



The Victorian Chapter: Australian Coastal Society

Flora and Fauna Guarantee Act [1988] Review January 2017

Submission: March 19th 2017

The Victorian Chapter: Australian Coastal Society welcomes the release of this Consultation Paper and appreciates the opportunity to contribute to its development. We recognise and support the Victorian Government's concurrent reviews and reforms relevant to biodiversity protection and management which are occurring at present.

The Australian Coastal Society was established to:

- *promote knowledge and understanding of the coast's environmental, social, and financial values;

- *provide a forum for the exchange of ideas and knowledge among people involved in coastal management, planning and development;

- *contribute to debate to foster rational open decision making to achieve sustainable use and responsible stewardship;

- *improve coastal ecosystems and to ensure the use of ecological sustainable development [ESD] practices;

- * promote the protection and conservation of significant sites on the coast and coastal waters;

- * serve as a link between various Australian organisations and individuals.

It is within this context that we comment on the Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper, [the Act].

Potential Improvements that We Consider Most Important

1. Retention of the FFG Act, with revision of the current objectives [p35, p36—37as described] to protect, restore and enhance biodiversity. We support using a landscape/area approach in conjunction with a threatened species approach. This must include climate change considerations and improved recognition of Traditional Owners.

2. Support and strengthen a whole of government approach [p38-42] to improve leadership, clarify roles and responsibilities of public authorities and to improve decision-making affecting biodiversity.
3. We support more specific wording to improve the understanding and requirements of Public Authority/government organisations and specifically forestry operation compliance. Additionally, we support the inclusion of the ability to prosecute offences on private land using a broader range of tools.
4. Habitat protection and regulation: Support for the introduction of new criteria to broaden the concept of "critical habitat areas", their location and importance for maintaining ecological processes, species recovery and climate change. We request increased declaration of these areas by the Minister once habitat mapping is completed and use of "interim conservation orders" where necessary.
5. Retain state listings of threatened species and communities and their Action Statements in addition to those at a national level. They provide specific protection under Victoria's legislation. [p19]. Include a legislative framework for landscape plans.
6. Compliance and enforcement: Support for the proposed improvements [Table 16] including the ability for illegal removal of native vegetation to be enforced under the FFG Act. Recommendation to establish a new offence: "to damage habitat of threatened species or communities without a permit".

Potential Improvements that Should be Made but not Described

[a]Consideration of including Marine and Coastal areas in the FFG Act

Will the proposed Marine and Coastal Act protect threatened flora, fauna, aquatic biota, habitats and recognise "seascapes" similarly to terrestrial areas as proposed under the FFG Act? If not, is there an opportunity to broaden the FFG Act to protect Victoria's species and habitats?

Relevance of the FFG Act to coast, inter- tidal and marine areas is inconclusive in the Consultation Paper. Figures 1 and 2 [p12 and 17] identify the legislative connectivity across terrestrial, coast and marine areas.

Some specific references to native vegetation clearing controls are noted in the Victorian Planning Provisions with Port Phillip Bay Councils [the old Port Phillip Authority] having jurisdiction to 600 metres of seabed. Hence native vegetation protection eg seagrasses would logically come under the Planning and Environment Act 1987. This framework has an objective to 'protect important habitats'.

The Wildlife Act 1975 works in conjunction with the FFG Act with provisions to “protect threatened species.” It also has provisions relating to “protection of whales and seals, the management of wildlife and nature reserves...”The FFG Act lists all threatened species – flora, fauna and fish- and the Wildlife Act provides regulatory protections to threatened species”. [p19]

“The Fisheries Act 1995 provides for the management and use of fisheries, aquaculture industries and aquatic biological resources.” “Any species of fish or community of fish or aquatic invertebrate listed under the FFG Act becomes protected aquatic biota under the Fisheries Act’. [p19]

From the above examples it is clear that marine habitat protection and ecosystem- based management is fragmented or absent. We recommend taking an ecosystem approach using spatial planning and other tools to protect specific species, habitat and seascapes in conjunction with relevant Acts. We should build on our existing marine national parks and sanctuaries [both Commonwealth and State]which contribute to biodiversity outcomes.

[b] Consideration of more research, improved monitoring and, based on the Deakin University/CSIRO sea bed mapping, new declarations for marine species, “critical habitat areas” and protected areas as can be done for terrestrial areas.

The discovery of new marine species and important habitat areas requires immediate listing and protection under this Act and other complementary policies.

Increased capacity to enable DELWP to instigate these opportunities instead of relying on public knowledge and action is crucial.

[c] Amend the division of controls across the Wildlife Act by enabling the FFG Act with additional regulatory functions for fauna and marine species. This will simplify and improve outcomes and contribute to FFG Act targets. In addition, the period to enable prosecutions to occur should be for up to two years after discovery of the illegal activity. This recommendation is based on a current case where drainage of a large important wetland [Chinaman’s Swamp] containing brolga nesting and flocking sites in western Victoria was not noticed until after Spring rains had fallen. Other landholders noticed the presence of heavy machinery, that all the other creeks, rivers and wetlands near Dundonnell were full but this one was dry.

[d]Express incorporation of the precautionary principle [s4.1] into the Act. This principle is a fundamental part of modern environmental law which ensures that the lack of full scientific uncertainty cannot be used as justification for a reason to either postpone measures to prevent irreparable loss or damage or to support a project or program.

The Potential Improvements which we consider are Most Important

- 1. We support retention of the FFG Act and revision of the current objectives** [p36 -37 Consultation Paper]. A requirement to establish Statewide biodiversity targets within

the FFG Act and Biodiversity Plan is recommended. We support a more detailed legislative framework that enables the Biodiversity Plan to become a more specific and focussed biodiversity conservation strategy. This should include regulatory targets designed according to SMART principles.

The Statewide biodiversity targets need to combine landscape scale conservation and protection of threatened species outcomes. We support the inclusion of goals that relate to enhancement and restoration of biodiversity but not at the expense of supplanting the key aims of the Act. A review period of five years with monitoring, evaluation and reporting against meaningful targets must be included. Outcome reporting to Parliament to support a whole of government approach is important. Stronger partnerships with Traditional Owners is needed with recognition of “sea country plans”, indigenous knowledge and co-management agreements.

2. Support and strengthen a Whole of Government Approach [p38-41]

It is pleasing that the Government is committed to improving the care and protection of Victoria’s environment by ensuring stronger protection of important biodiversity.[p6] We support the identified set of principles that are consistent with those that have informed the Biodiversity Plan with one caveat.

The Principles are:

[a] Informed decision-making to ensure decisions are based on the best available information and scientific uncertainty and risk is accounted for;

[b] Primacy of prevention- to ensure that appropriate weight is placed on preventing harm and avoiding impacts to biodiversity over the minimisation or mitigation of impacts;

[c] Shared responsibility- to provide a platform to use a range of mechanisms and work with a range of stakeholders to take action to prevent harm to, or restore biodiversity;

[d] Intergenerational and intra-generational equity- to ensure decision makers consider how decisions may affect specific parts of the community and future generations.

However, we query the intent of the Principle “Integrating and balancing environment, social and economic objectives”. Environmental issues historically have been unable to compete in financial terms with the proposed benefits of jobs and growth. There is little use and consideration of the value of “ecosystem services”, current and legacy values when decisions are made. If principles [a],[b], and [c] are truly to be considered, the ecosystem services contributions in biodiversity, financial, health and educational terms must be considered and have stronger weight against the project or program benefits.

3. Clarification and strengthening the existing duty of care on public authorities.

We strongly support the potential improvements identified within Table 10 page 42. In particular;

[1] clarify and strengthen the existing duty of care by setting out in the Act what the duty requires.

[2] Update the definition of a public authority to clarify that it applies to government departments as well as public authorities;

[3] enable the preparation of Ministerial guidelines;

[4] maintain the existing ability to enter into voluntary management agreements with public authorities. We support expanding the scope and purpose of these agreements but note that they should be monitored against the Act's principles and objectives;

[5] enable the preparation of biodiversity standards;

[6] investigate providing powers to the Minister to:

- request that a government department or public authority provides information as to how a particular listed threatening process or high value asset to biodiversity is being managed.

– issue a ministerial direction to take action to address a listed threatening process;

[7] We strongly support the revised wording: “public authorities are required to act *consistently* with the provisions of the FFG Act and with any plans and regulations made under it”.

[8] investigate options to further improve the consideration of biodiversity across government. We support compiling a schedule of relevant decisions under other legislation that must have regard for biodiversity. We also strongly support amending other legislation to add biodiversity as a consideration in decision making.

4. Habitat protection and regulation:

We support the introduction of new criteria to broaden the concept of “critical habitat areas”. This should not be specifically confined to a particular ecological vegetation type or area as species do use subliminal areas in times of drought. Critical habitat definitions should be broadened to include “areas important for the continuation of ecological processes; habitat required to ensure the survival of a species or community; that needed for species recovery and additional areas to allow adaptation to climate change.”

We request that the Scientific Advisory Committee [SAC], as an independent body, be required to establish a program to identify and map proposed critical habitat areas on public and private land.

Following the mapping the Act should include a requirement for the Minister to make a decision as to whether or not to declare the proposed area.

To guide these decisions, and to ensure consistency under the Act, there must be an obligation to declare a critical habitat in certain circumstances. eg when the decision is made to list the species under the FFG Act.

We support the use of “Interim Conservation Orders” where required.

5. Retain state listings of threatened species and communities and their Action Statements in addition to those at a national level to provide specific protection under Victoria's legislation.[p19] Action Statements and Recovery Plans are fundamental in identifying the issues, threats and threatening processes together with nominated actions for recovery planning of threatened species. They also provide the context, direction and information to inform communities who are assisting with implementation. eg South- eastern Red- tailed Black Cockatoo Recovery Team.

However, we support integration or alignment of species Action Plans/Recovery Plans within landscape plans where the latter substantially covers the listed species. Development of a legislative framework approved by Government should occur to make this effective.

6. Compliance and enforcement: Support for the proposed improvements [Table 16 p 63.] including the ability to enforce penalties for illegal removal of native vegetation under the FFG Act. This will improve compliance and enforcement on public and private land.

Additionally, we request establishment of a new offence: "to damage habitat of threatened species or communities without a permit". This recognises the important role of habitat in species protection and landscape /area plans and enables a broader application of the Act.

There should not be exemptions. Currently there are too many exemptions under the Act. eg forestry operations where incidental clearing and impacts on habitat occur.[habitat fragmentation, introduction of pest plants or pathogens].

General Comments:

We support:

[a] placing greater emphasis on avoiding native vegetation removal, Including seagrasses, kelp, mangroves, coastal Ecological Vegetation Communities;

[b]the Act should consider listed species, communities and threatening processes but continue to refer to all native vegetation and species;

[c] if offsets are required they should be for all native vegetation not just for threatened or endangered species or communities;

[d]greater stress on the role of strategic planning [ie early consideration of Native Vegetation Regulations and removal in avoiding or minimising loss;

What is working well?

[a]The original intent of the Act should be retained. The strong emphasis on achieving thriving ecosystems through habitat and species protection and to reducing threats is

especially valid today. In addition, the reference to all flora, fauna and aquatic biota is important as it covers both terrestrial and marine – based systems.

[b] Partnerships such as the award winning DELWP South West Integrated Flora and Fauna Team [SWIFFT] program are providing a forum for current scientific research and supporting improved community awareness and participation in identification and monitoring of species. The Team also takes a multiple species approach given that issues, threats and management are often the same for many orchid species.

[c] Trust for Nature perpetual conservation covenants are successful in ensuring that important species, wetlands and habitat are not cleared or drained when sold to new owners. In addition, the specific management plans for each site provide practical direction and advice based on modern scientific knowledge for landowners.

Despite the FFG Act and associated efforts, Victoria's biodiversity is in decline due to continued loss, habitat fragmentation and ongoing threats. The Act is not achieving enough for threatened species as demonstrated in State of Environment Reports.

In this context improvements should recognise the interconnection across catchments, coast and marine areas and support a continuing and strong emphasis on thriving ecosystems and larger landscape/seascape habitat protection. Living systems [including coastal and marine] and their symbiotic relationships, require understanding as a whole and should be managed accordingly.

Thank you for the opportunity to comment on the Consultation Paper and to present ideas on how the State of Victoria can improve biodiversity protection.

Yours faithfully



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A Voice for the Coast