

1. Introduction

LGPro welcomes the opportunity to comment on the consultation paper '*Review of the Flora and Fauna Guarantee Act 1988*'. This submission was prepared by LGPro based on significant direct input and expertise and knowledge of the LGPro Biodiversity Planning Network Special Interest Group (BPN SIG).

The Biodiversity Planning Network (BPN) is a group of Local Government officers that are professionals in the environmental field. The group has evolved since 2008, becoming a formalised LGPro Special Interest Group in July 2012. BPN consists of expert practitioners of native vegetation regulations, state and local policies and guidelines surrounding environmental regulations. Officers participating in the group include representatives from the majority of Local Governments across Victoria including urban growth areas, urban and interface Councils, as well as regional and rural municipalities.

The suite of natural assets members of the BPN seek to protect include a diversity of species and habitats; from volcanic plains to coastal ecosystems, woodland and drier forests of the foothills, the wet forests and Central Highlands. Remnant vegetation retained throughout these municipalities has a high proportion of EVCs with restricted distribution, as well as habitat for a number of state and national rare or threatened species.

Members of the BPN are current and frequent users of native vegetation and biodiversity regulations, hence have detailed insights into the implementation and implications of the native vegetation clearing regulations.

Local Government officers have witnessed first-hand the decline of biodiversity within our municipalities and across the state. The regulatory approaches used within Victoria to manage threats to biodiversity and drive much needed improvement are failing. Local Government are hopeful that this review will provide an opportunity to integrate good decision making across the biodiversity sector.

2. Setting the Direction

Fundamental to LGPro's concerns about the approach to the changes to the Flora and Fauna Guarantee Act (FFG Act) review, is why the Victorian State Government has elected to not review the entire scope of biodiversity and planning regulations. This review is a once in a generation opportunity to streamline and improve the approach to biodiversity regulation in the state – however the documentation highlights a continuing fundamental problem in which biodiversity on private land is not adequately protected through the FFG Act.

The paper indicates that Environmental Significance Overlay's (ESO's) may be the mechanism to protect biodiversity that occurs within non-native vegetation. Local Government with its significantly constrained resources under a rate-capping environment will not be in a position to protect significant habitat through the application of bespoke ESO's. It will still struggle to obtain the resources and political will to enforce breaches to any ESO's. The failure of the

enforcement and compliance tools within the Planning and Environment Act (P&E Act) will still exist and habitats within private land will continue to degrade, fragment and shrink in extent.

We recommend that the State Government needs to either:

- a) Make the FFG Act the mechanism through which biodiversity impacts from land use planning decisions are approved, or
- b) Amend the P&E Act, the State Planning Policy Framework and particular provisions to ensure that both important habitats and native vegetation are protected, including appropriate enforcement tools and penalties.

This Act must not simply be a land use and planning tool. It needs to set visionary goals and outcomes for the protection of biodiversity on all land within the state - be that protecting common species in normal bushland in the suburbs, or high value biodiversity within National Parks.

Effort must continue to be made in both the critical end of biodiversity conservation and at the proactive end to protect as many species as possible across the state before their security is at significant risk. Given Victoria’s long history of extinction, particularly for mammal species, the main objective should always be to prevent extinction for any species. Anything less does a disservice to future generations.

The revised Act must drive management actions across Victoria. These actions must be supported and facilitated through improved access to funding and resources for state government departments and agencies, Local Government and the community.

2.1 Objectives

The paper proposes a change to the overall objective in the Act.

Table 1 – Areas proposed to be covered by revised objectives

Revised Objectives	Comments
<p><i>Protecting, restoring and enhancing biodiversity so native flora and fauna improve in the wild, including genetic and habitat diversity and the ecological processes that support biodiversity.</i></p>	<p>Supported.</p> <p>LGPro has concerns, however, that the definition of biodiversity within the Victorian Planning Provisions is constrained to that which occurs within native vegetation. The focus is also on listed species rather than all species. Biodiversity which occurs within non-native habitats must also be protected and considered on private land and through planning permit processes under the <i>Planning and Environment Act 1987</i> (P&E Act) and the changes to the <i>Flora and Fauna Guarantee Act 1987</i> (FFG Act).</p> <p>Clause 12 within the Planning Scheme does provide mechanisms to introduce these changes. Implementing species-specific overlays such as the Giant Gippsland Earthworm Environmental Significance Overlay are extremely expensive and time consuming</p>

	<p>to establish and place too much responsibility on Local Government to drive species protection outcomes.</p> <p>Genetic diversity is currently not well considered in the permitted clearing regulations – when specific biodiversity equivalence units are required, these offsets can be anywhere within the state. There is potential to lose genetic resources at end of ranges that can be well adapted to changing climate, and sub-species of plants and animals that have not been subject to scientific investigation. This process also picks winners and losers across the state without a clear understanding of which habitats are the most important refuges in a changing climate.</p>
<p><i>Halting the overall decline of threatened species and communities and securing the greatest possible number in the wild in the context of climate change.</i></p>	<p>Supported in principle.</p> <p>Preventing currently common species declining to threatened categories should be a key objective within the Act. It is not adequately considered within the P&E Act.</p> <p>While LGPro acknowledges that under climate change all species might not be saved, open and transparent decision-making is required where attempts will no longer be made to save a particular species.</p> <p>The 'greatest possible' part of the objective contrasts with Zoos Victoria's 2014-2019 Wildlife Conservation Plan: <i>We are committed to the recovery of 20 native threatened species all of which require urgent conservation intervention. We've promised that no Victorian terrestrial vertebrate species will go extinct on our watch. This is an enormous but necessary undertaking and will require Zoos Victoria to work through strategic partnerships whilst mobilising community support.</i></p> <p>If Zoos Victoria can set such a visionary goal, then why not continue with the original objective of the Act to guarantee that all taxa of Victoria's flora and fauna other than taxa listed in the Excluded List can survive, flourish and retain their potential for evolutionary development in the wild?</p>
<p><i>Ensuring the use of native flora and fauna is sustainable.</i></p>	<p>Supported.</p> <p>Currently there is a significant discrepancy in the way flora and fauna use provisions are applied.</p> <p>For example, Kangaroo Management Plans are a tool that is used within urban greenfield development areas. In most cases these plans aim to prevent land locking by moving animals on and culling. The plans have not proven to be an effective tool in managing kangaroos and do not lead to a sustainable use of the animal post culling. Partnering with Traditional Owners to utilise the pelts for cultural clothing, for example, would provide a beneficial and sustainable use.</p>

	<p>In addition, there are many threatened and common native fauna species destroyed by machinery as part of the construction process occurring within urban greenfield developments. The Department of Environment Land Water and Planning (DELWP) have moved away from the previous policy and practice of salvage and translocation of animals to secure conservation reserves, and as a result these animals are currently being destroyed. More humane solutions are needed to achieve broader conservation outcomes for these species.</p>
<p><i>Managing the impacts of threats to biodiversity, including climate change.</i></p>	<p>Supported.</p> <p>Without proactive and funded management actions biodiversity will continue to decline across the state as a result of climate change impacts.</p>
<p><i>Promoting a landscape or area-based approach to biodiversity planning and ensuring the delivery of conservation actions maximises benefits to biodiversity.</i></p>	<p>Supported in principle. See Section 4.3 below.</p>
<p><i>Supporting a collaborative approach to managing biodiversity across stakeholders.</i></p>	<p>Supported.</p> <p>'Managing' alone will not be able to reverse the landscape wide decline in biodiversity, improving biodiversity outcomes on land managed by a variety of stakeholders by 'restoring and enhancing' is required.</p>
<p><i>Facilitating the involvement of Traditional Owners, acknowledging their connection to country and unique role in, and knowledge of, biodiversity conservation.</i></p>	<p>Supported. See Section 5.1 below.</p>
<p><i>Improving the management of biodiversity by developing and sharing knowledge and monitoring biodiversity outcomes to enable adaptive changes to approaches are necessary.</i></p>	<p>Supported.</p> <p>The local government sector has a substantial amount of knowledge and experience in improving and effectively managing ecological values within their boundaries. This knowledge and experience is not always called upon in government decision making processes.</p> <p>Taking an adaptive monitoring approach to ecological programs conducted by all levels of government, private land conservation, academia and community groups will enable learning and adaptation to occur across the sector and state.</p>
<p><i>The role of the Act could include specifying:</i></p>	<p>Supported. See Section 2.3 below.</p>

<ul style="list-style-type: none"> • a requirement to include the targets in the Biodiversity Plan • a review period and process for developing the targets • the matters that must be included in the targets • reporting against the targets. 	
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2.2 Principles

The paper outlines a number of principles that should be used by decision makers to balance the social, economic and environmental costs of their decisions. The paper highlights that the lack of these principles may be why certain tools - such as the use of critical habitat determination - have not been made to date. Our comments to the proposed improvements for the principles are in Table 2 below.

Table 2 – Comments on the framing of the proposed principles

Proposed Principles	Comments
<i>Integrating and balancing environment, social and economic objectives.</i>	<p>Supported in principle.</p> <p>Current accounting methodologies which seek to balance a range of objectives often significantly undervalue the role of biodiversity, ecosystem services and the long term nature of biodiversity impacts and overstate the usually shorter term benefits of economic gains.</p> <p>Further guidance, research and case studies will be required to identify what the FFG Act requires in triple bottom line decision making.</p>
<i>Informed decision making – to ensure decisions are based on the best available information and scientific uncertainty and risk is properly accounted for.</i>	<p>Supported.</p> <p>However, scientific uncertainty must not be used as a reason to do nothing.</p>
<i>Primacy of prevention – to ensure appropriate weight is placed on preventing harm and avoiding impacts to biodiversity over the minimisation or mitigation of impacts.</i>	<p>Supported.</p>
<i>Shared responsibility – to provide a platform to use a range of mechanisms and work with a range of stakeholders to take action to</i>	<p>Supported in principle.</p> <p>In order to achieve this principle, additional resources at state</p>

<i>prevent harm to, or restore, biodiversity.</i>	government level and including state agencies will be required so that Government can lead by example.
<i>Intergenerational and intragenerational equity – to ensure decision makers consider how decisions may affect specific parts of the community and future generations.</i>	Supported. Decision makers should also be required to consider the impact of 'failure to make decisions' – such as the delayed listing of species or the implementation of action statements. Most current action statements for species listed within the FFG Act would stop the decline of species, but they have simply not been implemented.

2.3 Targets

Target setting must occur at all spatial scales; a species with habitat within a small urban area supported by an active passionate community should not be disadvantaged by a landscape scale approach. Extinction always starts at a local level. Common or threatened species rely on reserves of all spatial scales, from orchids and butterflies that may only survive in small, locally managed reserves, to some mammals and birds with wider habitat ranges.

Local Government must be involved in the setting of conservation targets. This sector plays a key role in funding conservation activities on public and private land, and in creating connections between public land and community participation in conservation programs.

Targets must be strong, with monitoring and auditing performed regularly, and there must be government accountability for performance (or lack thereof) against targets. Targets, as well as the monitoring, auditing and accountability framework, should be subjected to a second round of consultation and should be species and ecological community dependent.

A critical gap in the Biodiversity Plan (which will sit under this reform) is an explanation of what expenditure currently is directed to biodiversity protection and how much increase in expenditure is needed to meet the targets of the Plan. Without clear funding streams, the reformed FFG Act will continue to be ineffective in achieving biodiversity protection in Victoria.

3. Coordination and Integration Across Government

LGPro supports the notion that biodiversity can only be protected and improved across the state with clearly defined responsibilities and accountability for all government departments.

3.1 Leadership

The FFG Act has limited awareness and profile within the community. This is a significant issue on roadsides that are actively managed by the general public who are unaware of the statutory controls within the FFG Act. The review does not clearly identify how DELWP will increase awareness of the FFG Act and its powers.

The inclusion of biodiversity considerations into all government legislation and decision making is essential. This should extend beyond land use decisions into procurement and tendering

policies, and take into account direct and indirect impacts on biodiversity both within the state, across the country and internationally.

Providing powers to the Minister to require information about how a public authority is managing a listed threatening process, or how a high value biodiversity asset is being managed, will increase the transparency and accountability of legislation. It is very difficult for Local Government to instigate enforcement proceedings against public agencies and this reform must allow the State Government to resolve issues that are caused by state agencies. This will also allow for the State to investigate cases where Local Government is impacting on biodiversity, which currently only occurs by the Commonwealth.

3.2 Duties on Government Departments

The proposed reform to place duties on public authorities is supported. LGPro has seen the lack of funding provided to public land managers such as Parks Victoria contribute to a decline in biodiversity values of significant public assets.

There is poor communication regarding the issuing of FFG Act permits between DELWP and Council. In some cases permits are issued to take flora from Council managed land with Council unaware that these permits have been issued. It is difficult for Councils to police the collection of propagules from its land when it's not even aware that people are seeking to undertake this work.

Other public land managers such as VicTrack and VicRoads must contribute their 'fair share' of proactive land management protection of biodiversity assets on and adjacent to land under their control. The LGPro BPN has witnessed a significant decline in the quality and condition of rail reserve BioSites in that last 20 years, an issue which is prevalent across the state.

The duty must also extend to the role DELWP undertakes as the Crown land manager and all of its relevant leases, licences and committees of management. The duty should also apply to the disposal or sale of any Crown land that has significant biodiversity assets. If Crown land or any public land assets are sold which contain significant biodiversity values, these should be pre-secured through the use of on-title agreements such as Trust for Nature Conservation Covenants.

It is unclear why the reforms have not considered extending similar duties to the owners of private land, given the extensive area with biodiversity values in private ownership. The current enforcement regime under the *Catchment and Land Protection Act 1994* is limited and largely ineffective. Duties should extend to all threatened processes, where critical habitat determinations have been issued in all land tenures.

3.3 Guidance Material and Standards

The availability of guidance material and standards is supported. There must be a review period for all guidance material so that it remains up to date as new scientific discoveries are made about biodiversity values. The scope and influence of guidance material and standards should be specified in the Act to clarify the circumstances under which they are to be used. This is particularly relevant for their influence on land use planning decisions.

Biodiversity standards and guidance material must be adaptive and responsive to changing conditions. For example, if key areas of habitat or populations are impacted on by natural disasters, then other areas of habitat must be able to be better protected until the true impacts are understood and accounted for, maintaining the guarantee that all species will survive into the future.

3.4 Management Agreements

LGPro supports the use and development of public authority management agreements. These agreements could be wider in scope than just biodiversity, taking into consideration all land management and land sustainability issues, such as the impact of weeds on adjacent conservation reserves, the role of land in strategic fire breaks, the impact on hydrological function and erosion within the landscape, and the use of land to reinstate native vegetation and biodiversity values for linkages (e.g. revegetation within rail and road reserves). These management agreements should be a requirement of any public land including land where a lease, licence and committee of management agreement exists.

DELWP should not be the only stakeholder involved in these negotiations, Local Government and local communities should also be involved in setting and developing these agreements.

4. Strategic Approaches to Biodiversity Planning and Species Listing

LGPro submitted a response to the draft state-wide biodiversity plan in May 2016. Please note that all comments made in that submission are relevant to this current submission.

4.1 Publishing Ecological Information for each Species, Distribution and Key Threats

LGPro supports the publication of up to date information for each species, community and threatening process. Lack of current information has been a key failure of the biodiversity legislation in the past at both a State and Commonwealth level, with a number of Action Plans not being completed and most being significantly out of date. These documents should be held on an online database, preferably with a spatial component, so that not only can communities identify what species are likely to occur near to where they live, but what actions need to occur, where and what actions are occurring and by whom, and how and where to support the species.

Information collected through this process should be used to peer review and update the habitat importance maps utilised through the permitted clearing legislation. They should also be used to make timely critical habitat determinations where required.

The current time lag and deficit in this information becoming publically available needs to be addressed, the transition documentation for the Act should mandate a timeframe for the publication of this information.

4.2 Priority Actions for each Listed Species and Communities

The identification of priority actions for each listed species and community is of critical importance, as is the commitment to undertake and fund these actions. All stakeholders must

be involved in the identification and prioritisation of actions. For many species simple on-ground management actions undertaken within prompt timeframes can achieve more than lengthy recovery plans that are not implemented. Priority actions should better balance research priorities and management priorities – so that we don't simply monitor species into extinction.

The Government should have an easily accessible list of all actions that are required for all species and whether or not these actions are being progressed. This list could help fund private investment and public involvement in threatened species and community conservation. As above, all priority actions should include a spatial component.

The spatial tool that Port Phillip and Westernport Catchment Management Authority has created to host and distribute the Regional Catchment Strategy could be expanded to host all specific priority actions.

Conservation actions must be matched with specific measurable targets and public reporting requirements. Case studies on community and governments working together to conserve threatened species should be published and widely communicated to increase awareness of these projects.

Priority actions should also be rapidly adaptable to changing climate conditions and significant natural disasters. For example, an insurance fund could be established to fund biodiversity recovery following significant fire or flood events, similar to funds for human settlements.

4.3 Landscape or Area-Based Planning

LGPro strongly supports the movement towards area based planning to enable the conservation of the broadest range of species and functioning ecological communities as possible. Key biodiversity assets such as Crown Land Reserves should be well funded and managed so that they form the principle core areas of habitat for which landscape and area based planning can be connected.

However we have concerns that a landscape or areas based approach will rely too heavily on modelling of cost effectiveness rather than determined local values and priorities. Management activities that focus only on threatened species, can lead to impacts on other species within an area. A balanced approach between focusing on the protection of an individual species and a landscape approach must be considered.

For example, under the Melbourne Strategic Assessment and Biodiversity Conservation Strategy, the Growling Grass Frog has been the main species used to determine ecological impacts of the urban growth expansion on waterway corridors. This has led to important species such as the Platypus, patches of native vegetation, Striped Legless Lizard habitat and other values within these reserves not being adequately considered in the planning and proposed management and funding strategies. In this situation, habitat should be restored to provide a benefit to a greater number of species and not just one. In general habitat should be restored and managed to provide a benefit to the greatest number of species, not benefit a single species to the exclusion of all other species. However, in certain situations it may be vital that the focus is on a single species to avoid that species going extinct, even when this

may cause detriment to other species. Public use and health and wellbeing outcomes should also be considered as part of a landscape based approach.

Of concern to LGPro with area based planning is the scientifically questionable concept that larger conservation areas provide the best conservation outcomes for the greatest number of species. Research by Dr John Morgan from La Trobe University, has shown that numerous small scale conservation reserves such as the Evans Street Wildflower Grassland in Sunbury can protect just as many threatened species as a larger reserve. In many ways larger connected reserves can be more difficult to manage, are less likely to see significant community involvement in land management and may be subject to more significant natural catastrophes in a changing climate. Diversity within the conservation estate, in size, location, surrounding conditions, land manager and management styles are important to maintain the broadest range of biodiversity across the state and give local communities as many opportunities to connect to biodiversity in the areas where they live and work.

Local Government plays a key role in funding conservation activities on public and private land. It also plays an important role in creating connections between public land and community participation in conservation programs. Target setting and landscape planning should occur at all spatial scales; a species with habitat within a small urban area supported by an active passionate community should not be disadvantaged by a landscape scale approach.

Area based planning is not currently adequately considered through the current Native Vegetation Permitted Clearing Regulations and this would need to be modified to consider these values. In particular indirect and compounding impacts on biodiversity are not well considered through the planning scheme, for example small to medium scale physical impacts, like roads, that reduce habitat connectivity. The impacts individual clearances on genetic diversity are not well understood or monitored.

4.4 Common Assessment Method

LGPro generally supports the basis behind the Common Assessment Method. However it raises the following areas of concern:

- The listing processes and identification processes between Ecological Vegetation Classes, FFG listed communities and *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) listed communities do not always adequately align. A process for consolidating the habitat characteristics will be required in order to adequately implement the common assessment method.
- Where mapped and modelled EVC's are used in the determination of listed communities, the accuracy of the data must be ensured to avoid inaccurate definitions of the presence of listed communities.
- The use of IUCN categories to determine the status of threatened species will likely generate significant increases in the numbers of species listed for some vegetation communities. For example any grassland flora or fauna species that is a grassland

specialist is likely to be endangered. Effort will be required to identify and list the many new species that will be required to be listed under the IUCN categories.

- The new listing process must ensure the current status of remaining habitat is included within the characterisation. Species and communities where the majority of remaining habitat is on unsecured public land like rail and road reserves, and private land, must have more substantial listing status than species that are found on secured and managed public land and private land conservation reserves. A species with limited secured habitat on public or private land may be currently common – but may also be under significant threatening pressures.
- There must be quicker listing and delisting processes available for species listed under the Common Assessment method – both under the EPBC Act and the FFG Act. Species listing status should be subject to a mandatory five year review to ensure that species that may be declining rapidly can be up-listed (e.g. Growling Grass Frog) and species that may be more common than the original listing documentation indicated (e.g. Golden Sun Moth) can be down-listed or delisted. The process for listing species should be simplified and available to the public to nominate species or vegetation communities; whilst ensuring that these nominations are then subject to the collection of any required ecological information and a peer review by the scientific advisory committee. DELWP and the Commonwealth should ensure that appropriate resources are allocated to departments and agencies to allow for fast processing of listing and delisting species.
- Consideration must also be given to legal and illegal removal of known habitats when listing decisions are made.
- Specific and deliberate effort to research and list less charismatic species which are less likely to be listed by the general public such as invertebrates, reptiles, aquatic vegetation, non-vascular plants, bats and fungi must be a requirement of the revised FFG Act. Without this focus many species may be lost without anyone noticing.
- Specific and deliberate effort should be made to place protection controls on public and private land for species where the bulk of the habitat does not occur within areas on native vegetation and may actually occur in weedy species that are listed under the *Catchment and Land Protection Act 1987* such as Blackberries and Gorse which protect Southern Brown Bandicoots, and Pine Trees that provide habitat for Red-Tailed Black Cockatoos.
- Effort should also be made to protect charismatic 'Australian Wildlife' such as Wallabies, Platypus and Koalas from impacts from development. While these species are not endangered they allow the general public to better connect to the Australian Bush. They also provide key tourism opportunities that bring extra funding to public and private land conservation activities. The FFG Act was not established as

threatened species legislation – it was to protect all flora and fauna – this should remain a key focus of the Act.

5. Habitat Protection and Regulation

LGPro believes that the objectives and principles of the FFG Act must relate to both public and private land. The FFG Act should also better relate to the regulation mechanisms within the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. This is particularly important given the Common Assessment Method proposed. As mentioned above, the way that the paper proposes reforms to private land is excessively complex and illustrates why full review of all biodiversity regulation is needed.

Some possible improvements to the suite of biodiversity legislation are listed below.

- High value biodiversity areas (both within and outside native vegetation) could be treated in a similar approach to Aboriginal Heritage regulations. Applications which are seeking to impact on areas of cultural heritage sensitivity are required to seek and gain approval for impacts from the Registered Aboriginal Party prior to receiving any planning permit. This process could be replicated for biodiversity, where applicants would be required to obtain approval under the FFG Act prior to the issuing of a planning permit. Any illegal impacts to high value native vegetation and biodiversity would be enforced solely under the FFG Act.
- The P&E Act could be amended to protect habitat for species where they occur in areas which are not within native vegetation. Clause 12 of the Planning Scheme speaks to all Environmental and Landscape Values and states that 'Planning should protect sites and features of nature conservation, biodiversity, geological or landscape value'. The Planning Scheme has the ability to protect species in all habitat types, including native and non-native vegetation. A new particular provision could be created within the Planning Scheme which includes habitat importance maps of species which do not occur within native vegetation which create planning permit triggers. DELWP would be the recommending authority for these cases. Responsibility for the protection and identification of species habitat for state significance should rest with the State.
- The limited scope of the P&E Act to act as a deterrent to illegal clearing is used in the review as justification to increase the enforcement tools within the FFG Act. Insufficient rectification tools and penalties exist within the P&E Act for more than just native vegetation clearing cases. As DELWP now includes all planning functions of the Government, as well as the environment functions, this process should be used to identify and drive reforms to the P&E Act. Attempting to split between approvals for clearing through the P&E Act and the enforcement of illegal removal through the FFG Act will be excessively complex to implement. The enforcement and compliance tools within the P&E Act should be repaired so that the legal ramifications of doing the wrong thing are a sufficient deterrent to offenders (applying penalties and requiring offsets and rectification of land).

DELWP officers should become Authorised Officers under the P&E Act and agreements entered into between Local Government and the State Government about which kinds of illegal clearance cases will be handed to the State.

5.1 Traditional Owners

One of the problems with the application of biodiversity legislation on private land is that it does not always align with the Cultural Heritage Management Plan process or the Aboriginal Heritage Act.

The value that traditional owners place upon native vegetation should be included in decision making processes both on public and private land. Including the need to secure local offsets that are within traditional owner boundaries so that losses within one Country are not placed within another Country, except with the approval of the Registered Aboriginal Parties or Aboriginal Affairs Victoria.

Traditional Owners should also be supported with specific funding streams to allow land management across the landscape. The duty of public authorities should extend to connecting and assisting Traditional Owners connection to biodiversity.

5.2 Risk Based Approach to Protected Flora

LGPro has significant concerns with an earned autonomy approach proposed within the reforms. It is clear that the current enforcement tools within the system do not act as a sufficient deterrent for breaches. Allowing companies and agencies even less scope for oversight is likely to result in significant impacts to biodiversity. If an earned autonomy approach is incorporated, enforcement and compliance of any breaches should be significantly more onerous than within sites that are subject to normal regulatory approaches.

5.3 Strategic Mechanism for Assessment and Approval of Biodiversity Impacts

While the use of strategic mechanisms is supported in principle, local governments must be involved in the development of agreement and mechanisms that affect their local biodiversity and their communities.

5.4 Compliance and Enforcement

LGPro supports any increased effort by the Victorian State Government to better ensure compliance with the FFG Act on both public and private land across the state. However, as above, we have concerns that the mechanisms and processes for enforcement on private land have not been adequately addressed in the consultation paper. Section 5 above discusses some options to create a more comprehensive regulatory framework that could be appropriately enforced. LGPro would like to see that the FFG Act has the powers to ensure compliance on land across land tenures and for all listed matters and their habitats.

5.5 Critical Habitat Acquisition

One area not adequately covered within the paper is the government acquisition of land that supports critical habitat into the government owned conservation estate. Where the State

Government determines that an area is critical habitat, a fund should be made available to provide ongoing compensation to private landowners for management and voluntary acquisition processes set up if they want to move off the land. This could mean that the land is acquired by the State and then placed into the Crown land conservation estate or acquired by Trust for Nature and permanent protection covenants placed upon the land prior to reselling to a conservation minded landowner. Having a process such as this may increase the likelihood that Critical Habitat Determinations will be political palatable.

5.6 Land Security

LGPro has concerns that the existing compliance and enforcement mechanism within the two of the three land security mechanisms currently used for the security of offsets sites (s173 agreement under *Planning and Environment Act 1987* and s69 agreements under the *Conservation Forest and Lands Act 1987*) are not bespoke enough or fit for purpose. These agreements have many ways that they can be removed from the title limiting the 'in-perpetuity' nature of offsets. There is also no land security agreement that is currently able to be used on public land offset sites – limiting transparency for ensuring compliance and enforcement with the offset objectives.

We suggest that the FFG reforms could be used to establish a specific on-title agreement process for the securing of offset reserves that includes appropriate restitution rules in case of breaches. Funds should be made available to DELWP and Local Government to enact restitution orders and charge these back on the land. The FFG Act reforms should also review in-perpetuity funding arrangements, particularly for public land offsets, rather than the current approach of only managing offset reserves for ten years.

6. Accountability and Transparency

The proposed reforms to the accountability and transparency of the Act, including the five year independent report, public consultation period and legal ability to challenge decisions are supported. All efforts to increase accountability and decision making within biodiversity legislation are important, particularly in relation to ensuring that the levels of investment are appropriate.

Transparency must also extend to the implementation of independent auditing of decisions made by State Government and Local Government on the application of biodiversity legislation. All offsets sites and auditing reports should be publically available.