

How to improve the Flora and Fauna Guarantee Act

Thank you for the opportunity to comment on proposed changes to the Flora and Fauna Guarantee Act which is set for 'modernisation'. The review comes at a crucial time as the future of a number of Victorian species depends upon evidence-based, enforceable legislation to protect native ecosystems and their inhabitants.

My comments are informed by a long association with the environments of Far East Gippsland and the Southern Monaro which are components of a contiguous ecosystem traversed by the Vic-NSW border. We are connected by landscape and catchments and, although the legislation under consideration deals only with Victoria, it is important to consider the status of species endemic to both states.

My response is shaped by points raised by Environmental Justice Australia (EJVA) who presented a summary of issues to a well-attended meeting in Orbost in December last year. At that time, the Consultation Document was not available. That, and comments on EJVA's web site, supplemented by my own observations, form the basis of this submission.

Goals, aims and Principles

4.1 The goal of the Act should be to ensure the conservation of existing natural environments as well as restoration of degraded but important environments.

The inclusion of a set of principles is a positive addition to the Act. However, since the FFG Act reflects scientific knowledge and ecological understanding of species and their requirements, there is no reason for this proposed first Principle:

- Integrating and balancing environment, social and economic objectives.

Similarly, the last Principle listed takes on more than the legislation need encompass:

- Intergenerational and intragenerational equity – to ensure decision makers consider how decisions may affect specific parts of the community and future generations.

Only issues related to the species itself are relevant to the Act.

On the other hand, the precautionary principle, a fundamental pillar of environmental law needs to be enshrined as the first principle.

4.2 At present, Authorities are required to consider the FFG Act. They should be required to act consistently with it.

DELWP is assigned a major role in implementing the Act. It is important, although not within the scope of the Act, that such responsibility is enabled with relevant expertise and resources.

4.3 The proposed abandonment of Action Plans reflects a reluctance to allocate resources to this intensive process rather than based on good science. The initial preparation of the Action plan is resource intensive – but a five year review and update is far less so and is key to the success of the legislation in achieving its goal. This recommendation is aligned to the proposal on p 36 to abandon the 'guarantee' of the act. This is an admission of defeat and a backing off – it suggests that no species can be assured of continued existence in Victoria, whether it be the Faunal emblem or as yet undiscovered insects or arachnids.

The Consultation document favours landscape action plans where the needs of species are prioritised. This approach will need to be introduced as a pilot program and carefully monitored as to its impact on individual species and should not replace the focus on single species protection where it is called for. This appears to be covered by:

- Ensure species and threats that are not able to be appropriately addressed through a landscape or area-based approach are managed through the development of plans for single species and threats.

Listing 'priority actions' for species suggests a move away from single-species protection. It is difficult to imagine how species can be weighed against each other in a priority list; there is too a problem that there is insufficient up-to-date data on which to base such decisions.

It is proposed to investigate establishing a multi- disciplinary committee or expanding the functions of an existing body to provide an advisory function under the Act. The committee could make recommendations to the Minister on appropriate courses of action in response to significant environmental risks or events, such as major bushfires, droughts, or a significant decline in threatened species. (p46)

It may be a good idea to set up a body to advise government as proposed above but there are disciplines that need not be included in such a committee – relevant scientific expertise and the ability to coopt it should be the prime consideration.

The great benefit of a landscape approach is that it can include privately owned land in biodiversity assessments and protection. Local government can provide strategies eg through rate rebates to encourage the conservation of ecosystems when they are identified as integral parts of a vegetation corridor to allow species movement in response to drought and other climate change impacts. This inclusion of private land in the assessment of 'critical habitats' will enhance the likelihood that species can survive the and adapt in the face of climate change and resultant changes in vegetation. Once identified, 'critical' habitats must be listed.

4.4 The ability to enforce its provisions is crucial to the Act. The focus should be on maintaining and/or enhancing native landscapes and critical habitats should not be subject to the ordinary provisions of the Native Vegetation Clearing Regulations. Thus penalties should be strong enough to deter illegal removal of vegetation.

As well as applying the Act to private land, activities currently exempted from its provisions should be brought in – forestry activities such as clearfelling and logging as well as planned burning and the removal of 'hazardous' trees.

4.5 On page 65 a number of proposals for increasing the availability of information about the Act and allowing public engagement in processes under the Act will enable members of the public to report and press for enforcement of breaches.

In conclusion, there is scope for strengthening nature protection with revisions of the FFG Act. Noting the major role that DELWP has in the process of drafting the legislation and applying it, the need for an independent group with an overseeing role is crucial. The role that other levels of government, federal and local, can play in nature protection needs to be considered and accounted for. State legislation can mandate local government action proposing, for instance, that Biodiversity officers be employed at this level to strengthen observation of the Act.

