

Submission to the review of the Flora and Fauna Guarantee Act

To the Department of Environment, Land, Water and Planning

Thank you for reading my submission into the FFG Act. I have several years of experience in the environmental consulting sector and dealt with the FFG Act frequently for a range of small and larger development projects.

The FFG Act has an important and justifiable place in the environmental regulatory landscape as being the act that protects threatened species and ecosystems in Victoria. I see it's role as being similarly as important to Victoria as the EPBC Act is to Australia. However, the FFG Act is famous for its impotency, the toothless tiger of environmental laws. It is very encouraging to see that DELWP are undertaking a thorough review of the Act. Although most of the following comments (listed in no particular order) may appear a little negative (it's constructive criticism I hope), I am broadly supportive of the approach taken in the consultation paper and of all serious efforts to increase the legal protections for our threatened species.

One of the main shortcomings of the Act is that it does not apply to private land. While clearing of native vegetation is regulated by the Planning and Environment Act, impacts to threatened species on private land (and since the Biodiversity Assessment Guidelines were introduced five years ago - threatened ecological vegetation classes) are not covered by that Act, so that there was nothing to prevent a landowner from deliberately destroying a population of threatened plants, so long as the broader "native vegetation" was not impacted. The Act must be applicable to private land. I'm not convinced that breathing life back into the Critical Habitat mechanism in the Act is a good way to achieve this. This approach relies on DELWP to define what is critical habitat and ensure the maps are updated whenever a new population of a threatened species is found, something that future governments may be reluctant to do. And how do you map critical habitat? If the species habitat distribution maps used to inform the native vegetation clearing regulations are anything to go by, I do not have much hope that they will be accurate or practically useful on the small scales many development projects operate on in Victoria, much less that they will be updated. The fundamental mechanism for protecting threatened species under the FFG Act should be that if a species or community is found or known to occur, it is protected by the FFG Act. Surveys for FFG Act-listed species should be required as part of the planning permit process under the Planning and Environment Act and the FFG Act should be the principle Act protecting State-listed species and communities in the planning process. I don't think that private landowners should have to apply for an FFG Act permit to pick wildflowers on their property, but if private landowners kill or damage populations of threatened species on their land they must be held accountable under the FFG Act. It goes without saying that the Act must continue to apply to public land.

Certain sectors, such as the mining and forestry sectors cannot continue to be exempt from the FFG Act as this completely undermines the Act.

I support the push to combine the multiple lists for threatened species. I am unsure of the usefulness of moving to IUCN criteria just because it is an international standard, but perhaps this is also a good idea - I don't have much experience with it. I am seriously concerned about the Common Assessment Method, because species listed under the EPBC Act would have no protection under the FFG Act or other State legislation. This is extremely concerning as it effectively removes our State's ability to protect our most endangered species and communities. For example, many threatened species listed under the EPBC Act have only one or a few small populations in Victoria, but have other populations in other States. A proposal that impacts that species in Victoria may not be deemed to have a significant impact on the species on the scale of the entire country, but it could have an extremely large impact on that species in Victoria. That is the whole reason we have State-based environmental legislation. To remove all State-based protection for our most threatened species that are also listed on the EPBC Act would be a serious mistake.

There is a move to modernise the old wildflower provisions and this is definitely a good thing. Permit proponents always found it hard to understand why they needed an FFG Act permit to remove one *Senecio quadridentatus* plant, so I support the modernisation of this aspect of the Act. I also support keeping some taxa as protected under the FFG Act but not listed (e.g. commercially attractive flora) as proposed.

I think it is important to define clearly and prominently what constitutes an action that requires approval under the FFG Act.

The public must be continue to able to initiate species for listing and also to initiate legal action against other members of the public or government under the Act.

In moving towards landscape or strategic approaches, the practical effectiveness of single-species action plans (which can work well when well designed and implemented) must not be diminished.

A major issue has been that action plans are written but never enacted. The review should consider legislating in the FFG Act a commitment from DELWP to enact action plans within a certain timeframe.

Regarding threatened communities/ecosystems I support the push to streamline these with EVCs. Of course, this means that all "endangered EVCs" must have protection under the FFG Act.

It is important that the role of the independent Scientific Advisory Committee is kept independent and not able to be watered down by a future government.

The idea of earned autonomy is a bad idea. Voluntary industry standards are by definition standards developed by and for the industry and this would only ever be used as a loop hole to help a proponent escape their obligations under the FFG Act.

Perhaps the most significant change is the push to introduce real penalties for people who contravene the FFG Act. This is a welcome and overdue change and is perhaps the single most important change being proposed. Many people will only obey an Act if contravening it would seriously hurt them financially. Financial penalties must be seriously large. I repeat: financial penalties must be seriously large. If penalties are small, the Act will remain completely undermined. I strongly encourage DELWP to include criminal penalties as an option for extreme cases as having them on the table - even if never used - is a very good deterrent.

Thank you for considering my comments.