

Thankyou for allowing me to put a submission into a review of the Flora and Fauna Guarantee Act 1988

## **PREAMBLE**

The Flora and Fauna Guarantee Act 1988 is weak and has been used sparingly. It is clearly not doing what it is supposed to achieve and that is to protect Victoria's Flora and Fauna. The Act needs substantial changes if it is going to protect and conserve Victoria's flora and fauna.

It is important that a stronger Act is designed to stop the increase in the amount of threatened flora and fauna. Victoria needs to reduce the number and possibility that many species on the threatened list do not become extinct. Half of Victoria's native vegetation is gone, and this will continue unless Victoria has in place strong processes to reduce this number. For example, Bird species such as the iconic Australian Magpie and Kookaburra are falling due to increased development, clearing of vegetation and recreational uses common in our public parks, reserves and on private land.

## **THREATENED SPECIES**

Each year, climate change causes more problems to Victoria's biodiversity. What is not sure are the amount of plant and animal species that are under threat. There is a lack of clear scientific data being provided to update information regarding threatened species, and when species are listed it takes time due to a lack of resources for the updating of the regulatory framework. When species are listed, they are not researched thoroughly to show what plans are required to safeguard them. Action plans which are completed are often months or years out of date.

According to the Auditor General's Report, which looked at the Act in 2009, it noted a number of significant inadequacies. This report was SEVEN YEARS AGO and little has been done since. We have a number of species disappearing or are threatened and our governments seem to be more worried about their personal resources, instead of the resources to fund the needs of our flora and fauna.

## **REQUIREMENTS**

- Greater transparency and public consultation
- Faster scientific updating and research
- Significant increase in funding
- Mandatory and faster action plans / set timeframes put in place
- Greater research of species' habitats, species' survival rates
- More information on how environmental change is affecting species' survival
- Employment of staff to monitor total processes into environmental protection and restoration, and safeguarding species
- A need for a total overhaul of processes with a systematic, organized approach put in place
- Education and training of staff, consultants, and volunteers

The action plans need to be followed up with on ground funding which it is not. Our parks are poorly funded and have been for a number of years. Whilst our species are increasingly making it onto the threatened lists we are doing nothing about ensuring they are protected. Our parks are in a state of decay caused by a number of factors. The Act does little in regards to ensuring we have strong monitoring, vegetation protection and survival, compliance and maintenance.

An Independent body should be established. The role of the body should be to establish that DELWP(Department of Land, Water and Planning), is following up with actions forthcoming which the Act stipulates. This body should investigate whether listed threatened species have action plans in place and follow up management plans to ensure protection, survival and what actions whether they be greater compliance, penalties or monitoring should occur. This will also require adequate funding and resources. At present , this situation is unlikely but it **SHOULD BE OCCURRING**.

The DSE, the sole agency responsible for such funding, should be funded and monitored on a regular basis to ensure that it is doing its job. **This CLEARLY IS NOT HAPPENING BUT IT IS NOT HAPPENING FOR A REASON, LACK OF RESOURCES AND FUNDING.**

In addition, there should be integration between other Acts which touch on ecological processes which help to list flora and fauna species as threatened. The climate Act for example must take into consideration the role it is playing in creating further biodiversity loss.

### **CRITICAL HABITAT DETERMINATIONS**

It is **unbelievable** that the DELWP has rarely used this part of the Act. It has to be asked if this part of the Act is not being used then why are there management plans for threatened species. The DELWP must set aside areas for the protection of critically endangered species.

I find the DELWP 's reasons as excuses. This is a major failure of the Act and makes the Act extremely weakened. By not using this critical part of the Act much of the Act falls apart.

There needs to be political backing of the DELWP 's ability to use the Act properly and will to protect species on private and public land. If there is no courage to do so, then what is the point of having a **FLORA AND FAUNA GUARANTEE ACT?**

This also applies to Public Authority Management Agreements, for the protection of public land. To date, few agreements have been made and when they have, the process has been extremely cumbersome and slow. More agreements should be made and they should be done in a timely fashion.

### **INTERIM CONTROL ORDERS**

Again, it is **INCREDIBLE** that since the Act's establishment that not one ICO (Interim Control Order) has been put in place. An ICO is put in place when a critical habitat is determined to regulate any activity or process that takes place in that habitat and as yet none of these have occurred. **IN TWENTY NINE**

**YEARS**, this is simply pathetic and embarrassing. We have a situation where more species are being put onto the threatened list and little is being done. This is simply **OUTRAGEOUS**.

This is especially concerning because the ICO's are the most significant part of the act as the Minister makes the decision over protection of habitat and species. IN TWENTY NINE YEARS THE MINISTER HAS YET NOT ISSUED ONE ICO. Of course, he has not been helped by the lack of action from the body that is responsible for the Act the DELWP. However, they are not helped by the sheer volume of work they must undertake which makes it difficult to go about their job if resources are limited. **IT MAY BE IN THE MINISTERS' INTEREST TO NOT DO MUCH IN THIS AREA.**

**So again the reason is cost. Therefore I must ask why have an Act in place?**

### **PROTECTED FLORA**

This part of the Act is somewhat confusing. On public lands, there are regulations in place however they can easily be challenged or excused by people. If flora is taken accidentally, then that is considered an exception, how one knows someone has taken flora by accident is difficult to understand. This part of the law needs changing.

In addition, whilst there are laws in regards to public land the laws do not seem to be in existence for private land removal, trade and processing of protected flora. This is even more evident due to the little habitat protections being established as stated above.

### **PERMITS/LICENSES**

Permits or Licenses are issued regarding the harvesting of protected flora. Rarely are permits or licenses not issued. Also, it is rare for such to be checked to see if compliance is occurring as data is not available regarding permits issued and whether compliance is occurring.

**Therefore I ask why have a permit system, WHY?**

This same failed system occurs in regards to other wildlife such as fish. Where information on fish removal and numbers when a permit is issued is unavailable to the public; Compliance again seems to be not taking place or any form of monitoring.

**So I ask again why have a permit system, WHY?**

After reading the Act and coming to understand what it should be achieving the conclusion reached is one of outrage. It simply has been abused and taken no notice of since 1988. The DELWP with the Government of the day, has forgotten about Victoria's flora and fauna and said we will worry about it in the future. Put simply this is **NOT GOOD ENOUGH**. What is required is a systematic change in procedures and processes which can only occur if adequate resources and funding are provided.

What is required is a new **INDEPENDENT BODY** to oversee the department of Sustainability and Environment. This body should ensure that the workings of the Act are enforced.

The DSE should itself work out set plans and objectives as a way forward.

It should within these plans set out an agenda from which to work.

### **Changes that the Government is suggesting**

The Government is taking the easy option with its changes by stating that a new Act should pick and choose which species it should conserve and protect on the threatened list. It no longer wishes to put forward a guarantee for all species that are threatened.

**This is a complete copout.** All species are important and all flora and fauna should be protected for the future. The prime focus should be climate change but what is worded is an emphasis on climate change. This is a not a strong statement of intent.

Statewide biodiversity targets are a good thing and are supported. Acknowledgement is given regarding timelines and targets and ensuring an emphasis is put on the most endangered species and at the same time, on other threatened species as well.

Ensure that all government departments are integrated in regards to biodiversity targets and protection. Make sure all Acts work towards a common goal of protection and conservation of our flora and fauna. All relevant departments must be kept informed of what is occurring so their decisions can reflect and work towards achieving set biodiversity action plan targets set via the Act.

Support statewide biodiversity targets, listing on threatened species and regularly updating but this needs to be completed with an emphasis on a strong scientific approach. It also requires strong targets and action plans to be done within time frames and with strong management plans. These plans need to be backed up with critical habitat areas and protection with hardly any exemptions on them. Agreements with private landowners are important but the government should step in and override agreements if not willing to be complied with and put conservation before profit.

Therefore what should occur?

### **CHANGES TO KEY SECTIONS OF THE ACT:**

**4:1** Agree on Statewide Biodiversity Targets **BUT MUST BE SCIENTIFICALLY DRIVEN**

**4:3** Agree on Statewide Biodiversity planning with landscape plans in collaboration with other departments and landowners or users to achieve biodiversity targets and conservation protection and preservation. Landscape plans must be comprehensive and include not just individual species but all species.

**4:3:2** ensure the listing of threatened species is comprehensive with regular reviewing and updating. This part of the Act should be administered by an independent body which oversees all processes to ensure that regular listing, management and action plans are being followed up with critical habitat determinations. This body could direct the Minister to determine ICO for conservation areas.

**4:3:1** Conservation advises for each new and current threatened species should be completed within certain timeframes set by an independent body. They should be listed with action plans on the internet or in Government bulletins within set timeframes.

Critical habitat determinations and plans should be prioritized and completed within set timeframes and administered by a **new independent body**.

**4:4:4** mapping of critical habitat areas should be done on a regular basis which highlight critical habitat areas for threatened species. The maps when completed must allow for declaration of this habitat as critical area of habitat that requires protection with adequate funding. These maps should be published. Mapping should be done for private and public land and critical habitat controls should be enforced in both jurisdictions. There should be few exemptions, one exemption is forestry and it is time that critical habitat was protected in areas where this occurs. **THEREFORE FORESTRY SHOULD NOT OCCUR.**

There needs to be clarification between all relevant acts in regards to enforcement, clearer and organized understanding between all Acts needs to occur.

**4:1** Mapping of threatened habitat areas for species should involve public and private land and critical habitat areas should be protected and conserved even if agreements with land owners cannot be reached. Agreements involving the protection of these areas are paramount with legislation permitting the clearing of vegetation where vegetation is present.

**4:5** Support a monitoring and evaluation framework to back up the biodiversity plan to ensure biodiversity statewide targets are reached. **A NEW SEPARATE INDEPENDENT BODY NEEDS TO ESTABLISH TO UNDERTAKE ENFORCEMENTS AND PROSECUTIONS UNDER THE ACT.**

**4:2** Support public reporting of DELWP public land management plans to protect biodiversity, the impacts and benefits and what the outcomes the plans seek to achieve. The management plans should work in collaboration with all government departments, should be scientifically driven and focus upon all species needs. Species with differing needs should be given differing focused plans which address required needs.

Support all these initiatives in respect of public and private land. Importantly, put into action a plan to ensure that threatened or endangered species are protected on private land.

Also put in place tougher legislation to ensure that endangered/threatened flora and fauna on private land is protected and their habitat is preserved. Ensure that clearing vegetation is protected with tougher penalties, either large fines or imprisonment.

## STATEWIDE BIODIVERSITY TARGETS

The current plans proposed to review the biodiversity plan every 10 years should be changed to **five**.

Ten year audits should occur every five years. This ensures that the regulations are effective, meeting targets and objectives.

Support conservation advices and time frames for species under the Act and agree to specific plans to be undertaken for each species listed. This action needs to be managed by a **NEW INDEPENDENT BODY** which ensures that such actions deliver the outcomes that are set out in the revised Act.

Agree with priority actions and the listing of such actions on DELWP's website.

All actions in regard to delivering on the plan require a collaborative effort and support forums between groups affected by biodiversity plans to ensure all groups are on board to achieving results. Keeping stakeholders informed is necessary and agree with this situation.

More managed action responses for critical or vulnerable species will be required and support this mechanism.

Support changes in relation to climate change except:

**4:3** Biodiversity planning reviews should take place every five years and climate change action plans and how effective they are should occur every year. This is because of the effects of climate change are increasing rapidly and more needs to be done to ensure the response is ahead of effects.

## LISTING OF THREATENED SPECIES

Support the current changes and also new changes

The Common Assessment method, which adopts principles set out by the IUCN ( International Union for Conservation of Nature). Agree with the rationalizing of threatened species.

Agree to the international standards on threatened species classification and the use of other jurisdictions for assessment criteria in relation to threatened species. Ensuring that species are not threatened elsewhere but are under threat in Victoria continue to make the list for protection.

**Do not agree with 10 year audits on targets, reviews should occur every 5 years.**

## HABITAT PROTECTION AND REGULATION

Critical habitat mapping for both public and private land is a step in the right direction. It would improve the process making it easier to identify areas which require protection.

Support the move that the Secretary undertakes the role of critical habitat mapping. Agree that these maps are published and updated periodically. This includes the mention of habitat types which are not listed within the planning scheme.

Adopting a permit regime towards critical habitat protection is supported as long as the habitat is protected or conserved within the permit provision. Permits also need to be published on the DELWP's website and adequate supervision provided so that permits given are agreed upon.

Agree that new offences should apply for individuals whom damage habitat of threatened species without a permit. **However, the penalties should be rigorous and tough and should not allow any exemptions to apply for people whom commit offences. If the State is unwilling to do this, then there is no point having such a provision within the Act.**

Whilst agreement is found on voluntary agreements on land by the secretary, and that all reasonable steps should occur, there must also be provision for taking control of land if an owner is unwilling to work collaboratively in ensuring threatened species can be protected. This should be a final step within a certain time frame which should not be longer than 18 months.

Support the new provision stating that the removal of flora is illegal with strong penalties if such occurs.

## **REGULATION**

Support changes that are being considered. Ensure that flora is protected with adequate sanctions. In addition, permits given must be supervised and monitored on a regular basis.

Skepticism towards a rewards system of support to permit holders, this is not something that has my total support. This approach could lead to corrupt behavior or if monitoring or information gathering is poor, it could lead to permit holders getting an easy ride.

## **COMPLIANCE AND ENFORCEMENT**

Agree to the introduction of enforcing penalties for the removal of vegetation which is done illegally on both private and public land. The penalties can only be effective if they are significant. They are only effective if the DELWP ensures that there is significant evidence to complete prosecution. These penalties should also apply to critical habitat damage and fauna which is not listed.

Support the view that penalties should be much higher for corporations. Again, it is important that penalties are enforced. Imprisonment as an option is supported.

Other compliance should be adopted however if damage to habitat colonies is noticed actions such as stop work provisions are a good measure but stop work must mean the immediate removal of the permit.

Making a corporation or individual through civil prosecution repair damage which has occurred is an **excellent measure.**

**Importantly, enforcement should be done by a new independent body.**

## **ACCOUNTABILITY AND TRANSPARENCY**

Support consultation periods under the Act allowing for greater transparency and feedback regarding decision making. Allow the public to be provided information on decisions undertaken under the Act.

Back the decision to allow for the publication of information on relevant decisions to be made public on the Internet. This includes enforcement decisions, critical habitat declarations and listing of threatened species. This should also involve decisions made regarding permits, their duration, location and details.

Internal merit reviews which enable decisions to be overseen by someone different improve the fairness of the Act.

Support the changes in the Act which allow for judicial review and for the community to report breaches to the Act via reporting information to DELWP.

## **FURTHER COMMENTS**

The lack of will to achieve anything in regards to the protection of our biodiversity can only be attributed to the significant lobbying being done by groups who own land or who have a resource on that land that they are making money from. It is time that the Government stepped in and valued the habitat on that land and protected our flora and fauna; Vic Roads can obtain land for infrastructure than the environmental department should do the same.

Regarding bushfire clearing and risk, trees and vegetation slow a bushfire's path. The excuse to continually suggest that clearing must occur to protect lives is simply not true. Fires on a windy day can travel many kilometres and the more clearing you do will not stop a fire burning it would only increase the speed of a fire.

The Flora and Fauna Guarantee Act has not delivered any significant results since its inception. It has been a failure. Governments elected Labor and Liberal ( more so Labor as they have been in the longest since 1988 and have had an opportunity to do something with control of the upper house with the support of environmentally conscious Greens at one stage) have simply pretended they are doing something.

To finish, there needs to be a complete overhaul to the Act, this should involve greater transparency, enforcement, monitoring, stronger and less lenient laws and greater education and scientific evaluation of threatened species. Nonetheless, few changes can be implemented unless the Government in power provides a large increase in resources and funding. Resources in offices and on the ground would make the Act workable and ensure that the laws within the Act are provided with ammunition. Funding has been the main reason for the Act being a catastrophic failure. This is worrying because of the impact of

climate change on our flora and fauna and there is the most urgent need **NOW** to do something and quickly. Our species are on the brink and all generations should have the privilege to see our flora and fauna before it is too late, **SO CAN THE GOVERNMENT HAVE SOME COURAGE AND DO SOMETHING ABOUT IT NOW BEFORE IT IS TOO LATE.**