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Submissions to the Flora and Fauna Guarantee Act 1988

March 2017

Background/Summary

The Geelong Field Naturalists' Club (GFNC) is one of the oldest environmental and conservation organisations in the Geelong region, originally formed in the 1890s and re-established in 1961 in its present form. The GFNC has undertaken study of natural history in the wider Geelong region since its inception and the Club and its members have been instrumental in the protection of many areas of natural environment, in urban and non-urban areas.

The GFNC welcomes the opportunity to comment on the review of the Victorian Flora and Fauna Guarantee Act 1988 (FFG Act). Our members are actively involved in club surveys and excursions where we observe and record mammal, reptile, bird, and plant species. The GFNC also conduct specific surveys related to many threatened species including Swift Parrot, Orange-bellied Parrot, Freckled Duck, migratory shorebirds, Striped-legless Lizard, and various amphibian and small mammal species.

What is clear to our members is that wildlife numbers across most species are down and a major threat to their survival is related to loss of habitat primarily due to urban development at the city fringes. Another impact is climate changes and this is already evident in the disappearance of some bird species from our area while other species from more northerly regions have started to be recorded regularly during certain times of the year or have taken up residence in the Geelong surrounds.

Our conclusion is the FFG Act has failed dismally in its implementation to achieve its stated objectives. This view is shared by many organisations including various government agencies as highlighted in their reports around this subject. Lack of resources generally and specially in completing "Action Statement" in a timely manner is one factor. Failure to deploy and use the Conservation Control Instruments at its disposal within the Act is another. These are clear signs that there has been a lack of commitment by successive Government to tackle this issue and unfortunately the result has been to allow Victoria to lose its unique living heritage.

So, we commend the current responsible Minister in putting this issue now in the foreground.

Our various specific comments related to the FFG Act and its various Parts are documented below and summarised as follows:

- **Strengthen the Act by removing barriers that inhibit the use of the conservation instruments and eliminate exemptions and special treatment provisions.**
- **Embed an independent review process in the Act.**
- **Place greater emphasis on the protection and restoration of Critical Habitats.**
- **Ensure funding and resources to implement the Acts requirements in a timely manner and establish objectives with clear and measurable targets to drive projects for threatened species survival.**
- **Enforce compliance of the requirements with an effective penalties system for breaches.**

1) Preliminary

- a) The GFNC believe the Act should retain the objective to guarantee Victorian native flora and fauna can survive and flourish in the wild. This must be a guiding principle upon which the details in subsequent parts of the Acts, Regulations and content of Action Statements can be framed.
- b) It is Important that principles of conservation supporting the implementation of the Act and its various elements be appropriately documented in the Flora and Fauna Strategy. This would address criteria around what the guarantee is a practical sense to teams involved in recovery programs.
- c) All aspects of the Act and its implementation should be subject to regular independent audit and review. We would suggest this role be undertaken by a Threatened Species Commissioner or incorporated into the responsibilities and powers of the current "Commissioner for Environmental Sustainability".
- d) It is our view that the failure of the Act in achieving its stated objectives is related to the ineffective use and implementation of the tools available within the Act to prevent habitat loss. The GFNC consider that more focus within the Act should be directed towards **Critical Habitats**. Firstly, the term ought to be defined in the Act, secondly, **Action Statements** where appropriate should specify where Critical Habitats are needed for species survival.
- e) The GFNC view is that the Act ought to include objectives and a management framework within the **Conservation and Control Measures** that proactively address past impacts and the need to restore areas of biodiversity. The emphasis of the objectives within Act is one of maintaining and conserving the current state and the Act should be updated to bring more focus on restoration. The importance and specific opportunities of habitat restoration could be included in the scope of the Action Statement.

- f) The GFNC contend that measurable Key Performance Indicators (KPI's) need to be placed to drive the Act's objectives. We consider this is not a difficult task to define these KPI's given the availability of data within various DELWP reports and other reports like the Victorian Auditors-General's Report April 2009 – "Administration of the Flora and Fauna Guarantee Act 1988". These various reports have data sets clearly showing the decline of species number and loss of certain habitats across the State. These KPI could be referenced and included The **Flora and Fauna Guarantee Strategy**. The KPI's and the information around their use would provide guidance to Public Authorities in their decision making and be used to assess the overall effectiveness of the Act.

2) Administration

- a) GFNC recommended that The Act be expanded to include a reference to an independent body such as the Commissioner of Environment and Sustainability with powers to regularly report on progress against the Act's Objectives and KPI's. The Commissioner would also give feedback to Government and the general community on the progress in implementing the various measures within the FFG Act.

3) Listing

- a) The GFNC fully support the need for an integrated approach between the National threatened species and processes lists and corresponding FFG Act lists to eliminate duplication and unnecessary waste of resources. The existence of a Victorian advisory list is acknowledgement that the current management processes are out dated and ineffective and might suggest the scientific community have lost faith in the Act and its processes.
- b) The GFNC contend that the definition of Threatened Communities may need to be expanded or modified in the Act and would suggest that there is a need create a clearly link to the Ecological Vegetation Classes (EVC). This classification system is in wide use and understood across the community and is already the subject to the ranking against IUCN Conservation Criteria. The infrastructure of recording and mapping where these EVC exist is already in place.
- c) The GFNC endorses the suggestion that the methodology and criteria of the Victorian Advisory list be adopted with the FFG Act that is using the IUCN Standards definitions which are enshrined in the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

4) Management Processes

- a) The Flora and Fauna Guarantee Strategy should provide not only direction via objectives and KPI's to achieve the intent of the Act but also give detailed guidance on how the various instruments within the Act can and ought to be used. For example, it might give instances when Interim Conservation Order might be used and what the expectations are around

purpose, structure, and implementation of the Public authority management agreements. In effect, it is the GFNC view that the Strategy document becomes a “how to” document that also performs the function of a “Code of practice”. The Strategy document should be subjected to more frequent review and can be updated more readily to reflect changes in conservation practices. It would thus set priorities as the impacts of Flora and Fauna change with time.

- b) The GFNC consider that The Flora and Fauna Guarantee Strategy should also examine landscape conservation and the impact that cumulative effects have on the chances of species survival. To counteract this effect and address the major loss of Critical Habitat that has occurred over the last 100 years, the strategy needs to focus on measures to aid habitat restoration. Mandatory habitat restoration plans for public authorities with targets aligned to the Flora and Fauna Guarantee Act should be included in this important document. The legal processes for the development, implementation and review of these plans could be contained within Part 5 of the Act. “Conservation, Control Measures and Restoration”
- c) The GFNC considers that the *Action Statements* are a critical document in the overall conservation process in defining the issues and setting a path way for management actions. However, under the Act, it states the statement must contain what has been done and what is intended to be done to conserve a threatened taxon or communities but it is only optional that the statement includes what needs to be done. The GFNC contends that the essential actions needed to be done to conserve a threatened species, community and process ought to be a mandatory requirement in the *Action Statement*. *Action Statements* and their proposed management actions plans should also be subject to audit and form the basis of commitments with those authorities and organisation tasked with their implementation.
- d) The *Action Statements* need to identify and list any *Critical Habitats* essential to ensure the species survival. The fact that currently the Secretary is responsible for defining *Critical Habitats* under section 20 of the Act, without any framework suggests a structural flaw in this part of the Act. Specifying *Critical Habitats* within the *Action Statement* would provide a clear linkage to threatened species and provide a steer to the Minister around the issuing of *Interim Conservation Orders*.
- e) GFNC questions “How can over 600 species be listed in the Act as threatened, yet no *Critical Habitats* have been declared when habitat loss is generally the prime factor impacting species abundance?” As there have been no instances of *critical habitat* being declared in the approximately 30-year life span of the Act again highlights a deficiency in the Act.
- f) The *Action Statements* should be subject to a mandatory review period depending on the Conservation Status; for example, every year in the case of Critical Endangered species, 5 years for Endangered and 10 years for Vulnerable species. This schedule of review, or similar should not preclude an immediate review if new scientific data indicates a change to the conservation status may have occurred due to a specific threat. Resources and funding need to be made available to ensure more timely completion of these critical documents.

- g) The *Flora and Fauna Management Plans* should be removed as the intention or purpose could be adequately covered in the *Action Statements* as previously discussed. Instead, *Flora and Fauna Management Plans*, or similar, form the basis of a condition within an issued *Interim Conservation Order*.
- h) The GFNC supports the use of *Public Authority Management Agreements* and while they have not been widely used, we would suggest that the DELWP develop a training program around the principles of Biodiversity and Conservation matter to assist senior management representatives of Public Authorities on the role, function of Public authority management agreements. As general comment, GFNC would call for a comprehensive awareness and skill based training and education program to accompany the release of the new FFG Act so that the issues of implementation of the various conservation instruments are widely understood by all authorities, community groups and other stakeholders.
- i) The key functions of *Public Authority Management Agreement* should be clarified with respect to responsibility and accountability of outcomes and actions arising from the “*Action Statements*”.

5) Conservation, Control Measures, and Restoration

- a) The GFNC notes that the determinations of *Critical Habitats* are an optional feature of the existing FFG Act. We believe the term is poorly defined and that there ought to be a link to Ecological Vegetation Classes. The GFNC suggest that the Critical Habitat determination not be a standalone process but incorporated into the overall *Action Statement* development stage. This would ensure the link between threatened taxon and critical habitat would be better understood and where these habitats exist, the relationship between habitat loss and effect on species populations transparent. This would still ensure adequate management review and governance as the *Action Statement* is subject to Secretary approval.
- b) The GFNC considers the process of issuing an *Interim Conservation Order* by the Minister is fundamentally flawed as a conservation and control measure. Firstly, *Interim Conservation Orders* apply to the conservation of critical habitats, with the determination of *Critical Habitat* being at the discretion of the secretary. As stated earlier in our submission, *Critical Habitat* need to better defined, aligned with ECVs and referenced in *Action Statements*. It is the GFNC view that this would make the *Interim Conservation Orders* a more effective tool and remove at least one barrier to its use.
- c) It is the position of the GFNC that the Minister in making *Interim Conservation Orders* (which would remain ministerial discretion) should arrive at the decision solely on conservation value basis. The need for the Minister to consider the social and economic consequences of making the order (26 (5)) should be removed from the Act. There are sufficient stages in the process for these considerations within the submission and review stages. This would ensure greater transparency of the conservation issue with the Minister being accountable to the people of Victoria for the Fauna and Flora conservation measures directly without interference from factors outside the Ministers jurisdiction. Currently there are just too many barriers to act for raising *Interim Conservation Orders*.

- d) The possibilities of land owner and water holder being entitled to compensation arising from issuing *Interim Conservation Orders* is another barrier to their use. The question of compensation in other planning process with zoning and planning permits does not arise and the GFNC believe these clauses ought to be removed from the Act.
- e) The GFNC consider that more work ought to be done with restoration of *Critical Habitats*. There is a need to have mandatory targets and goals applied to Public Authorities and other organisation that have been responsible for significant habitat loss in the past. The top-level targets being included in the FFG Strategy and lower level targets enacted within public authority agreements and /or "Restoration Orders". The Restoration Order would be a similar instrument to an *Interim Conservation Order* but with a longer timeframe for implementation.

6) General

- a) The GFNC is unsure whether the regulatory system involving current FFG Act and its related regulations is effective in ensuring the protection of the State's Flora and Fauna, as many of the control measures (Flora and Fauna Management Plans, Critical Habitat Determinations, Public Authority Management Agreements, Interim Conservation Orders) designed to do so have never been enacted and therefore tested.
- b) However, the GFNC fundamentally feel that legal framework and range of offence needs to be reviewed, tightened, and enforced if the steady decline in Victorian Flora and Fauna is to be halted.
- c) The GFNC considers that there is need for a general offence within the Act in the same way as there is the Health and Safety Act- "failure to maintain a safe work place" and Environmental Protection Act - "failure to protecting the environment". The Offence of "failure to conserve Critical Habitat involving in protection listed flora, fauna and communities without.....". Conserve's definition would include the actions of take, move, destroy as per the current Act. The taking of the flora or failure to conserve should not be excused by way of accident or the exercising of due care. The Offence should still be declared and recorded to have been committed and if accidental and due care was exercised this would only mitigate the extent of the penalty. The GFNC believe this would put the onus on the land owner / manager to be aware of their responsibilities under the Act and ensure rigorous management processes are in place to guard against failures to comply. Like the H&S and EP Acts, individuals within organisation / authorities who are in control of policies/procedures and supervision of activities ought to be liable for contraventions and penalties as well as the organisation.
- d) The GFNC believe that that reporting process be put in place to allow community groups to report offences to appropriate authorities and if necessary initiative legal action where significant habitat damage has occurred.

In summary, the GFNC believes a strong stance to protect Victoria's diversity and living history is urgently needed and essential for the long- term wellbeing of the State and its people. Economic development and Flora and Fauna survival may not be diametrically opposed if a consistent and well understood legal framework is in place. Indeed, with thoughtful strategies and rigorous control measures in place, better outcomes will be achieved for all who share this land.

So, we commend the Government on initiating this review and trust your consideration of our views and those of like-minded organisation who care about the States' natural living wonders. To do nothing is not an option and it is important that the new Act is comprehensive and most importantly workable in its implementation by having the appropriate review structures in place.

Yours respectfully,

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GFNC Hon. Secretary

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