



IFFA Submission on a Victorian Government Review of the *Flora and Fauna Guarantee Act 1988*

28th March 2017

We welcome the review of the *Flora and Fauna Guarantee Act 1988* and thank the Department of Environment, Land, Water and Planning for the opportunity to contribute with the following response to the Consultation Paper.

The Indigenous Flora and Fauna Association is thirty years old and has a broad interest in everything related to indigenous flora and fauna, focusing on Victoria. We contributed to the creation of the Act and have nominated items for listing under the Act, as have many of our members.

One notable feature of IFFA is that we don't see biodiversity conservation as being principally about protecting species in conservation reserves, like looking after stamps in an album. Rather, we seek conservation of nature all around us, from rarities in pristine wilderness to butterflies in urban backyards. We focus on how we interact with flora and fauna, e.g. through promotion and development of best practice ecological restoration, or connecting communities with nature in their daily lives. You will see these perspectives in the comments below.

We are generally supportive of many of the 'potential improvements' in the consultation paper and wish to offer alternatives to others. Our feedback on these is given below using the same headings and sequence as in Section 4 of the Consultation Paper. We also raise some matters that are not addressed in the consultation paper.

1 Setting the Direction

1.1 Objectives

1.1.1 Protecting, restoring and enhancing biodiversity

IFFA supports the idea of ‘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’, as put on page 37 of the Consultation Paper. There are two aspects to this: firstly, the recognition of restoration and enhancement; and secondly, the implicit recognition of biodiversity at the scale of individual habitats and ecological processes.

We think that in general, the Consultation Paper takes a simplistic view of biodiversity as an attribute of the whole of Victoria. In reality, biodiversity exists at any spatial scale from microscopic to global, and concepts like ‘habitat’ and ‘ecological processes’ demand consideration of spatial scales much smaller than the whole state. Conserving biodiversity does not just mean supporting the survival of each species, community and genotype somewhere in Victoria; It also requires maintaining the biodiversity of individual patches of habitat, at a local scale. Loss of local biodiversity means poorer, less resilient habitat for the remaining species, including any threatened species or communities that may be present. Loss of local biodiversity is also part of the process of global extinction: Species that may initially seem secure disappear from the edges of their range and gradually contract to core habitats, where they become increasingly vulnerable to stresses such as climate change, declining habitat and reduced exchange of genes across the landscape.

If we are to truly conserve each threatened species and community, we must conserve the local biodiversity of each patch of habitat for those species and communities. Often, we also need to restore and enhance those habitats to improve their biodiversity and the associated ecological processes. Many (perhaps most) of IFFA’s members are actively involved in these activities.

Throughout the new or amended Act, we would like to see greater clarity in the spatial scale associated with the word ‘biodiversity’.

1.1.2 Climate change

IFFA supports the proposed objective of ‘Halting the overall decline of threatened species and communities and securing the greatest possible number in the wild in the context of climate change’, except that the wording is ambiguous. We would also like to see a recognition that species not currently deemed threatened will become so due to climate change, with an objective along the lines, ‘Maintaining adequate populations and habitats of all species and communities to avoid them becoming threatened as climate change progresses’.

1.1.3 Sustainable use

In addition to the objective of ‘sustainable use’, IFFA would like to see an objective of ensuring that threatened species or communities do not suffer any material increase to their threats as a result of the use or taking of flora or fauna. We are particularly thinking of duck shooting, which involves substantial numbers of deaths of threatened species. This matter is also discussed below in the context of harmonisation with other laws and regulations, including the *Wildlife Act 1975*.

1.1.4 Landscape or area-based biodiversity planning

IFFA agrees with the objective of promoting a landscape or area-based approach to biodiversity planning, but not to the exclusion of species-based conservation. Both are needed. We would like to see the Act contain an objective that recognises the need for both approaches.

We would also be concerned if landscape or area-based biodiversity planning was used to divert effort and resources away from well-targeted site-based measures to less effective, broad-scale measures.

1.1.5 Collaboration and sharing knowledge

IFFA supports explicit recognition of the importance of collaboration with people outside the Department of Environment, Land, Water and Planning. The current administration of the Act suffers greatly from ignoring important information that is only available from outside the department.

1.1.6 Targets

IFFA supports the last four bullet points on page 37 of the Consultation Draft, regarding setting of targets.

1.2 Principles

1.2.1 Triple Bottom Line

IFFA supports the general concept of setting principles for how decisions should integrate and balance environment, social and economic objectives. However, we have concerns about what those principles might be, based on our experiences with the application of ‘triple bottom line’ accounting in other contexts.

1.2.2 Informed decision-making

In regard to the recognition of taking into account scientific uncertainty and risk, we ask that it be made explicit that the risk of inaction be taken into account as well as the risk of certain actions. For example, the sometimes very poor response to preparing and implementing Action Statements incurs the risk of the slide toward extinction progressing during inaction.

1.2.3 Primacy of prevention

IFFA strongly supports putting prevention first.

1.2.4 Shared responsibility

We hope this principle will receive adequate government funding and resources to make it work.

1.2.5 Intergenerational and intragenerational equity

As for ‘Triple bottom line’ – Section 1.2.1.

2 Coordination and Integration Across Government

2.1 Clarifying the duties of public authorities

IFFA supports all the potential improvements in Table 10.

We agree with the proposal to clarify and strengthen the duty of public authorities, including the Department of Environment, Land, Water and Planning.

Since the Act commenced, there has been a major change in the outlook of public authorities toward a corporate style of management; e.g. Melbourne Water, VicRoads and VicTrack. This has seen the organisations generally minimise the amount of money and effort they put into non-core, non-essential activities, including biodiversity.

The Act now needs to make clear exactly what the duties are, or else the duties are at risk of being overlooked or ignored. It should also be clarified that the duties apply to the department.

We like the proposals for measures such as ministerial guidelines and biodiversity standards to provide the additional clarity required. We would like guidelines and standards to be developed with community consultation. IFFA's purposes align strongly with such things and we would like to be involved.

In regard to voluntary management agreements, we draw attention to the need to consider biodiversity alongside a broad range of other considerations such as land protection and pollution. An integrated approach is needed.

We think the same clarity should be given to the rest of the Victorian community, not just public authorities.

Item 8 in Table 10 of the Consultation Paper touches on harmonising the Act with other laws, as do the first three paragraphs of page 54. We deem this such an important subject that we cover it in Section 7.

3 Biodiversity Planning and Species Listing

3.1 Targets

Following on from Section 1.1.1 above, IFFA believes that biodiversity targets should be set at all spatial scales. Not only is it important for biodiversity itself that targets be set at multiple scales, but it is also important for the Victorian community. Goal 1 and Priority 1 of the draft Biodiversity Plan are directed toward connecting the community with nature in their neighbourhoods, which cannot be reflected by biodiversity targets that make no reference to the different parts of Victoria. (We discuss the disconnection between the Biodiversity Plan and the FFG Act review in Section 7.)

As we have seen with the planning controls over removal of native vegetation, lack of geographic specificity leads to 'offsets' for urban clearing being located far from the most populace areas (where land, and hence habitat, is expensive) in favour of remote areas, where the community and environment affected by clearing get no compensation. Similarly, lack of

geographic specificity in the state government's targets for fuel reduction burning has led to the perverse outcome of effort being focused on environmentally destructive, ineffectual burning in remote areas such as Mallee. The same could happen if the Act were to set targets for biodiversity without mandating a reasonable geographic distribution. While the large expanses of remote habitat should clearly receive a lot of attention, the achievement of Goal 1 and Priority 1 of the draft Biodiversity Plan should not be ignored.

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 respond to the range of needs of different species and ecological communities.

3.2 Biodiversity Planning Framework

The proposals for publication of documents for 'conservation advice', 'priority actions' and 'management advices' seem to be already adequately accommodated by the existing Act, though under different titles. The important thing is not the name used for the documents or whether the Action Statement is split into two but whether the material is prepared in a diligent, timely and open manner, and then implemented. These are areas where the Act has been failing through no fault of its own, as discussed in Section 8.

We urge that the proposed 'management advices' not be like the existing Action Statements (as proposed in Table 11) but more like the management plans already covered by the Act. Action Statements typically cover the same material as is proposed for the 'conservation advice' and 'priority actions'.

The scope and influence of the 'biodiversity planning framework' 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. We discuss integration of the documents into planning in Section 7.

We support the proposal for specifying the lifetime of the documents. The documents should take into account all foreseeable stresses that may occur during their lifetime, e.g. bushfires, droughts and climate change. We would like to see a recognition that prior to the lifetime elapsing, a document should be updated where there is a material change in circumstances that was not accounted for when the document was prepared, such as a major bushfire or the arrival of a new disease.

We would like to see the government produce 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.

3.2.1 Landscape or area-based responses

As per Section 1.1.4 above, IFFA agrees with the objective of promoting a landscape or area-based approach to biodiversity planning, but with caveats. Within such an approach, it is important that some species and ecological communities be given species-specific or site-specific attention.

For example, the Eltham Copper Butterfly has a high level of community and volunteer support in a small area in Nillumbik, but the conservation efforts are quite strongly focused on the welfare of that one species and the (non-threatened) species that support it. This does not mean that the conservation of the Eltham Copper Butterfly is less important, particularly as it is iconic and helps to engage a community to protect the butterfly, its habitat and the other indigenous species of its habitat. Our comments about Goal 1 and Priority 1 of the draft Biodiversity Plan in Section 3.1 above also apply here; one must consider the human community as well as the intrinsic values of biodiversity. Public use and community engagement as well as health and wellbeing outcomes should also be considered as part of a landscape scale approach.

Over-reliance on landscape and area-based planning also runs the risk that the more conspicuous species or communities may unduly draw the focus (and hence resources) away from equally deserving species or communities within the same area. It will therefore be very important that landscape and area-based planning takes full account of the very localised and specialised needs that some species need, e.g. highly endemic orchids facing site-specific threats.

We support the ongoing investment in different types of actions which are tailored to groups of species or communities (e.g. for groups of spider-orchids) as well as individual species requirements.

3.3 Independent Conservation Advisory Committee

As stated on page 25 of the Consultation Paper, the Conservation Advisory Committee has not operated since the early years of the implementation of the Act. IFFA sees that as another example of the Act not being given a chance to do its job, due to government inaction or suppression. We therefore support the proposal to reconstitute the committee. We also support the associated item 7 of Table 12.

3.4 The Listing Process

IFFA strongly supports the adoption of the Common Assessment Method. It seems absurd that the IUCN Red List criteria have been applied by the Department of Environment, Land, Water and Planning to vertebrates for years but has resisted applying them to flora, favouring the decades-old, more qualitative and idiosyncratic criteria of the Act and the Advisory List. A consistent approach across biota and with the rest of the world is very important.

3.5 A Comprehensive List

IFFA and its members have nominated a number of matters for listing under the Act. We would do more, but we have only so much capacity. Many other matters are going unlisted simply for lack of the capacity of the community to nominate them.

We therefore strongly support the move to a comprehensive listing process, with the onus on government to make it so.

3.6 Defining Threatened Communities

The listing processes and identification processes between Ecological Vegetation Classes and communities listed under the *FFG Act* and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) 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 EVCs 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.

4 Habitat Protection and Regulation

4.1 Critical Habitat

The determination and protection of critical habitat is yet another aspect of the existing Act that has been prevented from functioning. We welcome the proposal to correct this long-standing problem. We support all of items 1–4 in Table 14 but in Item 3, the need for a permit could be avoided if a permit is already required for the same thing under the EPBC Act.

Where the state government determines that an area of private land is critical habitat, we would like there to be a fund to provide ongoing support to the landowners for management and the option (in appropriate circumstances) of voluntary acquisition when the owners 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 place 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

4.2 Native Vegetation

IFFA generally supports the proposal to use the Act to enforce illegal removal of native vegetation but we feel we do not have enough information to understand the circumstances in which it will apply, e.g. what is meant by ‘illegal’?

4.3 Other Habitats

IFFA supports establishing an offence for damaging ‘other habitat’ without a permit in a similar way to the EPBC Act, and for the same reasons as for the EPBC Act. However, we think it should apply regardless of land tenure, like the EPBC Act.

In this proposed improvement and the next, we support recognition that habitat, including critical habitat, sometimes involves vegetation that is not native to Victoria; e.g. the refuge that gorse and blackberries can provide for Eastern Barred Bandicoots.

4.4 Habitat Importance Mapping

IFFA supports the maintenance of habitat importance maps. We note that Action Statements normally contain habitat maps and explain the important areas, based on careful assessment by experts. We also note that the Department of Environment, Land, Water and Planning has produced synthetic habitat importance maps using the Zonation computer model, which has proved quite unreliable. We urge that carefully considered maps prepared by experts be given precedence over computer simulations.

In Section 4.5, we deal further with the discrepancies between Action Statement distribution maps and the maps used in planning controls.

4.5 Regulation

The absurd tensions between the FFG Act and the *Wildlife Act 1975*, such as permitting duck-shooting and protecting deer (a major threat to flora and fauna) should be resolved by consolidating regulations under one Act. See also Section 7 below.

IFFA generally supports the proposals in Table 15 with the proviso that in Item 8, there should always be a level of regulation that ensures the outcomes of ‘earned autonomy’ are better than in the absence of ‘earned autonomy’, with adequate penalties for default.

5 Compliance and Enforcement

IFFA agrees with items 1–6 of Table 16. We believe penalties should include restitution and ‘offsets’ in most cases. They should apply to government, public authorities and the rest of the community.

6 Regulation of Actions on Private Land

In 1988, the Act was envisaged as regulating actions on private land, but the necessary regulations have never been introduced. Even critical habitat has been left unprotected on private land, except for a brief period.

We support the approach of the EPBC Act in its application to both public and private land and we wish to see the FFG Act do likewise. See also Section 8 and its discussion of political ‘spine’.

7 Harmonisation with Other Acts and Regulation

The Consultation Paper considers coordination between government and public authorities but it does not deal with inconsistencies within the Department of Environment, Land, Water and Planning.

For example, we have noted above the disconnection between the FFG Act review and the draft Biodiversity Plan’s Goal 1 and Priority 1 regarding connecting the Victorian community

with nature on a daily basis. Another example is the tension between the FFG Act and the *Wildlife Act 1975*, such as permitting duck-shooting and protecting deer.

But the most important example of lack of harmonisation is between the FFG Act and the planning controls over removal of native vegetation. The planning controls use habitat distribution maps that conflict with Action Statements and make no apparent attempt to make use of the expert assessment that goes into Action Statements. Action Statements provide carefully considered assessments of the threats and needs of each species or community, but these are ignored in the planning controls.

We ask that the expert work done in support of the FFG Act be given effect by using it in the Victoria Planning Provisions. A simple way of doing this would be to introduce to clauses 52.16 and 52.17 of the VPPs a decision guideline to consider any Action Statement for a species or community that the Action Statement identifies as occurring on the affected land. Online mapping such as Planning Maps Online can make it easy for a permit applicant or statutory planner to find out what threatened species have been mapped as occurring on or near a property. A 'Flora and Fauna Guarantee Overlay' is another option, specifying the matters that an Action Statement has identified as relevant to consideration of planning permits. And as noted above, we urge that carefully considered distribution maps from the FFG Act processes take precedence over computer simulations currently used in the planning controls.

8 Commitment and Resourcing

As the Consultation Paper says on page 8, *'A strong theme emerging from this process is that many issues with the Act arise from a failure of government to properly implement the Act rather than poor legislative design'*. IFFA is disappointed at this failure, particularly regarding critical habitat determination, the Action Statement backlog, duck shooting and regulation of activity on private land. The potential benefits of the current review of the Act will be wasted if a new or amended Act is treated by government the way the existing Act has been treated. We recognise the political motivations for the past failure to properly implement the Act but we believe that politicians are being increasingly penalised for avoiding action on important but politically sensitive matters.

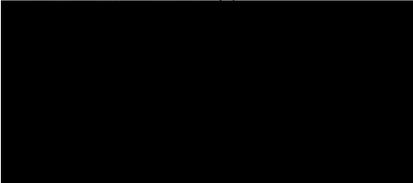
A critical gap in the Biodiversity Plan (which will sit under the Act) is an explanation of what expenditure is currently directed to biodiversity protection and how much increase in expenditure is needed to meet targets. Without clear funding streams, the amended FFG Act will continue to be ineffective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

9 Support for Conservation on Private Land

IFFA are particularly supportive of the potential improvements relating to private land conservation identified in Box 4 on page 50 of the consultation paper dealing with biodiversity targets, biodiversity planning, biodiversity standards, native vegetation, critical habitat and other habitat. These proposals will foster much better understanding by the community of the flora and fauna values in Victoria, where they are, what is required to protect them and the opportunities for collaboration, including greater incentives for private landowners.

Many species are not adequately reserved on public land and there should be a stronger effort to protect them on private land. In response to this principle, there should be more proactive engagement with landowners whose land has significant species or communities. Consideration of incentives and/or compensation as appropriate should be pursued where threatened species and habitat are identified on private land. The development of voluntary cooperative land management plans that facilitate the continued survival of threatened species or communities should be an integral part of this engagement. Support for landowners in the form of resources, advice and assistance should be provided.

Yours sincerely,



Dr Graeme Lorimer
PRESIDENT