

28 March 2017

Review of the Flora and Fauna Guarantee Act 1988
Regulatory Strategy and Design
Department of Environment, Land, Water and Planning
Victoria
Via email: ffg-act.review@delwp.vic.gov.au

Dear Sir/Madam

CMPA Submission to the Review of the Flora and Fauna Guarantee Act 1988

Overview

The Construction Materials Processors Association (CMPA) is dedicated to the representation, advocacy and service of its Members in the Victorian earth resources industry. The CMPA represents a broad spectrum of businesses that extract and process hard rock, gravel, sand, clay, lime, soil, and gypsum. CMPA members also operate recycling businesses. CMPA members are typically small to medium sized family businesses, local government and utilities. Many are regionally based employers (90%) and support the Victorian economy through providing for local construction, major infrastructure and road maintenance needs.

The Extractive Industry underpins growth and development in Victoria through supply of the construction materials described above. 50 million tonnes in 2014/15 was produced (~10 tonnes/person/annum in Victoria) to a value of approximately \$752 million excluding the cost of transport. CMPA members account for approximately half of this production, and more than half of this industry sector's employment. Also of import is the need to have supply of construction materials located in close proximity to their utilization to save on transport costs and reduce the carbon footprint.

The CMPA supports responsible, balanced legislation and community engagement that is in the best interests of the State and acknowledges Victoria's Aboriginal communities and cultural heritage.

Thank you for the opportunity to comment on the "Review of the *Flora and Fauna Guarantee Act 1988* (FFG Act) Consultation Paper" (Paper).

General comments

Mention is made in the paper that "Victoria's biodiversity continues to decline". The key drivers are said to be ongoing loss and fragmentation of habitat and issues such as weeds, pests and diseases. However, no reference was made to the rate of clearing of native vegetation which is said to be slowing and that the native vegetation offsets outweighing losses due to permitted clearing [1]. Additionally, all extractive industry Work Authority sites are required under the Mineral Resources Sustainable Development Act 1990 (MRSD Act) to implement a weed and pest plan.

Specific comments

p.9 last para: “Consideration could also be given to improving the community’s ability to challenge administrative decisions made under the Act and to enforce the Act, such as by expanding standing for community members to seek review through the courts.” There is no justification for increasing third party rights.

p.10 2nd para: The economic modelling undertaken that is referred to in the Paper is questionable:

“...suggests that a Victorian economy underpinned by healthier natural capital will outperform an economy where natural capital is degraded. It was estimated that by 2028, healthier natural capital could provide between \$15 billion and \$36 billion in economic benefits for Victoria. However, continuing on the current trajectory of decline in Victoria’s natural capital could cost the state between \$16 billion and \$78 billion.”

However, in the reference given [2] the following qualifier is given “While drawing sector specific conclusions from our model should be done with caution...” Independent economic modelling commissioned by the State government would have been more appropriate.

p.11 1st para: CMPA agrees with the following statement in the Paper: “DELWP recognises the broader regulatory system for biodiversity in Victoria is complex, with powers and regulatory obligations sitting under various laws. This system has developed over many years, often in response to specific issues, and not always taking a systematic approach. This can result in duplication of regulatory requirements, confusion amongst the community about regulatory obligations, and gaps in oversight and regulation.”

p.35 Figure 3 Potential Revised Act:

Listing: A single comprehensive list is supported.

Protection and enforcement: It is noted that enforcement of native vegetation clearing is proposed to be included in the FFG Act with little attention paid to the potential duplication of enforcement provisions already in place under the Planning and Environment Act 1987 (PE Act) and so is not supported.

4.1.1 Objectives

p.37 1st dot point: “Protecting, restoring and enhancing biodiversity...” has similar themes to the introduction of “net gain” in the Native Vegetation Permitted Clearing Regulations in 2002 which was clearly unworkable and now has the regulatory objective of “no net loss” in the Native Vegetation Clearing Regulations (NVCR).

p.37 Table 8 Potential improvements: The objectives set should be specific, measurable, achievable, realistic and timely as per best practice management.

4.1.12 Principles

p.38 dot 7th point: “integrating and balancing environment, social and economic objectives”. The CMPA supports this principle being included in the review of the FFG Act

4.2 Coordination and integration across government

p.39 3rd dot point: The extractive industry is required under the MRSD Act to consider and manage impacts on the environment in applying for permits (Work Authorities) to extract earth resources.

p.40 Potential improvements:

p. 40 1st dot point: “...including that biodiversity is considered at an early stage of decision making...” This already occurs for the extractive industry under the MRSD Act.

p.42 Table 10 Potential improvements:

1. “Clarify and strengthen the existing duty on public authorities...” The FFG Act does not need to be strengthened in the application for permits (Work Authorities) for earth resources as it is already considered at an early stage under the MRSD Act.

6. “Investigate providing powers to the Minister to...” The CMPA does not support further strengthening of the Minister’s powers.

4.3 Strategic approach to biodiversity planning and species listing

p.45 Potential improvements

3rd dot point: “Enable a landscape or area-based approach to biodiversity planning...” This will need to be evaluated for social and economic benefits as well as environmental. CMPA is concerned that additional burden will be placed on the already heavily regulated extractive industry with the inclusion of private landowners.

p.46 Responding to environmental change 1st para: “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.” If a multi-disciplinary committee is to be established, there should be representation from the extractive industry as well as the agricultural industry. Any recommendations to the Minister must consider social and economic factors in addition to environmental factors.

p.47 Table 11: Potential new biodiversity planning framework:

1st row Conservation advices: CMPA supports conservation advices being aligned to the Commonwealth EPBC Act especially if a Commonwealth advice already exists.

2nd row Priority actions: Priority actions should be developed according to principles of “integrating and balancing environment, social and economic objectives”.

3rd row Biodiversity response planning: “Collaborative forums to bring together partners and stakeholders ...such as businesses, community groups and traditional owners.” CMPA anticipates that businesses will not be the only stakeholder targeted to resource the priority actions. DELWP should also be responsible for ensuring that they have the resources available.

4th row Management advices: There seems to be little difference between Management advices and an Action statement.

p.49 Table 12- Potential improvements:

dot point 3.: “Ensure conservation efforts are efficient and effective and maximise benefits for biodiversity” These benefits should also have a regard to social and economic benefits.

dot point 5.: “Requires a landscape or area based response to the Biodiversity Plan.” This appears to be a catch-all for those that are private landholders such as agriculture or land with permits (Work Authorities) to extract earth resources and will have little impact on those within cities or suburbs.

p.50 Box 4 – Private land conservation: Concern is raised that this section summarises that the impact of potential improvements in the FFG Act will have a far reaching effect on private landowners.

p.51 Listing threatened species, communities and threatening processes

Potential improvements: CMPA supports “A single comprehensive list of threatened species and communities in Victoria which includes nationally threatened species...” and “Adoption of the IUCN standards for classifying the conservation status of the species.”

4.4 Habitat protection and regulation:

p.55 Potential improvements:

2nd dot point: "... an appropriate balance of incentives supported by proportionate regulation". Consideration should also be given to social and economic factors.

3rd dot point: "Provide an effective deterrent to the illegal removal of native vegetation on public and private land." There is already an effective deterrent under the PE Act.

5th dot point: "...broadening the concept of critical habitat...such as habitat corridors". There has not been justification for broadening the concept of critical habitat in addition the use of roadside vegetation should be excluded from the definition of habitat corridors.

6th dot point: In the mapping of targeted critical habitat areas, landowners' views should be given serious consideration before declaration of critical habitat.

7th dot point p.56: "Modifying the regulatory controls under the Act for critical habitat to require a permit for activities that would 'damage' the habitat..." These additional regulatory controls should not apply to the extractive industry.

8th dot point p.56: "Requiring the Secretary to take all reasonable steps to enter into voluntary management agreements with owners of land containing critical habitat". What is the process if landowners do not want to enter into a voluntary management agreement?

4.4 Habitat protection and regulation:

p.57 Table 14 - Potential improvements

Native Vegetation

5. "Provide for the illegal removal of native vegetation to be enforced under the Act." Enforcement provisions already exist under the PE Act.

4.4.2 Regulation

p.61 Table 15 – Potential improvements

"4. Establish decision making criteria to guide the consideration of permit applications." A risk based approach should be taken to determine the level of impact that should be considered as unacceptable taking into account social and economic factors.

4.4.3 Compliance and enforcement

p.63 Table 16 – Potential improvements: "7. Provide the ability for the illegal removal of native vegetation to be enforced under the Act". Illegal removal of native vegetation is already enforced through the PE Act.

4.5 Accountability and transparency

p.65 Table 17 – Potential improvements: There is no justification for increased third party rights, for example, as per below:

"7. Consider expanding standing for the community to:

- Seek judicial review of decisions made under the Act, such as granting of permits/authorisations.
- Seek injunctions in court to prevent/halt a breach of the Act, such as illegal damage to critical habitat."

Conclusion

The CMPA welcomes the opportunity to comment on the Review of the FFG Act, however, concerns are held regarding the lack of inclusion of analysis of social and economic factors, for example, there are approximately 100,000 additional people in Victoria every year [3] and their subsequent requirement for residences. This growth will obviously impact on the flora and fauna within Victoria which will have to be

managed with care so that private landowners such as agricultural and extractive industry are not inequitably targeted. CMPA supports the protection of flora and fauna, however, a whole-of-government approach is necessary to ensure continued economic growth in Victoria through a stream-lined and more efficient regulatory system.

Please do not hesitate to contact me if you require further information.

Yours sincerely



General Manager

References

- [1] Draft Protecting Victoria's Environment – Biodiversity 2036, DELWP p.15
- [2] The Future Economy Project: The economic impact of diminishing natural capital in Victoria, a report for the Future Economy Group 2014 Nous Group p. 5
- [3] Victoria in Future 2016 – Population and household projections to 2051, DELWP.