

Review of the Flora and Fauna Guarantee Act 1988

Consultation, submission and response summary



Aboriginal acknowledgement

The Victorian Government proudly acknowledges Victoria's Aboriginal community and their rich culture and pays respects to their Elders past and present. We acknowledge Aboriginal people as Australia's first peoples and as the Traditional Owners and custodians of the land and water on which we rely.

We recognise and value the ongoing contribution of Aboriginal people and communities to Victorian life and how this enriches us. We embrace the spirit of reconciliation, working towards the equality of outcomes and ensuring an equal voice.

Photo credit

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1 Introduction

Over 200 submissions were received in response to the *Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper*. Thank you to everybody who contributed.

Background

The Andrews Labor Government is delivering on its election commitment to review the *Flora and Fauna Guarantee Act 1988* (hereafter, the Act), a key part of the legislative framework for the protection and management of Victoria's biodiversity. The review is being undertaken by the Department of Environment, Land, Water and Planning (DELWP), and forms part of the Government's broader long-term agenda to ensure stronger protection of Victoria's biodiversity.

The review provides an opportunity to ensure the Act provides a modern overarching framework for biodiversity management in Victoria, as well as strong and effective protection for Victoria's native species and important habitats.

The objective of the review is to improve the efficiency and effectiveness of the Act in protecting Victoria's biodiversity. The Government is also taking this opportunity to align the Act with modern legislative approaches, Victorian best practice regulatory principles, the community's expectations for biodiversity management, and the rights and interests of Victorian Traditional Owners in the management of biodiversity.

The consultation process

As with any proposed legislative reform, broad public engagement and stakeholder consultation is a fundamental aspect of this review process.

The *Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper* (Consultation Paper) was available for community consideration and comment for eight weeks from 30 January 2017.

Engage Victoria was one key channel for interested parties to access the consultation paper and provide feedback. DELWP received 137 submissions through the Engage Victoria portal, and a further 73 submissions were made directly to DELWP.

Comprehensive submissions were received from the Municipal Association of Victoria, the Victorian Farmers Federation, Environmental Justice Australia, Environment Victoria, the Victorian National Parks Association, and many other high profile groups.

Submissions were made by a wide range of contributors, and reflected a wide range of views.

Contributor type	Submissions
Agricultural Group	3
Environment Group	47
Individuals	100
Industry Group	9
Land Management Authority	8
Local Government	21
Research Institute	3
Victorian Government Agency	11
Traditional Owner Group	1
Other	7

Analysis of submissions

All public submissions were read thoroughly, analysed and sorted into thematic groupings based on the structure and proposed reforms of the consultation paper. This enabled DELWP staff to efficiently group the feedback according to common themes, build a picture of the degree to which various reforms were supported, and identify alternative proposals which repeatedly emerged.

The information within each thematic grouping has been summarised to form the sections of this report.

A large number of contributors have given their consent for their submission to be published. These submissions remain available on the Engage Victoria website (www.engage.vic.gov.au).

Concurrent reforms for Victoria's biodiversity

In addition to the review of the *Flora and Fauna Guarantee Act 1988*, the Government is currently undertaking two other key projects that will shape Victoria's framework for the protection and management of biodiversity values:

- Implementation of the recently released Biodiversity Plan, *Protecting Victoria's Environment – Biodiversity 2037*, the overarching

strategic framework to stop the decline in Victoria's biodiversity and achieve overall biodiversity improvement in the next 20 years, and

- the review of the Native Vegetation Clearing Regulations, which operate as a component of land use planning schemes under the *Planning and Environment Act 1987*.

These three projects relate to separate aspects of Victoria's biodiversity regulation framework, each with a distinct scope and function. However, these aspects are closely inter-related, and share a common objective.

Each of these projects has undertaken its own consultation process, and each consultation process received a large number of responses.

However, given the inter-relatedness of the projects, it is not surprising that many submissions in response to the FFG Act Consultation Paper engaged with matters beyond the immediate scope of the review of the Act. These submissions often addressed high-level strategic matters relevant to the Biodiversity Plan, and/or matters related to the clearing of native vegetation.

This level of engagement is very welcome, and DELWP will ensure that these contributions are used to inform policy development across all projects and operations.

Broader reform

The reforms currently being undertaken by the Andrews Labor Government are the most significant reforms to Victoria's framework for biodiversity protection in recent decades. Biodiversity 2037 is the first such strategic framework since 1997, and the Act has not been comprehensively reviewed since it took effect.

The submissions received in response to the Consultation Paper indicated a strong appetite among contributors for even broader-scale reforms to biodiversity regulation in Victoria.

Common themes included the complex division of functions between the Act and the *Wildlife Act 1975*,

the differing frameworks for public and private land, the appropriateness of the native vegetation clearing regulations operating under land-use planning schemes, and the opportunities to consolidate biodiversity regulation into a single primary Act of Parliament.

The Consultation Paper noted:

...the broader regulatory system for biodiversity in Victoria is complex, with powers and regulatory obligations sitting under various laws. This system has developed over many years, often in response to specific issues, and has not always taken a systematic approach. This can result in duplication of regulatory requirements, confusion amongst the community about regulatory obligations, and gaps in oversight and regulation.

While addressing these broader regulatory issues is outside the scope of this review, the review may inform future reforms to Victoria's biodiversity framework.

This consultation summary paper

This paper summarises the submissions made in response to the potential improvements to the Act that were set out in the Consultation Paper, and discusses alternative proposals raised by contributors.

This paper also provides a description of how the Government will proceed, following the consultation feedback. The supported reforms will form the basis of a Bill to be introduced to Parliament to amend the Act and provide modern and effective protection of flora and fauna. The Bill will be introduced to Parliament as soon as practicable in 2018.

This review is a great opportunity to update the Act to deal with contemporary and emerging issues. The result must reflect best practice in biodiversity protection, provide clear objectives that can be simply conveyed, achieved and measured. – Goulburn Broken Local Government Biodiversity Reference Group.

2 Setting the Direction

The Consultation Paper proposed a range of options to improve the clarity and relevance of the Act's objectives – including the 'guarantee' objective – and to provide principles for decision-making.

The guarantee objective

The Consultation Paper questioned the appropriateness of retaining the Act's current objective to guarantee that all Victoria's flora and fauna can survive, flourish, and retain their potential for evolutionary development in the wild.

'While this objective provides an aspirational and visionary goal, it may not support the opportunities presented by targeting conservation actions to maximise benefits across multiple species. It can encourage a disproportionate amount of conservation effort to be focused on the most endangered species. This singular focus on the emergency end of biodiversity decline may not enable a long-term turnaround in decline, or be the most effective way of preventing extinctions.'

'[Also] the guarantee objective does not recognise the uncertainty that climate changes brings to biodiversity.'

The great majority of submissions were strongly in favour of retaining the guarantee objective.

The loss of the concept of a 'guarantee' is very concerning. While we appreciate we cannot guarantee the survival of all species in the face of climate change (given the global causes underlying it), we should be able to guarantee that our species will be safe from the impacts of activities that can be controlled within Victoria – for example clearing for roads, urban expansion or logging. The guarantee is a means of raising the profile of biodiversity in government decision-making and embedding consideration of threatened species in decisions made under other legislation. – Environment Victoria

While many submissions acknowledged the extreme difficulty of meeting the guarantee objective, especially in the context of climate change, most respondents felt that replacing the guarantee implied a lack of commitment to the protection of threatened species, and that proposed alternative objectives would weaken the Act's ability to protect individual species from extinction.

Restoration and enhancement

There was strong support for the proposed objective of

'Protecting, restoring and enhancing biodiversity so native flora and fauna improve in the wild, including genetic and habitat diversity and the ecological process that support biodiversity'.

In particular, it was the reference to 'restoring and enhancing' that contributors supported.

There was also support for aligning objectives with the Biodiversity Plan, and linking objectives to measurable targets. Several contributors agreed with supporting species-scale objectives with landscape-scale objectives.

Decision-making principles

The Consultation Paper acknowledged that there is insufficient guidance within the Act as to how decision-makers should weigh competing considerations. Articulating a set of principles in legislation is an established practice which promotes consistent decisions and clearly expresses the intentions and values underpinning the Act.

There was strong support for the inclusion of principles in the Act. One very common suggestion was that the 'precautionary principle' should serve as a fundamental guide to decision-making.

We submit that if the FFG Act is to be reformed into a modern environmental law, then it must include a legislative statement that incorporates the precautionary principle. - Environmental Justice Australia

The precautionary principle states that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Response

In acknowledgement of the very strong feedback from contributors, the Government will retain the guarantee objective in the Act. The quoted passage from Environment Victoria's submission provides an

excellent starting point in considering how the objective can be meaningfully understood. Other objectives may be amended to incorporate elements of the proposed objectives in the Consultation Paper.

The Government supports the inclusion of principles to guide decision-making. The 'objectives' and new 'principles' expressed in the Act will work together to set a direction for the Act and guide its implementation. The Act's principles, will align with the statewide biodiversity targets and principles of the Biodiversity Plan.

The precautionary principle provides a strong signal as to the Act's commitment to protecting biodiversity. The Government supports the inclusion of this principle and its integration with other key principles of good regulatory practice, which require proportional responses founded on evidence-based risk assessment.

3 Coordination and integration across government

The Consultation Paper proposed options to make the existing duty on public authorities clearer and more effective, to improve the functioning of public authority management agreements, and to hold DELWP to clear standards for monitoring and reporting.

Duty on public authorities

The Act establishes a duty for public authorities to be administered so as to have regard to the objectives of the Act. The Consultation Paper acknowledged that the duty is not clearly defined and insufficient guidance has been provided on how public authorities should give effect to it.

Many submissions agreed that the existing duty was not clearly defined under the Act, and the proposal to create a power for the Minister administering the Act to issue guidelines to clarify the duty was also well supported.

Contributors expressed an expectation that there should be consistency in public authorities' regard for biodiversity. Responses from public authorities welcomed a more detailed set of guidelines to support the duty and provide clarity.

Hume City Council noted the difficulty faced by local governments in holding public authorities to account, and welcomed the proposed strengthening of the State Government's capacity in this regard.

Fewer submissions supported the proposal for the Minister to issue a direction to a public authority. Some respondents suggested that public authorities should be responsible for providing information about their impacts, and not be reliant on the Minister requesting it. Other respondents suggest the requirement to 'have regard to' could be strengthened to 'act consistently with' or 'comply with'.

Public authority management agreements

The Act provides a power for the Secretary to DELWP to enter into public authority management agreements (PAMAs) to provide for the management of listed species, communities or processes. These management agreements have not been widely used. Public authorities do not always see the value in entering into these agreements and the Act provides little incentive to do so.

The Consultation Paper proposed that the power to make these agreements is retained, and

agreements are promoted as an effective way for public authorities to fulfil their duty under the Act.

Some respondents queried whether PAMAs could overcomplicate existing frameworks of agreements, codes and regulations that already apply to some sectors. More generally, there was strong support for the development and promotion of PAMAs as a useful tool. Manningham City Council suggested that PAMAs could provide 'many benefits in linkages across landscapes'.

Some contributors suggested that, in some circumstances, PAMAs could be required, rather than voluntary.

The role of DELWP

The Consultation Paper suggested that DELWP's role in supporting the achievement of the objectives of the Act and the statewide biodiversity targets should be clarified under the Act. In particular, DELWP (and its successors) should be subject to clear monitoring and reporting requirements.

One respondent saw a role for DELWP in conducting ongoing surveys and monitoring of species and habitats to inform management, investment, modelling and prioritisation. Other contributions saw DELWP's role as ensuring compliance and enforcement, and in holding the ultimate responsibility for ensuring the conservation for threatened species.

The proposal that DELWP be required to report publicly on the benefits and impacts of its public land management activities on biodiversity was not significantly addressed by the submissions.

Response

A clearer definition of a public authority will be introduced, to remove doubt that it includes government departments. As a result, the duty will unambiguously apply to all levels of government in Victoria. The Government supports clarifying and strengthening the duty on public authorities, and enabling the creation of Ministerial guidelines, setting out the Minister's expectations of how a public authority might comply with this duty.

The Government will retain the power in the Act for the Secretary to enter into PAMAs, which will be used to control risks, promote management outcomes and satisfy the duty requirement.

Government supports requirements for DELWP to report on its management of public land and its progress toward statewide biodiversity targets.

4 Strategic approach to biodiversity planning and species listing

The Consultation Paper examined potential improvements to the Act's framework for listing threatened species, and for developing plans in response to new listings.

Action statements and the proposed new biodiversity planning framework

The current approach to biodiversity planning under the Act primarily involves the mandatory development of action statements for each threatened species and community and for each listed threatening process. The development of action statements is a resource intensive and often protracted process and has failed to keep up with the listing of species, communities and threats.

The Consultation Paper raised a number of ways in which biodiversity planning could be more efficient and effective – with a key proposal that the long lists of possible conservation actions currently found in action statements are replaced with a strategically prioritised set of actions with measurable targets and a consideration of costs and benefits. A new framework for biodiversity planning was proposed, comprising of conservation advices, priority actions, biodiversity response planning and management advices.

All submissions that commented on these potential reforms agreed that, after an item is listed, information about the item, threats and priority actions should be made available in a timely manner which should be required by the Act. Many submissions acknowledged issues with the current process, but often attributed those issues to a lack of resources rather than the Act itself.

In general, respondents were strongly opposed to the removal of action statements. There was a strong theme within submissions that action statements have been the most meaningful, practical tool under the Act to protect threatened species.

Action statements are fundamental in establishing adequate recovery planning for threatened species. Action statements for specific species also inspire communities to protect their local places that are critical to the survival of individual species. – Friends of the Leadbeater's Possum

Most submissions that responded to the aspects of the proposed new system were very positive about the new features, but were cautious about the

approach because it involved replacing action statements. For some contributors, the primary appeal of action statements was that they were a mandatory requirement on government – the concern being that in the absence of a mandatory requirement, no action would be taken.

Biodiversity response planning

The Consultation Paper noted the significant advances in conservation practice that have been made since the creation of the Act. Contemporary planning approaches give greater emphasis to landscape or area-based planning. This enables actions to be undertaken at appropriate scales which can benefit many species, while accounting for the needs of individual species where required.

Responses were mixed in relation to landscape-based planning and actions. Some respondents were very much in favour of the approach, advocating for landscape-based responses to form the core activities under the Act. These responses often recognised the value of the approach in protecting a larger number of species and habitats and promoting healthy ecosystems. Other responses were more sceptical, and expressed concern that this approach would come at the expense of appropriately tailored responses for specific threatened species.

Some submissions suggested that an action statement or equivalent might not always be required if a landscape scale approach could more effectively manage a species or community, but that this should be by exception only.

Zoos Victoria believes it is essential to concurrently address the needs of endangered species whilst endeavouring to mitigate key threats to halt additional species slipping into endangered categories. The two approaches are complementary and we can achieve both. – Zoos Victoria

There was also a strong appetite from local governments and communities for participation in a regionally focussed planning process.

Common assessment method

The Act's list of threatened species and communities and threatening processes is not comprehensive, and only includes one conservation status ('threatened'). This differs from the recognised international standard set by the International Union for the Conservation of Nature (IUCN). The Act also lacks criteria to assist in defining threatened communities, which can lead to inconsistency in the way communities are listed.

Almost all submissions supported the adoption of the Common Assessment Method (CAM) for listing species. Improving alignment with Commonwealth and international standards and processes and removing duplication within Victoria received strong support.

A small number of submissions expressed concerns with the IUCN standards and processes that the CAM utilises. Adopting the CAM would require that a Victorian threat category is not assigned for nationally threatened species, which was a source of concern for some respondents. There were also concerns that the proposals would result in many more species being listed, beyond the capacity of DELWP and the Scientific Advisory Committee to respond.

Contributors suggested that the listings should:

- be regularly audited or reviewed
- include the status of remaining habitat in any assessment
- provide for quick and responsive listing and de-listing processes, and ensure that species declining rapidly are 'uplisted' as soon as possible, and
- provide appropriate attention to less 'charismatic' species, such as fungi, invertebrates and reptiles.

Response

It is possible that the Consultation Paper was not clear enough in setting out the proposed new biodiversity planning framework. The very strong support for retaining action statements suggested many respondents felt that the proposed framework lacked the rigour that action statements could provide. Rather, the intent of the proposed new framework was to replicate the function of action statements in a format that was responsive and kept pace with listings, and also provided the opportunity for subsequent expansion based on risk and response priority.

Government supports replacing action statements with conservation advices, so that information about *all* listed species, communities and threatening processes is available promptly after listing. Requiring mandatory preparation of conservation advices for all listed items is supported, as is currently the case for action statements.

Conservation advices will be more concise than many action statements, however a requirement to prepare a more detailed management plan when necessary will be introduced. Criteria will be developed to specify when a management plan is required for species, communities or threats.

Existing action statements will continue to apply, unless superseded by an updated management plan or conservation advice in future.

The mix of opinions in relation to biodiversity response planning suggested that the Consultation Paper did not adequately explain the proposed process or how it is proposed to balance species specific and landscape scale conservation actions. Government intends the implementation of this Act and its statewide strategy to operate at multiple scales, appropriate to how species operate, and to cost-effectively benefit the maximum number of species.

The Biodiversity Plan proposes biodiversity response planning, a collaborative approach to planning for biodiversity and responding to statewide targets within an area. Government will introduce changes to the Act to support and enable this process.

Given the strong support for adopting a consistent national approach to listing species and the creation of a single Victorian list, Government will introduce amendments to adopt the intergovernmental Common Assessment Method for assessing and listing species.

5 Habitat protection and regulation

The Consultation Paper made a range of proposals to improve the effectiveness of the habitat protection powers provided under the Act.

Determinations of critical habitat

The Act has a mechanism to protect critical habitats for species and ecological communities on public and private land. However, the Government has not used this mechanism for a range of reasons, including concerns over the regulatory burden placed on landholders and the scientific challenges of identifying critical habitats and determining their boundaries.

The Consultation Paper suggested ways in which this mechanism could be used with greater confidence in circumstances where it was warranted.

Almost all respondents supported the proposed reforms to improve the protection of critical habitat. Most respondents commented in favour of broadening the concept of critical habitat to include areas critical for maintaining ecological processes, such as habitat corridors and climate refuges. Some respondents did express concerns that this broadening might weaken the overall concept or make it difficult to identify suitable sites.

There was a positive response to requiring the mapping of proposed critical habitat areas, particularly if this results in improving the use of critical habitat determinations.

Adopting a cooperative approach to managing critical habitat through agreements was also widely supported. Respondents suggested an incentive framework was necessary to provide funding to support landowners significantly affected by a critical habitat determination.

Some submissions expressed concern that the implications of these potential reforms were too difficult to assess without more detailed information.

Additional suggestions made about critical habitat included:

- The Act should clearly articulate circumstances where critical habitat must be declared and protected
- Criteria for defining critical habitat should be developed in collaboration with land managers and other stakeholders from the start of the process
- The permitting regime that applies to critical habitat should include an 'improve or maintain test'

- The Secretary should be required to identify and map critical habitat *at the time of listing*

The Government's proposal to require the Secretary to establish a program to identify and map proposed Critical Habitat on both public and private land would be an essential and welcome step forward. - Birdlife Bass Coast

Native vegetation

The Consultation Paper suggested a mechanism to enforce the native vegetation clearing regulations through the Act.

There was a mixed response to this potential reform. The intent of the reform was generally supported however many submissions requested more clarification about how it might operate in practice. Some submissions queried whether this somewhat complex arrangement may cause more confusion for landholders.

Other habitats and communities

The Consultation Paper highlighted issues with the protection of species habitats that are not within native vegetation, such as caves, rocky areas, and marine and coastal habitats. The Consultation Paper considered whether mapping these habitats could support regulatory protection measures.

These proposals received strong support. Some contributors raised concerns about the appropriateness of incorporating modelled data into habitat mapping.

Protected flora

The Act currently protects a range of flora taxa which are not threatened. The intent of the protection is to prevent the take of wild flora for commercial and personal use.

The Consultation Paper notes that while this protection achieves its intended effect, it also creates unwarranted regulatory impediments to a wide range of activities. Measures were proposed to promote an adequate balance between protection against commercial harvesting and flexibility where other activities inadvertently impact on the flora.

Several submissions acknowledged the current overlap between the Act and the native vegetation

clearing regulations in relation to non-threatened flora, and supported the proposal. This proposal was complex to describe and many submissions may have misunderstood the proposal, and believed that it applied to threatened, as well as non-threatened, taxa.

An additional suggestion made by some respondents was that ecological communities that are not threatened but that play an important role in ecosystem health could also be declared protected.

Decision-making and strategic approvals

Proponents wanting to undertake activities that impact protected flora or threatened species and communities may be subject to different and unpredictable regulatory obligations due to inconsistency in the granting of permits and Governor in Council orders. Other inconsistencies arise from the Act's lack of guidance on the level of impact to a threatened species which is considered acceptable, or the kind of conditions which can be attached to a permit.

The Consultation Paper proposed the establishment of guidelines to improve the consistency of permit decisions, to establish an 'avoid, minimise, mitigate' principle, and to introduce risk-based scaling of application requirements. The Consultation Paper also proposed a strategic assessment option, whereby single approval could be given to a series or class of activities, 'earned autonomy' status for best practice proponents, and clarifications on the use of Governor in Council orders.

Respondents were generally supportive of reforms to improve the consistency of decision making under the Act and to provide more guidance to potential applicants.

Some submissions were cautious of strategic approval approaches due to a perception that they can come to act almost as exemptions for particular activities or agencies. Others were critical of the way Governor in Council orders have been used to authorise government agencies under the Act, and suggested a preference for ending these perceived exemptions altogether.

Some other submissions suggested that there should be better alignment between exemptions from the Act and from the native vegetation clearing regulations.

There was some cautious support for earned autonomy arrangements, on the proviso that these were well thought out and road-tested prior to being

established. Opportunities for strategic approvals were not widely commented on.

Compliance and enforcement

The Consultation Paper acknowledged that the Act has been challenging to enforce, and that penalties are too low to be an effective deterrent or adequately punish illegal behaviour. A number of proposals were suggested to improve the proportionality and effectiveness of the compliance and enforcement powers under the Act.

Submissions agreed that the Act's penalties are too low and do not serve as an effective deterrent. There was strong support for stronger penalties.

There was broad support for a tiered hierarchy of compliance response actions, including civil penalties and remediation orders. The proposal to enable stop-work orders in the Act was widely supported and there was much demand for strong intervention for serious cases.

Some respondents cautioned that while higher penalties may be appropriate in some circumstances, punitive approaches should not become normal just because they are possible. Others asked that penalties be considered in the context of the existing range of obligations imposed on proponents under other legislation.

Submissions tended to focus on severe breaches and higher-level enforcement measures, and generally did not address infringement notices or other responses to offences that may be minor, but more frequent. On the other hand, no submission referred directly to the proposed introduction of imprisonment as a penalty for the most severe offences.

Response

The proposals regarding critical habitat and habitat mapping were well supported, and the Government will proceed with the proposed reforms. Criteria to define critical habitat will be developed and subject to further consultation.

The Government will not pursue the proposal to use the Act to enforce the native vegetation clearing regulations.

The Government will proceed with the proposal to incorporate more flexible protection for protected, non-threatened, flora.

The Government will ensure the Act adopts mechanisms that align with best practice regulatory principles, to promote clarity, consistency and

proportionality to risk. Submissions that engaged with matters of decision-making tended to focus on possible decision outcomes ('Should there be exemptions?') rather than decision processes ('If there are exemptions, in what circumstances should they be granted, what factors should be taken into consideration, and how can these decisions be made consistently?').

Increases to penalties, and improved powers of authorised officers, will be accompanied by a tiered suite of enforcement measures to ensure that compliance responses are proportionate to impact. Good regulatory practice requires that the administration of these powers under the Act is supported by a comprehensive and publicly available compliance and enforcement strategy.

6 Accountability and transparency

The Consultation Paper identified significant opportunities to improve accountability and transparency in relation to the administration of the Act.

Reporting and review

The Consultation Paper noted that there is limited public reporting on the conservation activities implemented under the Act, and their biodiversity outcomes. Timely and accurate disclosure should be provided on actions taken to achieve objectives and government's performance against outcomes and indicators.

Respondents were consistently supportive of the proposal to produce a five-yearly public report on progress in achieving the statewide biodiversity targets. Several submissions suggested that compliance and enforcement activities should be reported on. One submission noted that reporting is time consuming and risks diverting resources away from delivery.

A further proposal suggested that the Act should be subject to a 10-year review cycle to assess its efficacy. This was also widely supported, although some contributors suggested five-year reviews, or even annual reviews, would be more appropriate.

Public participation and access to information

The Consultation Paper proposed improved opportunities for members of the public to be consulted on important decisions made under the Act, and that records of decisions should be made publicly available online.

These proposals were welcomed by respondents.

The Consultation Paper also identified that it is increasingly common for modern environmental legislation to expand opportunities for the public to review government decision making. Proposals included the opportunity for a person affected by a decision to seek an internal merits review, as well as 'expanded standing' to seek a judicial review of decisions made under the Act, or a court injunction to prevent or halt a breach of the Act.

Responses to these proposals were mixed. Several submissions felt that existing appeal rights were adequate, and allowing expanded standing for judicial review amounted to DELWP abdicating its responsibilities to the public. Some raised concerns about the potential misuse of such provisions to delay or derail important infrastructure projects.

Others suggested that the proposal should go further, and include cost protections for public interest environmental legal proceedings.

Response

Given the strong support for the proposals relating to reporting, periodic review, consultation in relation to important decisions and a public register of decisions, the Government will introduce these changes to the Act.

