



Review of the Flora and Fauna Guarantee Act
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning

28 March 2017

Submission to the review of the Flora and Fauna Guarantee Act

Thank you for the opportunity to provide feedback on the proposed changes to the Flora and Fauna Guarantee (FFG) Act.

Friends of Leadbeater's Possum Inc. is a community ENGO based in Healesville, Victoria. Our members are mostly, but not exclusively, in Victoria. We conduct field activities such as stagwatching, nest-box provision and placement, supplementary feeding and habitat regeneration and identification, as well as community education. We also engage in active advocacy for Leadbeater's Possum, which has been Victoria's faunal emblem since 1971. For example, we contributed to the successful application to have the species uplisted to "Critically endangered". As the only community group solely established to assist the species, we had a place on the Leadbeater's Possum Recovery Team, where we worked with scientists and others to advise government on conservation issues.

Leadbeater's Possum has been listed under the FFG Act for over twenty years and it can only be concluded that it has failed to provide the guaranteed protection intended, as the population of the species has continued to decline, leading to the 2015 review of its federal conservation status.

In our view the FFG Act has not been effectively implemented in the past, relying on accessory policies such as the Forest Management Plans which have had the effect of weakening protection. This was demonstrated by the MyEnvironment –v- VicForests case in the Supreme Court (2012), in which Justice Osborn found that the Leadbeater's Possum Action Statement was to be implemented through the Central Highlands Forest Management Plan and that VicForests' highly restrictive interpretation of the plan was not illegal. The decision was upheld at appeal (2013), the only time the FFG Act was tested at this level. In our view the legislation failed to protect the target species.

We are encouraged that the current government is following up its election promise to improve environmental protection through reviewing this Act. However, there are a number of proposals that concern us, which we would like to see improved.

Proposals that will weaken protection for our environment:

- ***Abandonment of 'the guarantee'***

Section 4.1

We are deeply troubled at this proposed change as it indicates reduced government commitment to ensuring protection of *all* native species of flora and fauna in Victoria. The centerpiece of the current Act is the commitment to ensure that all species of flora and fauna in Victoria survive and retain their potential for evolutionary development in the wild. We continue to believe that this is a worthy aspiration and must be retained, despite practical difficulties. The discussion paper is suggesting this objective is too ambitious and that it should no longer be included in the Act. We do not agree.

- **Drop the requirement for action statements for all listed threatened species**

Section 4.3

Producing action statements is currently the only binding action that the government must take to protect listed 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. We believe the requirement that Action Statements should be prepared must be retained and adequate resources, including effective science-based Recovery Teams, must be allocated to ensure and direct implementation.

Essential elements that will strengthen protection of our environment and I would like to see in the Act are:

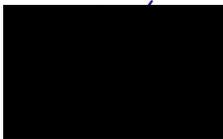
- **Enhanced opportunities for survival and recovery of threatened species** by removing exemptions and special treatments for government departments and some industries.
- **An independent body appropriately resourced (funds and staff) to implement, and effectively enforce the Act: This body will be provided:**
 - A clear suite of stronger accountability tools, including monitoring and evaluation based on ***adoption of a common assessment methodology using IUCN criteria.***
 - Resources to support active investigation, enforcement, meaningful penalties and better tools for accountability, when breaches of the Act are identified.
 - **Clear targets and timelines** to direct investment and programs for threatened species protection and recovery, across the whole state.
- **A mandatory requirement for the Minister to intervene** when important species or habitats are under urgent and imminent threat.

- **Empowering community groups to act**, including capacity to contribute to regional plans and to initiate legal action to protect threatened species.

Conclusion:

We appreciate that this government is reviewing the ineffectual Flora and Fauna Guarantee Act, but Friends of Leadbeater's Possum remains concerned the proposed changes indicate a lack of courage and political will to confront and rise above the difficulties inherent in protecting threatened species. We strongly urge the Victorian government to take this opportunity to strengthen our environmental legislation and commit to its implementation for the benefit of current and future generations.

Yours sincerely,

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