To whom it may concern

Environment Victoria has high expectations that the Andrews Government will be environmental leaders and act quickly, decisively and strongly to protect and enhance biodiversity by restoring our natural environment.

Our 100,000 supporters, and the people who we work with across Victoria hope that the Andrews government will be one that is remembered by future generations as a government that took a leadership approach to these critical issues.

Protecting and restoring our environment will also be good for the state’s economy and social welfare. Detailed modelling commissioned by The Future Economy Group identifies responding to climate change and resource scarcity and restoring natural capital as key drivers of economic growth and employment for the 21st century.

We welcome the opportunity to contribute to the review of native vegetation permitted clearing regulations. The loss of remnant native vegetation continues incrementally on both public and private land across Victoria. Victoria is the most cleared Australian state, with around 70% of native vegetation cleared since European settlement. In some heavily modified agricultural landscapes, less than 2.5 percent of native vegetation remains. In the lower Goulburn Broken catchment, for example, the Goulburn Broken Catchment Management Authority has acknowledged that one of the biggest single threats to biodiversity loss in the region is no longer broad-scale clearing of native vegetation, but the incremental loss of scattered remnant vegetation, or ‘paddock trees’.

HISTORY OF CLEARING REGULATIONS
Native Vegetation Clearing Controls were first introduced to Victoria in 1989, and the introduction of ‘Net Gain’ in 2002, with a regionally-based focus on endangered species and vegetation communities used to determine an area’s conservation value. This approach also put a value on Scattered Trees in the landscape, and enabled specific revegetation targets for losses.

Numerous independent reports to government, including the Victorian Catchment Management Council’s Catchment Condition Report, the Victorian Environmental Assessment Council’s Remnant Native Vegetation Investigation, and the 2013 Victorian State of the Environment Report have all referred to the vital importance of keeping remnant native vegetation.

It is in this context that we provide the following comments, taken largely from discussions with the Victorian National Parks Association, on how native vegetation clearing controls can be improved:

KEY GAP 1: CLEARING EXEMPTIONS: TOO MANY, TOO MUCH
There are currently 34 exemptions for requiring a permit to clear remnant native vegetation under the Native Vegetation provisions of the Planning and Environment. According to recent Victorian government data, by far the biggest cause of remnant native vegetation loss is unregulated clearance, such as via agreements, exemptions, and existing land-use rights on freehold land. ‘Existing use’ exemptions are often applied by small landholders where there has been a (relatively) uninterrupted use of the land for more than 15 years, and there is a claim that vegetation removal is required to be able to continue that use. Significant and high-value ‘Scattered Trees’ in cleared areas constantly fall victim to such ‘existing use’ permit exemptions.

The regulations should be strengthened to ensure sufficient value is given to the protection of Scattered Trees, some of which can be hundreds of years old, and often provide the last habitat for threatened species and woodland birds in highly cleared agricultural landscapes.

GAP 2: PUBLIC AUTHORITIES NEED TO SHOW LEADERSHIP
The second-largest cause of native vegetation losses in Victoria takes place on public land, where authorities are entrusted with protection of our natural places. Government departments, public authorities and service providers operate under a wide variety of (generally unregulated) Agreements, Exemptions, Memoranda of Understanding, or Codes of Practice with the State Government. These Agreements exist to ‘streamline’ the removal of remnant native vegetation, plants and animals in the name of avoiding the costs and time delays of a permit process. However, they can also serve to avoid public notification, reporting, and detailed offset strategies, all of which are otherwise required for ordinary Victorians.

In addition to the direct losses from exemptions, the Victorian Government’s own reporting shows that the third-largest cause of native vegetation losses occurs through ‘insufficient management of threats on public land’.

In most Bioregions across the state, public land (38% of Victoria) contains the majority of remaining native vegetation and includes national parks, state forests, road and railway reserves. Currently 570,000 hectares of native vegetation is contained within public land road reserves, which are under constant development pressure, through a lack of transparency, exempt or unregulated clearing by government authorities and utility providers. In the areas of the state with the greatest level of clearance, public road reserves provide a disproportionately large amount of critically important habitat. These narrow reserves harbour more than 5% of Victoria’s remnant native vegetation. In three bioregions, more than 15% of the native vegetation remaining on public land is contained solely within road reserves.

Through this review the Victorian Government needs to show leadership by striving to exceed the minimum requirements of the regulations, through transparent policy, adequate resourcing, and a commitment to funding appropriate public land management. Victorian national parks should be the jewel in the crown of our conservation estate, but exemptions allow the clearing of native vegetation in parks for a wide variety of reasons, such as roads, tracks, picnic grounds and fire management. While authorities have to follow the National Parks Act, the Act is largely self-regulating, and any challenge to existing management could only be enforced through an expensive legal challenge in the Supreme Court.

The planning exemption that allows the Departmental Secretary to approve clearing on Crown Land must be removed, and public authorities must set an example by demonstrating leadership and accountability, applying at least the same, if not better, vegetation controls as other Victorians. This includes the demonstration of avoidance and minimisation, as well as the provision of an offset strategy. And this information must be reported.
KEY GAP 3: ENTIRE VEGETATION COMMUNITIES ARE THREATENED

We know biodiversity is made up of much more than just threatened species. The status and significance of vegetation communities within a local and bioregional context needs to be included as a planning consideration in the reviewed regulations.

The review only proposes minor modifications to existing, computer-modelled and resident threatened species focused or ‘risk’-based approach to native vegetation regulations. That isn’t enough. We need to see protection of entire communities, not just a select number of plants and animals that a computer model says might be there or not.

While the original native vegetation regulations were set up to protect habitat and other features such as land health, salinity and erosion reduction, they now focus almost solely on threatened species to represent all species. This dramatically narrows the focus of the regulations without enough consideration of the other environmental features and services provided by native vegetation.

Essentially, the current regulations only look at the contribution of an area or ‘Patch’ of vegetation to the state as a whole, ignoring either its local or regional significance. This approach stops local councils from being able to deny permit requests to remove native vegetation, unless that vegetation is also covered by a strong local planning control, such as an Environmental Significance Overlay.

Victoria’s native vegetation supports between 80,000 and 100,000 species - that we know of. It is not appropriate to consider a relatively small number (around 800 species) listed as ‘threatened’ to represent such a huge diversity. Patches of vegetation have been mapped across Victoria and are represented by around 300 vegetation types (Ecological Vegetation Classes, or EVCs) across 28 different Bioregions. Unfortunately, EVCs and Bioregions were abandoned in the 2013 changes to vegetation clearance regulations.

EVCs were well-understood, measurable and could be simply explained on the ground to the general public. They could also be assessed for their rarity/depleted status, as well as their significance in all contexts: local, regional and state-wide. The contribution and significance of these vegetation communities cannot be adequately considered with assumptions largely based on the modelled presence or absence of threatened species. For example, only 16% of remnant vegetation remains in the Victorian Volcanic Plain Bioregion i.e. all remnant habitat is of critical importance to the region.

State-wide ‘significance’ models to be used in the proposed regulations will not consider this importance when permitting clearance, or sourcing offsets.

The existing and proposed regulations barely take into account any local values or observable on-ground conditions, particularly where Scattered Trees are concerned. In the Consultation Paper, Proposed Improvement (PI) 15 mentions the reintroduction of site-specific measures for the biodiversity value of Scattered Trees, however no detail has been provided on how this would be achieved. Under the previous native vegetation framework, associated pre-1750 clearance EVCs were used to provide information on Scattered Tree significance. One efficient and effective way to include the significance of Scattered Trees is to require that all tree removal referrals include details of their trunk size, exact location and a photo. A smart phone App could help with this process. These supplied details would then assist referral authorities in considering the tree’s context, such as tree hollows, nests and age. This could also be fed into the existing Native Vegetation Information Management (NVIM) tool, which could automate the use of pre-1750 EVCs mapping already held by DELWP and help determine the appropriate conservation significance and offset.
To ensure community and biodiversity values are suitably maintained within the local landscape where losses occur, regulations need to require that specific measures be adopted for retaining large old scattered trees, whilst other vegetation offsets provide a ‘Net Gain’ in protected vegetation and are like-for-like. Any revegetation approach should follow the intent of the previous Native Vegetation Management Framework (DSE Appendix 4), which limited the amount of revegetation allowed to offset losses of higher conservation significance.

KEY GAP 4: WE NEED AN INDEPENDENT REGULATOR
Having native vegetation clearance regulations means government authorities, such as DELWP and local councils, have multiple roles, as they are responsible for both the clearance and the regulation of native vegetation clearance permits. This leads to potential conflicts of interest. Of particular concern is the fact that under the current government, clearance works, policy development and regulation are all housed within the same department - the Department of Environment, Land, Water and Planning.

To help manage these potential conflicts of interest, there is a need for an independent Native Vegetation Regulator, a role recommended to be established in the Victorian Competition and Efficiency Commission’s (2009) report into environmental regulations. Once established, this Regulator should be adequately resourced to make sure that governance, monitoring and reporting processes are all being followed appropriately by authorities to ensure public trust can be maintained.

KEY GAP 5: NOT ENOUGH FUNDING FOR COMPLIANCE AND ENFORCEMENT
The most important factor in ensuring regulatory compliance and enforcement (and therefore policy success) is adequate resourcing. If these regulations are to succeed where previous policies have failed there should be a genuine and public increase in compliance and enforcement actions, including support for councils that regulate the majority of clearance on private land.

To ensure sufficient compliance and enforcement actions, the Victorian Government should make a clear commitment to financially investing-in and adequately resourcing DELWP and local councils. Currently, the best-resourced councils are those with the least amount of remnant native vegetation, e.g. Melbourne City Council vs a rural shire council, and vice-versa. The proposed changes are looking to increase reporting requirements, requiring council staff and resources that simply don’t exist, particularly with the commencement of council ‘rate capping’.

To provide a real disincentive to illegal clearance, penalties for non-compliance need to be increased to appropriate amounts and clearly articulated to the public. Currently it can be cheaper to illegally clear native vegetation, even if a fine is issued by the relevant authority, than to go through the planning and offset process. Public Infringement Notices also need be issued as a further disincentive to illegal clearance. Penalties collected should be used to improve resourcing compliance and enforcement. It is understood that currently less than half of all native vegetation offsets go through the Credit Register, as they are secured using Section 173 agreements with local councils. We would be supportive of the Department of Environment, Land, Water and Planning requiring all third-party offsets to be included on the Credit Register for ease of identification and certainty of availability.

Environment Victoria also seeks the creation of a Conservation Zone in Victorian Planning Schemes to identify all areas secured as offsets, regardless of tenure or security arrangement. Such a Conservation Zone would clearly identify sites on public mapping, including any native vegetation offsets on Public land, where specific management is required in addition to existing
statutory requirements. It would also allow for improved transparency and in turn facilitate better public awareness, monitoring, reporting and enforcement.

KEY GAP 6: THE NEW POLICY IS UNMEASURABLE
The reviewed clearing regulation’s objective is for ‘No Net Loss in the contribution made by native vegetation to Victoria’s Biodiversity’. This cannot currently be measured and reported easily or effectively.
The Department of Environment, Land, Water and Planning’s current Draft Strategy Protecting Victoria’s Environment - Biodiversity 2036 defines biodiversity as: ...all the components of the living world: the numbers and variety of plants, animals and other living things, including micro-organisms, across our land, rivers, coast and ocean. It includes the diversity of their genetic information, the habitats and ecosystems within which they live, and their connections with other life forms and the natural world.

The regulations must have clear and measurable objectives to determine losses or gains in native vegetation 'contribution' to Victoria’s Biodiversity (as defined above). To achieve this a clear definition of the term ‘contribution’, as well as a baseline measurement for ongoing comparison, is required.

The previous ‘Net Gain’ policy’s overarching objective was for ‘a reversal, across the entire landscape, of the long term decline in the extent and quality of native vegetation’. Under this objective, changes in vegetation cover could be assessed using remote-sensing data collection in combination with vegetation community mapping to determine the extent of any losses. To be part of a ‘good regulatory system’, policy must be transparent, accountable and performance-based. The Consultation Paper proposes to use computer modelling of a select group of threatened species as the basis for determining which areas of native vegetation are ‘significant’ and can potentially be given protection under the regulations. The policy does not state how this will be measured or reported.

If a set of threatened species are used, then at the very least the regulations need to ensure consistent and regular species monitoring, along with the submitting of the modelling to a peer-review.

There should also be at least annual updates of computer modelling and reporting on these species’ persistence across Victoria. A review of the number and status level of threatened species in Victoria is also required to determine the success of the regulations. This review should be presented annually to the independent regulator.

Kind regards

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