FFG Act are proposed to be amended so that they:</p> <ul style="list-style-type: none"> • Are simply and clearly stated and can be measured and reported against. • Are structured to include primary objectives on desired outcomes, as well as objectives focused on processes that will guide how the primary objectives will be achieved. • Are integrated with the substantive provisions of the Act and other relevant legislation. • Drive management responses that reflect contemporary approaches to conservation. • Facilitate responses to climate change and other significant environmental changes. 	<p>LFF agrees that the objectives of the FFG Act require revision to reflect current best practice.</p> <p>However:</p> <ul style="list-style-type: none"> • LFF does not support the removal of the guarantee that is currently set out in the FFG Act. • In particular, it is appropriate to set a guarantee to the effect that “all taxa of Victoria’s flora and fauna can survive, flourish and retain their potential for evolutionary development in the wild” if the Government is serious about species preservation. Anything less, represents a significant watering down of the commitment that is currently set out in the FFG Act. • Furthermore, the justification for removing the guarantee, that is that ‘the guarantee may not support a conservation approach that enables long-term turn-around of biodiversity decline’ is spurious. The guarantee is perfectly consistent with the long-term turn-around of biodiversity decline and use of contemporary conservation approaches.

2.		4.1.1	State-wide biodiversity targets are set.	<p>LFF generally supports the proposal to implement state-wide biodiversity targets.</p> <p>That said:</p> <ul style="list-style-type: none"> • The targets should be set at an appropriately high level (and be set by an appropriately qualified, independent body). And, it is of concern that the basis on which the targets will be set is not clear. ¹⁷ • The targets should be the subject of public consultation, and considered by the Scientific Advisory Committee, or new advisory committee that is proposed. ¹⁸ • There must be a process for a regular assessment of performance against any targets, in an open and transparent way.
3.	Establish a set of principles	4.1.2	It is intended to introduce principles into the FFG Act to provide ‘guidance to decision makers on how the Act should be administered to ensure its objectives are achieved and improves consistency of decision making under the Act and across government, (“Proposed FFG Act Principles”).	<p>LFF supports the introduction of the Proposed FFG Act Principles to guide decision makers when making decisions, taking actions, and when considering issues, subject to the principles:</p> <ul style="list-style-type: none"> • Being mandatory considerations for decisions made under the FFG Act and other relevant legislation, including the P&E Act, <i>Conservation Forests and Lands Act 1987</i>, and <i>Environment Effects Act 1978</i>. • Incorporating the Biodiversity Plan, targets set under the

¹⁷ The draft Biodiversity Plan (Protecting Victoria’s Environment - Biodiversity 2036, public consultation draft, does refer to the setting of targets. However it does not set out how those targets will be determined, refer p.31.

¹⁸ That is, the LFF Proposed Consultation Process should be followed, as set out in the text accompanying the discussion of issue 8.

				<p>Biodiversity Plan, and Action Statements¹⁹ (and requiring decisions to implement the Biodiversity Plan, targets set under the Biodiversity Plan, and Action Statements).</p> <ul style="list-style-type: none"> • Expressly incorporating the precautionary principle, which is a fundamental to modern environmental law. • Incorporating ecological sustainable development (ESD) principles, including: <ul style="list-style-type: none"> ○ Full integration of economic, environmental and social considerations. ○ The principle of inter-generational equity. ○ Conservation of biological diversity and ecological integrity. <p>The Proposed FFG Act Principles should be overarching, and apply to all decisions and actions which have an impact, or the potential to impact, on Victoria’s biodiversity.</p>
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¹⁹ It is not clear whether Action Statements are proposed to be replaced by a combination of “conservation advices” and “priority actions.” This submission recommends that:

1. Action Statements, or replacement document, presumably a combination of a conservation advice and a priority action list be retained and set out the actions that are proposed in order to preserve individually listed threatened species or communities.
2. An Action Statement, or replacement document, which incorporates both the conservation advice and a priority action list, and with the conservation advice and list of priority actions incorporating the requirements as set out in the Consultation Paper and/or as recommended by LFF (refer to the discussion accompanying issue 10) would be an improvement on the current system.

Accordingly, references in this submission to an “Action Statement” should be read as a reference to an “Action Statement or its replacement, with the Action Statement or its replacement, incorporating the requirements as recommended by LFF (see the discussion accompanying issue 10).”

4.	Coordination and integration across Government	4.2	<p>Clarify and strengthen the existing duty on public authorities by setting out in the Act what the duty requires.²⁰</p> <p>Update the definition of a public authority to clarify that it applies to government departments as well as public authorities.²¹</p> <p>Consider strengthening the existing duty on public authorities, for example by requiring <i>consistency</i> with the objectives and principles of the Act.²²</p> <p>Other potential improvements as set out in Table 10 of the Consultation Paper.</p>	<p>LFF generally supports the proposed reforms and agrees that the FFG Act should be taken into account in government decision making.</p> <p>In particular, it is essential that:</p> <ul style="list-style-type: none"> • The definition of a public authority should be updated to clarify that it applies to government departments as well as public authorities. • The Proposed FFG Act Principles are overarching and mandatory considerations which must be taken into account in decision making processes. <p>However:</p> <ul style="list-style-type: none"> • <i>Consistency</i> (with the objectives and principles of the Act) should be replaced with the word <i>compliance</i>. In particular, it is not appropriate for a public body or Government department to have the ability to avoid complying with a duty under the FFG Act, or the Proposed FFG Act Principles on the basis that the duty conflicts with other existing obligations.²³ • The FFG Act, including the Proposed FFG Act Principles should be <u>mandatory</u> considerations for decisions or actions which have an impact, or the potential to impact, Victoria's biodiversity, including decisions made under the P&E Act, <i>Conservation Forests and Lands Act 1987</i>, and <i>Environment Effects Act 1978</i>. <p>LFF also supports the proposal that the Minister have new powers to request that a government</p>
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²⁰ *Consultation Paper*, Table 10, point 1.

²¹ *Ibid* point 2.

²² *Ibid* point 7.

²³ As envisaged by the Consultation Paper at pp 40 – 41.

				department or public authority provides information as to how a particular listed threatening process or high value asset to biodiversity is being managed, and power to issue Ministerial directions. However, these powers should be extended to include the power to make similar directions to companies and individuals (with a right for companies and individuals to appeal to the Victorian Civil and Administrative Tribunal (“ VCAT ”) against the making of those directions).
5.	Role of DELWP clarified.	4.2, Box 2.	Expand DELWP’s role in implementing the FFG Act, as set out in Box 2.	DELWP’s role in implementing the FFG Act, and its obligations, should be set out in the FFG Act.
6.	Strategic approach to biodiversity planning and species listing	4.3.1, table 12.	Require the Biodiversity Plan to specify statewide biodiversity targets.	LFF generally supports the proposal to implement state-wide biodiversity targets, and the FFG Act should be amended to so that there is a requirement that the Biodiversity Plan specify statewide biodiversity targets. That said: <ul style="list-style-type: none"> • The targets should be set at an appropriately high level (and be set by an appropriately qualified, independent body). And, it is of concern that the basis on which the targets will be set is not clear. ²⁴ • The targets should be the subject of public consultation, and considered by the Scientific Advisory Committee, or new advisory committee that is proposed. ²⁵ • There must be a process for a regular assessment of performance against any targets, in an open and transparent way.

²⁴ The draft Biodiversity Plan (Protecting Victoria’s Environment - Biodiversity 2036, public consultation draft, does refer to the setting of targets. However it does not set out how those targets will be determined, refer p.31.

²⁵ That is, the LFF Proposed Consultation Process should be followed, as set out in the text accompanying the discussion of issue 8.

7.		4.3.1, table 12.	Require a five-yearly evaluation and 10-yearly renewal or re-endorsement of the Biodiversity Plan.	<p>There must be meaningful reporting on and a commitment to achieving, the biodiversity targets and other aspects of the Biodiversity Plan.</p> <p>The requirement to evaluate the Biodiversity Plan, and renew or re-endorse it, should be set out in the FFG Act.</p>
8.		4.3.1, table 12.	Investigate establishing an independent conservation advisory committee or expand the functions of an existing body to provide advice in response to environmental change (“Proposed Advisory Committee”). Enable the Minister to request advice from the Proposed Advisory Committee on how to respond to events that significantly affect biodiversity.	<p>The proposal to consider establishing the Proposed Advisory Committee, with wider investigative and advisory powers than the existing Scientific Advisory Committee is supported. Perhaps Planning Panels Victoria could assume this role. If so, then Panel members with appropriate scientific expertise would have to be appointed, and sit on the Proposed Advisory Committee.</p> <p>However:</p> <ul style="list-style-type: none"> • The Proposed Advisory Committee must be capable of receiving submissions from the public, as appropriate. • Furthermore, LFF emphasises that there must be specific legislative amendments to ensure a public consultation process in the preparation of and any amendment to key strategies and documents under the FFG Act, including the Biodiversity Plan, Action Statements, conservation advices, and priority actions. Merely providing that those key strategies and documents are made publicly available is not sufficient. • On the other hand, LFF believes these key strategies and documents should be prepared as soon as possible, and not delayed by reason of a public consultation process. • LFF therefore suggests a process whereby:

				<ul style="list-style-type: none">○ The Minister initially prepares the key strategies and documents, or amends the key strategy or document, and then gives public notice that the key strategy or document has been prepared, or amended.○ The public notice invites the public to make submissions.○ If submissions are made, and not resolved, the Minister appoints the Proposed Advisory Committee to consider public submissions, and if necessary, to conduct a public hearing, and then provide advice to the Minister (and which is made publicly available, before the Minister makes his or her final decision).○ The Minister must consider that advice, and decide whether to amend the key strategy or document in response to that advice (“Proposed LFF Consultation Process”).• Relevantly, the LFF Proposed Consultation Process is similar to the process used under the P&E Act for Planning Scheme Amendments.
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9.		4.3.1, tables 11, 12.	<p>Require conservation advices within a specified time after listing (table 11). Conservation advice to include information on a species ecology, its distribution and key threats to its survival.</p> <p>Require publication of a conservation advice for each listed threatened species, community and threatening process within a specified period following listing (table 12).</p>	<p>This is supported.</p> <p>However:</p> <ul style="list-style-type: none"> • LFF has previously expressed concerns regarding the delay in the preparation of Action Statements for listed threatened species and communities, and threatening processes, and the content of Action Statements.²⁶ The proposal to specify a time is therefore supported. There is also therefore a need to set out the matters that the conservation advices and lists of priority actions must address. • The “specified time” should be set out in the FFG Act. This should be extended to include the preparation of conservation advices for currently listed threatened species, communities and threatening processes, where Action Statements have not been prepared. • The FFG Act should state that it is a requirement that conservation advices include information on a species ecology, its distribution and key threats to its survival. • The LFF Proposed Consultation Process should be followed after the preparation of the conservation advice, or amendment of a conservation advice, and the conservation advice amended as appropriate following the Minister’s consideration of the advice from the Proposed Advisory Committee.
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²⁶ LFF FFG Act Review at pp 13 – 14, (at 4.1 (b)); pp 16 – 19 (at 4.3, 4.4), p 35 (at 5.9). LFF also expressed concerns about the implementation and enforceability of Action Statements; at pp 24 – 25 (at 4.10(a)).

10.		4.3.1, tables 11, 12.	<p>Require priority actions to be prepared within a specified time after listing (table 11).</p> <p>Require priority actions to be made publicly available for each listed threatened species and community within a specified period following listing.</p>	<p>This is supported.</p> <p>However:</p> <ul style="list-style-type: none"> • LFF has previously expressed concerns regarding the delay in the preparation of Action Statements for listed threatened species and communities, and threatening processes, and the content of Action Statements.²⁷ The proposal to specify a time is therefore supported. There is also therefore a need to set out the matters that the conservation advices and lists of priority actions must address. • The “specified time” should be set out in the FFG Act. This should be extended to include the preparation of priority actions for currently listed threatened species, communities and threatening processes, where Action Statements have not been prepared. • The content requirements for priority actions should also be set out in the FFG Act. This should include a requirement that the actions necessary to ensure the protection of the species are set out, in the list of priority actions, and in order of priority.²⁸ • The LFF Proposed Consultation Process should be followed after the preparation of the priority actions, or amendment of a priority action list, and the list of priority actions amended as appropriate following the
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²⁷ LFF FFG Act Review at pp 13 – 14, (at 4.1 (b)); pp 16 – 19 (at 4.3, 4.4), p 35 (at 5.9). LFF also expressed concerns about the implementation and enforceability of Action Statements; at pp 24 – 25 (at 4.10(a)).

²⁸ Action Statements currently must set out what has been done to conserve and manage that taxon or community or process and what is intended to be done and *may* include information on what needs to be done, (refer section 19(2) of the FFG Act). This is a serious deficiency of the FFG Act. It should be mandatory, and not discretionary, to include information on what needs to be done to protect and conserve the species, community or to halt the threatening process.

				<p>Minister’s consideration of the advice from the Proposed Advisory Committee.</p> <ul style="list-style-type: none"> • It is also not entirely clear whether conservation advices and priority actions are intended to replace Action Statements, or Action Statements are now proposed to be a combination of the conservation advice and priority actions. • For the reasons set out below,²⁹ Action Statements, or any replacement documents, presumably being a combination of a conservation advice and a priority action list, should be retained as a management strategy to prevent the loss of individually listed threatened species or communities, and to manage threatening processes. • An Action Statement, or replacement document, which incorporated both the conservation advice and a priority action list, with the elements anticipated under the Consultation Paper, and/or with the additional requirements as recommended by LFF, would be an improvement on the current system. • That said, there is currently no obligation to monitor the species, community or threatening process after Action Statements are completed. Nor is any proposed under the Consultation Paper. A mandatory obligation to implement Action Statements (or their replacement) and review their effectiveness should be included in the FFG Act. • Further, existing Action
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²⁹ Refer to the discussion accompanying the consideration of issue 11.

				<p>Statements do not currently incorporate the elements that would (or should) be required in the making of conservation advices and priority actions. They should be updated so that they do incorporate these elements. The LFF Proposed Consultation Process should also be followed in this process of updating existing Action Statements.</p>
11.		4.3.1, table 12.	<p>Require a landscape or area-based response to the Biodiversity Plan. Enable preparation of management advices for specific species or threats where warranted.</p>	<p>A landscape and area-based response is supported. In particular, a landscape and area-based response should be utilised to identify habitat which is of critical importance, in that it may support more than one endangered species, and so that the protection of that habitat is given priority.</p> <p>However it is important that individually listed threatened species and communities are protected. This aim may be lost if a landscape or area based response is implemented. Action Statements should therefore continue to be prepared and set out the necessary measures to ensure the preservation of specific species or communities. And, given this, LFF questions the need for “Management Advices.”³⁰</p> <p>In short:</p> <ul style="list-style-type: none"> • The landscape and area based response should be used in conjunction with other mechanisms, such as Action Statements, conservation advices and priority actions, to ensure individual species protection. • Action Statements, must be prepared to ensure the preservation of individual species, and integrated with landscape and area based protection measures.

³⁰ Table 11 of the Consultation Paper refers.

12.		4.3.1, table 12.	<p>Investigate establishing criteria to guide when the Minister may seek advice from the Proposed Advisory Committee. This could include thresholds, such as an imminent threat to the survival of a species, that would trigger mandatory action from the Minister.</p>	<p>The proposal to consider investigating establishing criteria, and a mandatory trigger for Ministerial action is supported, and commended. This proposal should be implemented, with criteria, including triggers for mandatory action, adopted.</p> <p>The content of the criteria is critical, and would benefit from public consultation and the advice of the Proposed Advisory Committee.</p> <p>The LFF Proposed Consultation Process should be followed after the preparation of the criteria, and the criteria updated as appropriate following the Advisory Committee's consideration and advice.</p>
13.	Listing threatened species, communities and threatening processes	4.3.2	<p>Reforms being considered to improve the listing process under the Act:</p> <ul style="list-style-type: none"> • A single, comprehensive list of threatened species and communities in Victoria, which includes nationally threatened species as well as species threatened in Victoria. • Establish criteria for defining threatened species. • A comprehensive list of threatened ecological communities and threatening processes. • Adoption of the IUCN standards for classifying the conservation status of species. • Adopt the Common 	<p>There is duplication between the EPBC Act and FFG Act. LFF supports the proposal to adopt assessments by other jurisdictions, under the Common Assessment Method, and to use IUCN standards and establish criteria for defining threatened species.</p> <p>However:</p> <ul style="list-style-type: none"> • Victoria should also list species which are threatened in Victoria, as set out in the Consultation Paper. • Action Statements should be prepared for all listed species, threatened species, and threatening processes, and comply with the requirements of the FFG Act (noting that recovery plans prepared under the EPBC Act are unlikely to comply with the requirements of the FFG Act). • The Common Assessment Method must be consistent with the requirements of the FFG Act.

			<p>Assessment Method for threatened species and establishing arrangements to enable adoption of relevant assessments made by other jurisdictions.</p> <p>Under this proposal, the Act's threatened list would include:</p> <ul style="list-style-type: none"> • A list of nationally threatened species based on assessments made according to the Common Assessment Method. • A list of Victorian threatened species, which, while not nationally threatened, meet the IUCN criteria when assessed according to their circumstances in Victoria. <p>DELWP will re-assess all species currently listed under the Act along with all remaining rare or threatened species included in the advisory list.</p>	<ul style="list-style-type: none"> • The LFF Proposed Consultation Process should be followed after the preparation of the criteria used for defining threatened species (and also threatened communities and threatening processes), and the criteria updated as appropriate following the Advisory Committee's consideration and advice. • The existing ability for the public to make nominations should be retained, as contemplated in the Consultation Paper. • If, after the DELWP re-assessment of all species currently listed under the Act and all remaining rare or threatened species included in the advisory list, any species are proposed to be removed, then notice of the proposal to remove the species should be given to the public, with submissions invited, and submissions referred to the Proposed Advisory Committee (or Scientific Advisory Committee) for advice.
14.	Habitat protection and regulation	4.4	<p>Potential improvements generally:</p> <p>Provide effective protection of habitats for threatened species and communities on public land and complements the role of native vegetation clearing regulations on private land.</p> <p>Foster a collaborative approach to protect and</p>	These proposals are supported.

			<p>restore critical habitats that provides an appropriate balance of incentives supported by proportionate regulation.</p> <p>Provide clear and consistent information to landholders, public authorities and others on where the most important habitats for threatened species and communities occur.</p>	
15.		4.4	<p>Critical habitat:</p> <ul style="list-style-type: none"> • Provide criteria to define and broaden the concept of critical habitat to include areas important for maintaining ecological processes. • Require the Secretary to establish a program to identify and map proposed critical habitat areas across the state on public and private land. • Modify the regulatory controls for critical habitat to require a permit for activities that would ‘damage’ the habitat. • Consider replacing Interim Conservation Orders with alternative regulatory and compliance mechanisms, such as stop work orders and remediation orders. • Require the Secretary to take all reasonable steps to enter into voluntary management 	<p>These initiatives are generally supported.</p> <p>The LFF Proposed Consultation Process should be followed after the preparation of the criteria, and the criteria updated as appropriate following the Advisory Committee’s consideration and advice.</p> <p>In addition, LFF believes:</p> <ul style="list-style-type: none"> • There should be a mechanism for the public to make nominations for Critical Habitat. • The Scientific Advisory Committee or Proposed Advisory Committee should have input into the Critical Habitat declaration process. <p>Interim Conservation Orders:</p> <ul style="list-style-type: none"> • Any mechanisms that replace ICOs, if indeed they are replaced with alternative regulatory and compliance mechanisms, such as stop work orders and remediation orders, should not automatically be limited to two years, but remain operative until revoked, and thus, no longer ‘interim’.

			<p>agreements with owners of land containing declared critical habitat. The agreements would be developed on a case-by-case basis to suit specific circumstances and identify land uses compatible with conservation. They would be supported by appropriate incentives for land management.³¹</p>	
16.	Compliance and enforcement	4.4.3, Table 16	<p>Increase penalties for breaches of the Act.</p> <p>Introduce higher maximum penalties for offences committed by a corporation. The standard approach in Victoria is for maximum penalties for body corporates to be five times higher than for individuals.</p> <p>Introduce imprisonment as a penalty for the most serious breaches.</p> <p>Consider introducing a tiered suite of enforcement tools, including:</p> <ul style="list-style-type: none"> • Infringement notices • Stop-work orders • Remediation orders • Enforceable undertakings. <p>Improve the powers of authorised officers to enable them to:</p>	<p>LFF supports:</p> <ul style="list-style-type: none"> • Significantly increasing penalties for breaches of the FFG Act, including the availability of imprisonment. • The introduction of a tiered suite of enforcement tools. • Improving the power of authorised officers. • The introduction of civil penalties.

³¹ *Consultation Paper*, Table 14, pp55-56.

			<ul style="list-style-type: none"> • Seize plants or animals taken illegally (or other equipment used in the process). • Release seized plants or animals to the wild. • Require plants or animals to be retained pending further investigation. <p>Investigate introducing civil penalties for breaches of the Act.</p>	
17.		4.4, table 14.	<p>Provide an effective deterrent to the illegal removal of native vegetation on public and private land.</p> <p>Investigate establishing an offence to damage habitat of listed threatened species or communities without a permit, in conjunction with the existing offence of taking individuals of a species.</p>	<p>The destruction of habitat is the biggest single cause of species extinction.</p> <p>LFF therefore supports the establishment of an offence to damage habitat of a threatened species or threatened community without a permit, in conjunction with the existing offence of taking individuals of a species. The Consultation Paper anticipates that this offence would be limited to offences on public land.</p> <p>Species and critical habitat exist on private land. Further, the EPBC Act does not generally distinguish between public and private land. The offence should be extended to private land, and for actions which have a significant impact or are likely to have a significant impact, on listed species, communities, or critical habitat, similar to the “offence” provisions of the EPBC Act.</p>

18.		4.5	<p>Improved accountability and transparency:</p> <p>DELWP has received a strong message from stakeholders that greater accountability and transparency is required in the administration of the Act. As the Act does not always specify matters that decision makers must consider in making decisions, the basis for these decisions is not always clear.</p> <p>Potential improvements (at table 17):</p> <p>Require key decisions made under the Act to be made publicly available online, such as:</p> <ul style="list-style-type: none"> • Listing • Permits/licences/authorisations • Governor in Council orders • Critical habitat declarations • Compliance and enforcement action taken. <p>Establish a mechanism to enable internal merits review of some important decisions made under the Act. This enables a person affected by a decision to have the decision reconsidered and made again by another decision maker within DELWP.</p> <p>Expand standing for the community to:</p> <ul style="list-style-type: none"> • Seek judicial review of decisions made 	<p>LFF supports the proposal that key decisions be made publicly available.</p> <p>There should be a requirement that written reasons are provided. LFF also believes that the public should have the right to enforce the provisions of the FFG Act, with VCAT as the forum.</p> <p>LFF notes:</p> <ul style="list-style-type: none"> • Section 114 of the P&E Act allows ‘any person’ to apply to VCAT for an enforcement order to enforce the provisions of the P&E Act, Planning Schemes and planning permits. • A similar mechanism should be provided under the FFG Act, and so that members of the public have the ability to enforce the provisions of the FFG Act. And the standing provision should not be drafted too narrowly. • Extending enforcement rights to the general community would not only broaden the resource base for taking action, but would also empower people and allow those interested to take an active role in the protection of Victoria’s most threatened and endangered species. • The internal merits review of important decisions is inadequate. Affected persons should have the right to appeal to an independent body – such as VCAT.
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			<p>under the Act, such as granting of permits/ authorisations.</p> <ul style="list-style-type: none">• Seek injunctions in court to prevent/halt a breach of the Act, such as illegal damage to critical habitat.	
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