





## 1.0 Introduction

The Andrews Government election commitment to “...review the Flora and Fauna Guarantee Act and institute a state wide biodiversity strategy to protect our habitats for future generations”, was a welcome commitment. Some two years since the commitment was made the VNPA is pleased to see the release of the review and the consultation paper.

We also note the Victorian ALP Platform, 2014, states “Labor acknowledges that protecting and restoring biodiversity underpins the well-being of the environment, society and the economy. Labor will:

- Review the Flora and Fauna Guarantee Act and put in place a statewide biodiversity strategy
- Give priority to restoring habitat via landscape scale projects that benefit the widest range of species and ecosystems
- Modernise threatened species protection to adopt world’s best practice”

The [72-page FFG Act review](#) states that it will better enable conservation efforts to prevent the decline of biodiversity, admitting that a *“strong theme emerging from this process is that many issues with the Act arise from a failure of government to properly implement the Act rather than poor legislative design.”*

Victoria is the most cleared state in Australia. Since European settlement 18 species of mammal, two birds, one snake, three types of fish and 51 plants have become extinct in Victoria, with many more still at risk. The laws that are supposed to protect nature are clearly not doing their job.

The FFG Act was considered landmark conservation legislation when introduced in 1988, however the Act has since undergone a significant review, and is widely regarded as an unfunded, failed, and toothless tiger, which has rarely been effectively enforced.

The review is positioned as part of the government’s broader long-term agenda to ensure stronger protection for Victoria’s native plants and animals. There are some very welcome improvements suggested in this review, but it still requires significant work so that it is made entirely clear how the reviewed/revised laws will actually serve to protect our habitats for future generations.

We are also concerned about the proposed timelines. As we understand it this consultation paper will be the only opportunity for broader consultation with the community, if the review is to be translated into legislation, before the next election.

The FFG Act is a critical piece of environmental legislation; it would be a missed opportunity if it was rushed to meet political/ electoral deadlines.

The review rightly highlights extensive problems with the current legislation – some of which are legislative, some of which are institutional, and some are resource related. The consultation paper proposes over 50 improvements. There is a significant strategic question here: is the level of reform really an amendment to existing legislation or a completely new Act? The levels of reform are such that there would be advantages to consider a completely new piece of legislation vs amendments to existing act.

## 1.2 The Case for reform - issues to be rectified

The VNPA has argued for some time that Victoria's laws relevant to nature conservation are complex, outdated, fragmented and failing, and that they need reviewing, integrating and strengthening.

They represent 'the incremental accumulation of different legislative regimes rather than any attempt to consider how it should all fit together and work effectively'.<sup>i</sup> Many lack clear objectives, provide too much discretion in decision making, and fail to address cumulative impacts.<sup>ii</sup> A 2009 review by the Victorian Competition and Efficiency Commission also found the system of environmental legislation was fragmented.<sup>iii</sup> To protect nature, optimise resilience and facilitate adaptation of nature to climate change, Victoria needs a much stronger legislative framework.

Consolidation of several existing environmental laws in an Environment and Conservation Act is desirable to achieve modernisation and integration. While the current review process is not proposing this, some of the principles should inform this review.

A renewed FFG Act should specify principles, objectives and major strategies as a framework for more specific sections on biodiversity (including threatened species), vegetation and public land management. The EDO/EJA has developed further details of this model.<sup>1iv</sup> A legislative framework for conservation should:<sup>v</sup>

- function as a clear public statement about the importance of biodiversity conservation and ecologically sustainable management,
- provide clear overarching principles and a framework for developing, implementing and evaluating strategies and plans at appropriate temporal and spatial scales,
- provide clarity about the roles and responsibilities of different agencies and organisations,
- guarantee monitoring, evaluation, accountability and public participation, and
- establish appropriate instruments and tools for implementation and enforcement of strategies and plans, and
- require public reporting on compliance and enforcement activity and outcomes for each relevant law and regulation.

Victoria's environmental laws and policies offer some powerful tools but suffer from poor implementation (and in some cases, from no implementation). This is the case with Victoria's primary law to protect biodiversity – the *Flora and Fauna Guarantee Act 1988* (FFG Act) – as documented in a 2009 audit by the Victorian Auditor-General's Office and a 2012 analysis by EDO Victoria.<sup>vi</sup>

The FFG Act provides a framework for the protection of threatened biodiversity and mitigation of threats. The first object is the 'guarantee' for Victoria's flora and fauna, worthy of striving for, according to the Act's designers, because 'the employment of any lesser concept is to give advance warning of our intention to fail.'<sup>vii</sup> The FFG Act operates in conjunction with the *Wildlife Act 1975*, whose objects include promoting the conservation of wildlife, prevention of extinction and sustainable use of and access to wildlife.

The Auditor-General's Office found that the environment department (then DSE) was not using most of the processes and measures available under the FFG Act and that it 'no longer provides an effective framework for the conservation and protection of Victoria's native flora and fauna'.<sup>viii</sup> The

available but 'patchy' data indicated to the Auditor-General that its primary objectives were not being achieved.

Listing threatened species and communities under the FFG Act is a first step for their protection and recovery. For example, as of June 2013, 667 taxa and communities are listed as threatened. Although this is a grim figure, it does not represent a genuine measure of threatened biodiversity. Listings are not systematic and rely on nominations – these days mostly from members of the public; Departmental officers were responsible for most nominations in earlier years. The environment department (now DELWP) also maintains advisory lists of species considered threatened, on which there are almost twice as many taxa. DELWP have been unable to determine the conservation status for 350 species on the advisory lists because it considers that there is too little information.

Contrary to the promise implicit in the name of the Act and in the objects, listings seem to guarantee nothing much at all. The Act requires that an 'action statement' be developed 'as soon as possible' for each listed species or community or threatening process. Action statements are 'brief management plans' which are 'designed to apply for three to five years, after which time they will be reviewed and updated.'

More than half (57%) of listed species and communities lack any action statement and more than two-thirds (69%) of threatening processes lack one. Most statements have not been reviewed within the specified timeframe. In 2009 the Auditor-General found that at the then rate of progress, with existing resources, it would take 22 years for the department to complete action statements for then listed entities, as just 15 had been approved each year (1991 to 2008). The rate has dropped since then to an average of less than five a year, and at this rate (with no extra listings) it will take more than 80 years.

The Auditor-General's Office found that there were no relevant and appropriate performance measures to indicate whether the actions in action statements had been effective. It was not possible to determine whether the conservation status of threatened species had improved due to their listing under the Act.

The listing process is compromised by a lack of up-to-date scientific data. Much of the information on threatened species is over 20 years old, while information on marine invertebrates, for example, is not readily available. There is limited information on the condition of most of Victoria's flora and fauna. The Auditor-General also commented on the limited stakeholder participation and a lack of expertise in biodiversity due to reductions in research staff.

In the last few years, the role and influence of the action statements have been further undermined. The *Sustainable (Forests) Timber Act 2004 (SFT Act)* regulates the allocation of public-owned timber to Vic Forests and creates obligations to comply with certain management prescriptions in relation to threatened and/or protected flora and fauna.

The Code of Forest Practice requires Vic Forest to consider some threatened species in both planning and management.<sup>ix</sup> Most species listed under the state and commonwealth threatened species black letter laws (The Flora & Fauna Guarantee Act and national Environment Protection & Biodiversity Conservation Act 1999) are listed in Management & Planning Standards<sup>x</sup> under the Code of Forest Practice (Appendix 3 Tables 13). They require Vic Forests to apply the management actions for rare and threatened flora and fauna, usually at a coupe level. These are often a considerable simplification of actions required under an action statement. They generally put forward a suite of measures to help a species, which the forestry codes largely cherry-pick.

Several essential tools for conservation provided for under the Act are rarely or never used.

The declaration of 'critical habitat' provides a legal basis for protecting the habitat of a threatened species but it has been used just once in the 25 year history of the FFG Act and was revoked soon after. As the Environmental Defenders Office (now EJA) commented, this failure leaves the Act 'substantially weakened, particularly as it relates to private land'.<sup>xi</sup>

The government has never used its capacity to issue Interim Conservation Orders to protect critical habitat. Although they are powerful tools that should be used, they are also limited by a requirement for compensation for financial loss suffered due to the making of an interim conservation order. Much more reasonable would be to require compensation only if the order requires actions that go beyond what would be expected under a duty of care or to remove the compensation clause altogether as is the case for stop work orders and interim protection orders under NSW's national parks and threatened species laws.<sup>xii</sup>

However, the government has used its powers to undermine protection for biodiversity by creating Orders (legally binding instruments under the Act setting out exemptions or additional requirements), including the Flora and Fauna Guarantee (taking, trading in, keeping, moving and processing protected flora) Order 2004, which effectively removes protection for most threatened flora on private land, and the Flora and Fauna Guarantee (Forest Produce Harvesting) Order No. 2/2004, which authorises the taking of protected flora in state forests and on crown land where it results from or is incidental to harvesting operations or associated road works.<sup>xiii</sup> The FFG Act requires the department's annual report to report on progress in implementing the flora and fauna conservation and management objectives but this has been ignored.

Permits and licences to take species under the Wildlife Act are 'rarely refused', there is no publicly available data on the degree of compliance with conditions and 'it does not appear that DSE (now DELWP) conducts any compliance monitoring of permits'.<sup>xiv</sup> Undermining the conservation goals of the Wildlife Act, some damaging invasive species – feral deer in particular – are protected under the Act for the benefit of hunters. They receive more protection than some native species exempted from protection under the Act. The Act defines 'wildlife' as indigenous vertebrate animals, invertebrate animals listed under the FFG Act and 'all kinds of deer, non-indigenous quail, pheasants or partridges'. Unprotected wildlife include wombats, long-billed corellas, sulphur-crested cockatoo, galah, common brushtail possums, dingoes.

Compliance monitoring and enforcement under both Acts have been 'very limited'.<sup>xv</sup> There is no policy or strategy to guide compliance monitoring and enforcement, and no reporting of compliance and enforcement activity specific for each Act.

A 2002 departmental review found that the Flora and Fauna Guarantee Act was in need of an overhaul. More than a decade later, nothing has been done and the Act is in even greater need of reform. The Auditor-General's Office and the Environmental Defenders Office (now EJA) have each made several recommendations to improve the Act, which VNPA endorses. These changes could be made through the development of the proposed Environmental and Conservation Act, which also includes vegetation and public land management.

The VNPA 2014 report *Natural Victoria: Conservation Priorities for Victoria's Natural Heritage*, Nature Conservation review, reviewed over a dozen audits and reports of about environmental regulatory agencies in Victoria, undertaken over the five year period between 2008-2014. From this emerges a consistent pattern of failure to effectively establish and implement the processes and measures needed to achieve environmental objectives. The following eight themes emerged:

**Lack of integration:** Laws, administration, programs and plans are poorly integrated, undermining the state's capacity to pursue higher-level strategic objectives, and leading to inefficiencies and conflicting objectives. The 2009 land and biodiversity white paper, *Securing our Natural Future*, is probably the closest a Victorian government has come to an all-of-government approach to biodiversity but it has not been implemented.

**Poor leadership and coordination:** Over the past five years, the auditor general has reported many instances of inadequate leadership and coordination. For example, on marine biosecurity, there was poor coordination between the environmental and biosecurity agencies, and no evidence of an operational plan to coordinate responses to new incursions. Although a new departmental structure, which merged the environment and primary industries agencies, provided the potential for better coordination, it often resulted in the subsuming of environmental priorities in favour of resource exploitation. A new structure is needed.

**Weak laws:** Victoria's environmental laws are complex, fragmented and outdated, and fail to mandate sufficient priority for biodiversity conservation. They have not kept pace with changes in community attitudes, scientific concepts and growing threats to the environment, and lack principles such as ecologically sustainable development and mechanisms to promote accountability, transparency and public participation. Instead of addressing these shortcomings, the previous state government further weakened environmental laws, dismissing essential safeguards as 'green tape'.

**Inadequate enforcement:** A 2012 audit by Victoria's auditor general found major systemic failings in compliance and enforcement of environmental laws by the environmental and primary industries agencies. Neither department had a comprehensive risk-based approach to compliance.

**Limited planning:** The auditor general identified many examples of planning failure, including that performance indicators are commonly activity-focused rather than outcome-focused. The state has lacked a current biodiversity strategy for many years, despite it being required under the Fauna and Flora Guarantee Act. The abandoned 2010 draft strategy acknowledged a lack of clarity regarding the state's biodiversity targets and goals. The 2012 *Catchment Condition and Management Report* found that the lack of 'long-term goals and targets for land and water condition...remains a critical weakness', and the *State of Environment Victoria 2013* found that there is no clear articulation of statewide priorities, objectives and targets.

We greatly appreciate the launch of the new strategy: Protecting Victoria's Environment – Biodiversity 2037.

**Inadequate data:** Knowledge of Victorian biodiversity is deficient in many areas, including the conservation status and trends of many species, and the effectiveness of different management techniques. In several audits, the auditor general identified major deficiencies in monitoring, data collection and data management.

**Limited disclosure:** It is not possible to gain a clear understanding of the state's environmental performance from the government's public reports. In a 2013 audit, the auditor general found that the Department of Environment and Primary Industries reported on only a subset of performance indicators, and primarily on outputs and activities rather than outcomes. State agency performance measures in the annual budget papers are poor measures of performance and not linked to environmentally meaningful measures in state of the environment or catchment condition reports.

**Low commitment and priority:** The preceding problems with governance are all symptomatic of a low level of political commitment to the state's environmental objectives, particularly when they are perceived to be in conflict with economic goals. There has been an increasing rollback of

environmental objectives in favour of commercial interests. Victoria has a multitude of admirable environmental objectives and has achieved much in the past half century or so but backward environmental trajectories will continue unless the environment is accorded much higher priority within government. Inadequate funding for essential environmental functions is also symptomatic of a low commitment.

## 2.0 Strategic Directions

As well as a review of the Proposed Improvements outlined in DELWP's FFG act discussion paper, the VNPA, alongside partners at Environmental Justice Australia and Environment Victoria, are calling for the following five key elements to be fully integrated into the revised laws:

1. **A fair go for threatened species:** Threatened species provisions must be retained in the FFG Act and overhauled so that:
  - All public authorities are required to comply with the provisions of the FFG Act to ensure that the provisions of the Act have greater effect across various spheres of government decision-making.
  - Current exemptions to threatened species protections removed to ensure they apply to all sectors – including forestry – and apply on private, as well as public land.
2. **Stronger stop and protect powers:** There must be greater clarity around *when and how* the government is required to act to protect threatened species (as opposed to the existing discretionary tools)
3. **A nature cop on the beat:** The compliance and enforcement provisions of the FFG Act need a major overhaul, including a new entity to monitor and enforce the provisions of the FFG Act and a range of penalties for non-compliance.
  4. **Clear targets and timelines:** The targets in the biodiversity plan (Protecting Victoria's Environment – Biodiversity 2037) that has recently been released, must be adhered to, as a minimum position.
5. **Giving the community power to act** so that they are able to take legal action to protect threatened species and for the FFG Act to also establish a framework to enable regional communities to develop landscape scale restoration action plans.

### 3.0 General Comments & Questions

- Objectives of the Act. The existing objectives should be retained and added to. FFG Act should retain a high level of ambition while acknowledging the current and anticipated impacts of climate change. The FFG Act needs to include an acknowledgement that biodiversity conservation and ecological restoration mitigates climate change and better enables adaption to climate change impacts. Inclusion of goals that relate to restoration and enhancement of biodiversity will be an essential component to any reformed FFG Act, given how much biodiversity has already been lost in Victoria.
- There is a concurrent review of Victoria's Native Vegetation Clearing Regulations. How they work together has not yet been made clear. It appears there will be overlap with Native Vegetation Clearing Regulations' Threatened Species Habitat Importance Models and mapping.
- Climate change requires proactive as well as reactive initiatives. While the discussion paper recognises (p.48) the need to protect important habitat corridors and climate refuges, there is no provision for the establishment of a series of 'Climate Future' experimental plots across Victoria's habitat types. These would be plots where different genotypes of Victorian species, taken from further north (eg NSW), would be introduced to experimental plots and monitored. Then, if and when a critical local habitat species failed under a changing climate, we would be better informed as to which genotype to introduce (and also potentially have a suitable seed source) to maintain ecosystem function. This potentially critical pro-active measure is anticipated on p. 48 of 'Protecting Victoria's Environment – Biodiversity 2037' as: "Develop an enabling environment that allows for the use of novel techniques (such as the active movement of individuals and/or mixing of provenances, to better match future climates) to achieve desired biodiversity outcomes."

The adverse impact of climate changes on Victoria's species and communities is likely to be considerable, and strategies that can inform future management intervention should be accommodated in policies, plans and legislation.

- The Consultation Paper regularly refers to 'risk-based' 'modern approaches' and 'shared responsibilities'— which appear to be non-specific and non-transparent measures. For example, it is proposed that public authorities use 'Management Agreements' to meet and maintain their compliance with the Act, however such agreements in the past have not been subject to public scrutiny, reporting or monitoring – this needs to change.
- The Consultation Paper states that there are only nine such agreements currently in place. Does that mean that all road/rail agreements which have cleared FFG affected land have been in breach to-date? Or that separate permits were organised? WE note that "Public authority management agreements have not been widely used.". We are also nervous about any Risk Based approach, such as 'Significant Impact' triggers of EPBC Act, and this requires further explanation.

- We support the development of Assessment or Decision-making Guidelines, and public advertising and consultation periods for any proposal impacts on matters listed under the FFG Act, as in the EPBC Act. (Though the EPBC Act only relates to nationally-significant species and communities.)
- It is unclear how Threatening Process listings under the existing FFG Act will translate. Indeed there is little discussion of the inclusion of threatening processes and how they will be included or addressed.
- The FFG Act's lack of enforcement is best demonstrated by the fact that, though the law predominately applies to Public Land. Public Land managers overwhelmingly remain the most significant clearers of native vegetation in Victoria.
- VNPA are keen to see further details which outline the mechanisms to be put in place to provide enforcement authorities with some real teeth. It claims it will 'Promote modern approaches to regulation that are strategic, risk-based and targeted at the most important activities and species.' While that sounds nice, it would be good for the review to provide clear examples of how the improvements would be used to protect seriously threatened species in precarious situations where the current FFG Act offers little-or-no material protection, such as for Striped Legless Lizards on roadsides on Melbourne's western fringes.
- The proposed changes will require the establishment of state wide biodiversity targets to replace Action Statements. However, these will be generalised area/multiple species approaches, which are obviously then significantly harder to measure and determine successes (or failures). The VNPA Strongly supports the need for all strategies and targets to be measurable, and regularly reported against.
- The proposed new Biodiversity planning framework would require ecological information for each listed species, community, or threatening processes, including species ecology, distribution and key threats to survival. It is also proposed to require identification of priority actions for each listed species and community. These are proposed to be developed from an analysis of synergies and efficiencies across multiple species to identify the most beneficial actions for biodiversity. All of this is currently collected when creating Action Statements under the Act.
- FFG Act species listing could replicate all Threatened Species in Victorian Advisory Lists, but it also needs to include Communities, including both EVCs and other assemblages (e.g. Woodland Birds, etc.).
- Threatening Processes and Legislative Hierarchy: the impacts of deer is a great case study. Which legislation has priority? FFG Act, Wildlife Act, etc..? How is this likely to change from the current confused, and confusing, approach?

- Existing ‘Action Statements’ will remain for the most endangered species to support conservation efforts, but this needs clarification.
- Will individual species still have their own monitoring programs, to ensure new approaches are working to prevent their further decline and extinction? Prominent examples in Victoria include the Leadbeaters Possum. How will such monitoring programs change (if they do)? Failure to implement Critical Habitat determination.
- We are unsure how the review will change the way the FFG Act relates to other policy and legislation which regularly impacts on biodiversity. In this regard we note that ‘planning, forestry, fisheries and mining legislation increasingly include objectives to conserve the environment and mechanisms to improve consideration of biodiversity in decision making’.
- The review suggests that Native Vegetation Clearing Regulations do the most to regulate native vegetation clearance, yet these, combined with FFG Act, have done little if anything to halt public land clearance and subsequent impacts on threatened species and ecological communities, especially with regard to forestry.
- There is a need for targets for landscape-scale revegetation of under-represented communities; it is unclear if the tools presented in the consultation paper adequately address this.
- We strongly support the introduction of a five-yearly independent public report on progress in achieving the biodiversity targets, as well as allowing opportunities for public comment and appeals to processes, as well as opportunities for public reviews through independent courts / tribunals.
- Critical Habitat Protection and Regulation. There should be additional tools, broader than just ‘critical habitat’ to deal with issues at different scales. The existing FFG act has in part failed due to having too few tools. There is a danger that by relying only on a revamped critical habitat the same mistakes and deficiencies will be repeated. Options for other tools should be considered and investigated.

We suggest cascading regulatory tools with a range of differing obligations. For example:

- Critical habitats
- International and Nationally Significant landscapes
- State Significant landscapes
- Important local places

Example of cascading regulatory tools – habitat directives and designations,

Habitat Directives/ Designations	Scope	Measure
Critical habitats	<b>Perminant protection:</b> Endemic, rare or locally dependent species	Direct legislative protection via spatial designation or directive
	<b>Interim Protection:</b> High	(Basically similar to critical habitat

	conservation value areas under imminent threat	determination etc)
<b>International and Nationally Significant landscapes</b>	<b>Ramsar, JAMBA, CAMBA areas, national parks etc.</b>  EPBC listed ecological communities and species	Direct legislative protection via spatial designation or directive
<b>State significant landscapes</b>	Depleted veg types, key connectivity areas, linkage areas, Bio links etc, key hotspots with multiple values, across (public & private tenures).	Direct legislative protection via spatial designation or directive and or complimentary planning controls.  Could also create co-regulation, mechanisms such as activity codes of practice or incentive programs  Could also create a bio link vehicle a bit like the feds Wildlife corridor or compel or create a legislative framework for cooperation between agencies and landholders.
<b>Important local places</b>	Important areas of local significance.	Head of power, which strengthens local planning, creates a formal legal register (bit like bio sites, with a legislative basis)

## 4. Detailed Response to DELWP's Potential Improvements Identified

In responding to the Key Issues identified DELWP provided a series of tables outlining Potential Improvements to the legislation. VNPA have provided comments, as appropriate, to these Potential Improvements.

Potential Improvement	Rationale	VNPA Comment(s)
FFG Act Objectives (Ch. 4.1.1, pg. 36)		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>8.1</b> Revise the current objectives and require the establishment of statewide biodiversity targets.</p>	<p>Provide objectives that can be measured and reported against and drive management responses that reflect contemporary approaches to conservation.</p>	<p>Agree that the objectives should support the establishment of periodically reviewed biodiversity targets; however the existing objectives of the act should also be retained. It is unclear what is specifically meant by ‘contemporary approached to conservation’ and hence hard to judge.</p> <p>Note that, some important objectives don’t translate as easily, or accurately, measureable targets, but should nevertheless be recognised in the Act. For example, ‘ecological integrity’ or ‘ecosystem health. Sensible objectives should not be ignored simply because they are not easily measurable.</p> <p>We acknowledge the potential impacts of climate change. However we agree with the intent of the original authors of the FFG act that the ‘the employment of any lesser concept is to give advance warning of our intention to fail’.</p> <p>Much better (eg with climate impacts) to allow and encourage processes that can facilitate success, such as ‘Climate Future’ plots – see p. 9, dot point 3 in this submission.</p> <p>As the consultation paper does not actually provide the language to be used for the objectives, it is difficult to judge if the principles proposed will deliver an acceptable set of objectives.</p> <p>We support the idea put forward by EJA that: The FFG Act should retain a high level of ambition while acknowledging the current and anticipated impacts of climate change. The FFG Act needs to include an acknowledgement that biodiversity conservation and ecological restoration mitigates climate change and better enables adaption to climate change impacts. Inclusion of goals that relate to restoration and enhancement of biodiversity will be an essential component to any reformed FFG Act, given how much biodiversity has already been lost in Victoria.</p>
<p><b>Principles (Ch. 4.1.2, pg. 38)</b></p>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>9.1</b> Provide principles in the Act to guide decisions made under the Act. Investigate how these principles could be applied in decision making affecting biodiversity across government (see section 4.2).</p>	<p>Provides guidance to decision makers on how the Act should be administered to ensure its objectives are achieved and improves consistency of decision making under the Act and across government.</p>	<p>Agree in principle with this proposal and the principles discussed in the consultation paper.</p> <p>We also support the idea for a general ‘duty of care’.</p>
<p><b>Coordination (Ch. 4.2, pg. 39)</b></p>		
<p><b>10.1</b> Clarify and strengthen the existing duty on public authorities by setting out in the Act what the duty requires.</p>	<p>Provides clarity for public authorities on what is expected under the Act’s duty and how to incorporate biodiversity in decision making. Improves the government’s ability to achieve the biodiversity objectives and t</p>	<p>Support direction but needs to go significantly further.</p> <p>State government agencies and entities make some of the largest impacts on the State’s natural environment. The combined impact of Vic Roads, Vic Forests, other transport and water infrastructure agencies, DELWP fire programs etc, are huge and are carried out in our view with little ecological oversight.</p> <p>The idea of ‘general duty of care’ against preventing harm should also consider restoration and rehabilitation of impacts.</p>
<p><b>10.2</b> Update the definition of a public authority to clarify that it applies to government departments as well as public authorities.</p>	<p>Removes uncertainty for public bodies and clearly defines the duty’s scope</p>	<p>Supported but need to go further, to explicitly incorporate a general duty of care as well as an obligation to act consistently with conservation advice.</p> <p>Need to consider other state government entities as well including state owned enterprises.</p>
<p><b>10.3</b> Enable the preparation of ministerial guidelines.</p>	<p>Supports public authorities to comply with the duty by providing specific information relevant to their individual operations.</p>	<p>Supported, but should be strengthened. Should include both a voluntary as well as a mandatory component. If an agency/ public authority fails to act voluntarily, then ministerial guidelines may be imposed.</p>
<p><b>10.4</b> Maintain the existing ability to enter into voluntary management agreements with public authorities. Clarify and consider expanding the scope and purpose of these agreements.</p>	<p>Provides clarity and certainty to public authorities on how to meet the duty and a public statement of how a public authority is taking the Act’s objectives into account.</p>	<p>As above</p>
<p><b>10.5</b> Enable the preparation of biodiversity standards.</p>	<p>Provides guidance on how to most effectively manage specific species, areas or threats.</p>	<p>Supported, but more detail required on the type of standards or the scope of standards which need to be developed.</p>

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>10.6</b> Investigate providing powers for the Minister to:</p> <p>a) Request that a government department or public authority provides information to her/him as to how a particular listed threatening process or high value asset to biodiversity is being managed.</p> <p>b) Issue a ministerial direction to take action to address a listed threatening process.</p>	<p>DELWP is able to engage early to develop preventative approaches to support biodiversity.</p> <p>Public authorities benefit from clarity of expectations.</p> <p>Provides a role for the Minister to support implementation of the duty.</p>	<p>Supported.</p>
<p><b>10.7</b> Consider strengthening the existing duty on public authorities, for example by requiring <i>consistency</i> with the objectives and principles of the Act.</p>	<p>Creates a stronger obligation on public authorities under the duty as it requires an authority to act consistently, rather than merely have regard to, the objectives and principles of the Act.</p>	<p>Support this. There must be a clear requirement for actions to be 'consistent' with the Act, rather than just 'having regard to'.the Act.</p>
<p><b>10.8</b> Investigate options to further improve the consideration of biodiversity across government. This could be achieved with a schedule of relevant decisions under other legislation that must have regard to biodiversity, or by amending other legislation to add biodiversity as a consideration in decision making.</p>	<p>Targets the duty by identifying specific decisions of particular importance for biodiversity.</p>	<p>Supported.</p>
<p><b>Biodiversity Planning (Ch. 4.3.1, pg. 44)</b> <b>Potential new biodiversity planning framework</b></p>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>11.1</b> Conservation Advices</p>	<p>Conservation Advices will be required for each listed species, community or threatening process within a specified period following listing.  Advices will include information on a species' ecology, its distribution and key threats to its survival.  For threatening processes, Advice will include an indication of the mechanism best suited to address the threat, such as investment in on-ground action or changes to policy or programs.  Advices will be aligned to those developed under the Commonwealth EPBC Act, and may not be required if a Commonwealth advice already exists.</p>	<p>Re 11.1, 11.2 and 11.4 We are not convinced of the usefulness of a three-level advice process:</p> <ol style="list-style-type: none"> <li>1. Conservation Advices</li> <li>2. Priority Actions</li> <li>3. Management Advices</li> </ol> <p>Given the acknowledged difficulty of maintaining a simple Action Plan process, it seems inevitable that one, if not two or even all of the above steps may not actually eventuate. A process to trigger a quick 'Conservation Advice' is a good idea, but then followed by a single second step might be more realistic. Some initial precautionary 'Priority Actions' could be incorporated in the Conservation Advice, then final Priority Actions established for the 'Management Advice'.</p> <p>Importantly, this will also facilitate the posting of critical emergency 'Priority Action' in step one if circumstances required it.</p> <p>In addition, re 11.1  Advices should also include clear recommendations for regulatory actions, required actions by public authorities and agencies, not just program or policy focus.</p> <p>Advices should be Victorian-based, irrespective of existing Commonwealth advices and should consider species at multiple scales – statewide, regional, local.</p> <p>Specific, local advice can be (and often is) different to , and may also trigger the need for up to date research to ensure best-known advice is gathered, recommended and followed.</p>

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>11.2</b> Priority action</p>	<p>Priority actions will be required to be identified for each listed species and community within a specified period following listing.</p> <p>Priority actions would be published following the publication of conservation Advices. They would be developed from an analysis of synergies and efficiencies across multiple species, threats and locations to identify the most beneficial actions. The information on priority actions could be published or provided in a publicly accessible database made available on DELWP's website.</p>	<p>See response to 11.1, 11.2 and 11.4 above</p> <p>It is unclear, what this actually it will look like. There is a danger in 'black box' approach to hard-wiring a set of standard 'priority actions'.</p> <p>This seems like an initiative to reduce departmental workloads as opposed to delivering best outcomes for threatened species. More detail is required here.</p>
<p><b>11.3</b> Biodiversity response planning</p>	<p>A landscape or area-based response to the Biodiversity Plan will be required. This will involve collaborative forums to bring together partners and stakeholders in an area of land or waters with a role in biodiversity conservation, such as government, public authorities, non-government bodies, such as businesses and community groups, and Traditional Owners.</p> <p>The forums will identify priority actions to contribute to statewide biodiversity targets. This will include actions to help biodiversity adapt to climate change and could enable greater recognition of species of cultural significance to Traditional Owners. The response will also capture commitments made to implementing actions and report on actions taken.</p> <p>DELWP will be responsible for ensuring that appropriate processes are in place to support a landscape or area-based response to the Biodiversity Plan, and for establishing the forums.</p> <p>General features of the proposed biodiversity response planning process will be described in the final Biodiversity Plan.</p>	<p>Interesting idea, and supported.</p> <p>The plan however needs to do more than just plan, but rather have some regulatory tools, which assist with delivery. These could range from direct regulatory measures through to co-regulatory, voluntary and funding commitments.</p> <p>In some circumstances, there are benefits in having an approach which gives stakeholders an opportunity to take action either voluntarily or incentivised action, but it needs a mandatory component if outcomes fail to be reached.</p>

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>11.4</b> Management Advice</p>	<p>Management Advice will be developed for some threatened species or threats that require specific attention. It is expected these will only be needed in limited cases.</p> <p>Criteria will be established to determine when these Advice are needed.</p> <p>Management Advice will be similar to an Action Statement.</p>	<p>Not clear, more detail required.</p> <p>More detail required around these criteria, particularly How/When will it be determined which threatened species/community/process requires "Specific attention" – what are examples of these 'limited cases'?. Who will determine the need.</p>
<p><b>Statewide Biodiversity Plan (pg. 46)</b></p>		
<p><b>12.1</b> Require the Biodiversity Plan to specify statewide biodiversity targets. Require a five-yearly evaluation and 10-yearly renewal or re-endorsement of the plan.</p>	<p>Provides a more effective framework to review and renew the Biodiversity Plan.</p>	<p>Agree. But need a clear process for review spelt out.</p>
<p><b>Biodiversity Planning Framework (pg. 46)</b></p>		
<p><b>12.2</b> Require publication of a conservation advice for each listed threatened species, community and threatening process within a specified period following listing. A transition process will be needed for items already listed under the Act.</p>	<p>Ensures information on threatened species, communities and threats is made publicly available in a timely manner.</p>	<p>Supported.</p>
<p><b>12.3</b> Require priority actions to be made publicly available for each listed threatened species and community within a specified period following listing. Priority actions would be published following the publication of conservation Advice</p>	<p>Ensures conservation efforts are efficient and effective and maximise benefits for biodiversity</p>	<p>Not sure. More information required and what 'efficient and effective' mean in this context.</p>
<p><b>12.4</b> Enable preparation of management Advice for specific species or threats where warranted.</p>	<p>Captures the needs of species and threats that require specific attention.</p>	<p>Not clear, more information required.</p>

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>12.5</b> Require a landscape or area-based response to the Biodiversity Plan.</p>	<p>Facilitates a shift to landscape or area-based planning approaches that can maximise benefits across multiple species, drive restoration of important habitats, and better address the impacts of climate change on biodiversity.</p> <p>Enables government and non-government bodies to make commitments to action and contribute towards statewide biodiversity targets.</p> <p>Improves co-ordination and collaboration between government, public authorities, non-government bodies and the broader community</p>	<p>More information required on what this will look like.</p> <p>Not convinced that the shift to landscape based planning, by itself will deliver any additional benefits for species. It could in fact water down responses in many instances.</p>
<b>Responding to environmental change (pg. 46)</b>		
<p><b>12.6</b> Investigate establishing an independent conservation advisory committee or expand the functions of an existing body to provide advice in response to environmental change. Enable the Minister to request advice from this body on how to respond to environmental change or emergency events that significantly affect biodiversity.</p>	<p>Enables the Minister to receive independent advice on how to best respond to significant risks or environmental change affecting biodiversity, such as fire, flood or drought, which can reflect the costs, benefits and trade-offs of options.</p>	<p>Supported</p>
<p><b>12.7</b> Investigate establishing criteria to guide when the Minister may seek advice from the independent conservation advisory committee. This could include thresholds, such as an imminent threat to the survival of a species, that would trigger mandatory action from the Minister to seek advice from the committee or take other action.</p>	<p>Establishes the circumstances when the Minister would request advice from the committee.</p>	<p>Supported.</p> <p>Should include both option for mandatory referral actions under certain circumstance and discretionary referral by minister.</p> <p>More detail required on specific circumstances.</p>
<b>Listing threatened species, communities and threatening processes (Ch. 4.3.2, pg. 51)</b>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>13.1</b> Adopt the Common Assessment Method [see pg. 53 for detail]. This includes:</p> <ul style="list-style-type: none"> <li>• using international standards for classifying the conservation status of species (e.g. critically endangered, endangered, etc.)</li> <li>• the capacity to adopt assessments made by other jurisdictions that are relevant to Victoria</li> <li>• rationalising the listing of threatened species in Victoria by shifting to a comprehensive list under the Act and retiring the advisory lists.</li> </ul>	<p>Improves consistency across Australia when assessing the eligibility of species for listing as nationally threatened.</p> <p>Achieves efficiency gains and avoids duplication through the ability to adopt assessments undertaken by other jurisdictions.</p> <p>Avoids duplication in Victoria by rationalising the advisory lists with the Act's threatened list.</p>	<p>Supported</p>
<p><b>13.2</b> Establish a new requirement for DELWP to ensure the list of threatened species, communities and threatening processes is maintained in a comprehensive state.</p>	<p>Addresses the problem that the Act's threatened list is incomplete due to a lack of public nominations.</p>	<p>Supported.</p> <p>With the rise of citizen science, should also include requirement to ensure that efforts are made to consider appropriate 'other' data for species and improving data collection in Victorian Biodiversity Atlas.</p>
<p><b>13.3</b> Investigate establishing criteria for defining threatened communities.</p>	<p>Enables communities to be identified more readily on the ground.</p>	<p>Supported, but more detail required about what the criteria look like.</p>
<p><b>Habitat Protection and Regulation (Ch. 4.4, pg. 54)</b></p>		
<p><b>Critical Habitat</b></p>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>14.1</b> Provide criteria to define critical habitat (these would be prescribed in Regulations made under the Act).</p> <p>Consider broadening the concept of critical habitat to include areas important for maintaining ecological processes.</p>	<p>Improves the ability to identify and map critical habitat.</p> <p>Provides a more preventative approach to the protection of threatened species and communities and enables protection of areas that help species adapt to climate change.</p>	<p>Supported, but detail required on ‘criteria’</p> <p>Support the idea of broadening to include maintenance of key ecological process.</p> <p>There should be an additional tool, broader than just ‘critical habitat’.</p> <p>The existing FFG act has in part failed due to having too few tools. It has often accused of using a sledgehammer to crack nuts. There is a danger that by relying only on a revamped critical habitat model, it will repeat the same mistakes.</p> <p>We suggest cascading regulatory tools with a range of differing obligations. For example:</p> <ul style="list-style-type: none"> <li>• Critical habitats</li> <li>• International and Nationally Significant landscapes</li> <li>• State significant landscapes</li> <li>• Important local places</li> </ul>
<p><b>14.2</b> Require the Secretary to establish a program to identify and map proposed critical habitat areas across the state on public and private land.</p>	<p>Places an obligation on the Secretary to identify potential critical habitat. Improves the consistency, fairness, and transparency of the process for identifying and declaring critical habitat.</p>	<p>Supported</p>
<p><b>14.3</b> Modify the regulatory controls for critical habitat to require a permit for activities that may damage the habitat. Investigate replacing Interim Conservation Orders with alternative compliance mechanisms.</p>	<p>Establishes effective, reasonable and proportionate regulatory controls over critical habitat to control activities that may harm these areas.</p>	<p>Supported</p>
<p><b>14.4</b> Require the Secretary to take all reasonable steps to enter into voluntary management agreements with owners of land containing declared critical habitat.</p>	<p>Fosters a collaborative approach to the protection of critical habitat that encourages participation, is flexible, and capable of addressing landowners’ aspirations for their land.</p>	<p>Supported</p>
<p><b>Native Vegetation</b></p>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>14.5</b> Provide the ability for the illegal removal of native vegetation to be enforced under the Act.</p>	<p>Improves compliance and enforcement arrangements for the illegal removal of native vegetation on public and private land.</p>	<p>Supported, but should also include other types of habitat not just vegetation e.g wetlands, rocky landscapes, marine, coastal etc.</p>
<p><b>Other habitats and threatened communities</b></p>		
<p><b>14.6</b> Investigate establishing an offence to damage habitat of threatened species or communities without a Permit (that would operate in conjunction with the existing offence relating to take of individual species).</p>	<p>Improves the effectiveness of the regulation of threatened species and communities under the Act.</p>	<p>Supported. Needs to be clear that it applies to public and private land. Also some thought need to be put into how this could be drafted to include such things as the water column in the marine context, or flow regimes in rivers or wetlands.</p>
<p><b>14.7</b> Require the Secretary to publish and periodically update habitat importance maps for rare and threatened species, showing the locations of important habitats for these species. These are proposed to include the most important locations for species that rely on habitats that are not vegetation or do not meet the definition of native vegetation under the planning system.</p>	<p>Ensures information on the most important habitats is available to inform decision making across government.</p> <p>Improves the protection of habitat types that are currently given limited protection under Victoria's regulatory system.</p>	<p>Strongly supported, as above.</p> <p>However there needs to be caution taken in any publication of locations of highly collectible and/or tradable threatened species, such as reptiles and orchids. The revised Act should not mandate critical habitat information in such instances if it facilitates illegal collection of species.</p>
<p><b>Regulation (Ch. 4.4.2, pg. 58)</b></p>		
<p><b>Protected Flora</b></p>		
<p><b>15.1</b> Retain the ability to declare and maintain a list of flora that is not threatened. Consider specifying categories of declared flora and establishing eligibility criteria for each category.</p>	<p>Provides clarity about why native flora may be declared protected under the Act and a more accountable and transparent process for making declarations.</p>	<p>15.1 and 15.2 We are not sure why it should be necessary to allow the collection of native flora at all, as:</p> <ol style="list-style-type: none"> <li>1/ Native flora needed for commercial use should be easy to grow on agricultural land.</li> <li>2/ Protection of native flora is not just a matter of whether it is approaching threatened status – it is also a matter of protecting its broader ecological function. Many (most?) flora species should be present in large numbers to fulfil important habitat functions.</li> <li>3/ By simply disallowing commercial harvesting of native flora, there would be a significant saving in licencing, administrative and enforcement costs.</li> </ol> <p>Protection of the ecosystem function of species should be established in the Act.</p>

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>15.2</b> Amend the regulatory controls for protected flora so that flora subject to commercial harvesting and domestic use is regulated separately to any other categories of declared or threatened flora. Consider enabling some low risk commercial harvesting to operate under an enforceable code of practice.</p>	<p>Enables a risk-based approach to the regulation of flora declared protected that targets effort to where it achieves the greatest benefits for biodiversity consistent with Victorian best practice regulatory principles</p>	<p>See 15.1 and 15.2 note above.</p>
<p><b>15.3</b> Review the current protected flora list and place flora on the list in their relevant new categories.</p>	<p>Ensures the current list of flora declared protected is up to date and includes flora that warrant additional protection under the Act.</p>	<p>Unclear</p>
<p><b>Decision Making</b></p>		
<p><b>15.4</b> Establish decision making criteria to guide the consideration of permit applications.</p>	<p>Improves the consistency, accountability and transparency of the decision making process for granting permits. Clarifies the level of harm that is considered unacceptable so that impacts are avoided where possible and the outcomes of decisions are reasonably predictable.</p>	<p>Unclear</p>
<p><b>15.5</b> Provide clear guidance for applicants on the information that is required to support a permit application. Consider specifying application criteria in the Act or Regulations</p>	<p>Ensures decisions to grant permits are based on the best available information on the impacts of proposed activities and proponents are clear on assessment requirements so these can be factored into planning and unnecessary assessment costs are avoided.</p>	<p>Supported.</p>
<p><b>Strategic Approaches</b></p>		
<p><b>15.6</b> Introduce a strategic mechanism under the Act that enables the assessment and approval of the impacts and benefits of multiple or on-going activities under a policy or program.</p>	<p>Provides opportunities to improve biodiversity outcomes and streamline regulatory requirements and improves the implementation of Governor in Council Orders.</p>	<p>Not supported.</p> <p>Strategic assessments which have focused on a specific development or pattern of development, exploitation are flawed. If an approach is to be considered for cumulative impacts, this should be done on a bioregional basis. Replace strategic assessment with bioregional assessment.</p>
<p><b>15.7</b> Clarify the Governor in Council Order process, including the role of these orders in supporting the proposed strategic mechanism.</p>	<p>- None Provided -</p>	<p>Not supported. Unclear</p>
<p><b>Improving Performance</b></p>		

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>15.8</b> Investigate the suitability of using an ‘earned autonomy’ approach to regulating activities under the Act.</p>	<p>Encourages public authorities and businesses to achieve better biodiversity outcomes by performing beyond minimum regulatory requirements.</p>	<p>Not Sure. Could be considered as one step in broader co-regulatory approach, but would need to be looked at in context of whole package. ‘Earned autonomy’ will be hard to reverse when a business changes hands, or for some other reason reverts to bad practice. Any awarded ‘earned autonomy’ should have a sunset clause, and/ or be subject to a regular audit/review process.</p>
<p><b>Compliance and Enforcement (Ch. 4.4.3, pg. 62)</b></p>		
<p><b>16.1</b> Increase penalties for breaches of the Act to bring them into line with those in similar laws in Victoria and interstate.</p>	<p>Encourages compliance with the Act by increasing the deterrent to illegal behaviour.</p>	<p>Supported.</p>
<p><b>16.2</b> Introduce higher maximum penalties for offences committed by a corporation. The standard approach in Victoria is for maximum penalties for body corporates to be five times higher than for individuals.</p>	<p>Increases the deterrent to illegal behaviour to encourage compliance with the Act by corporations.</p>	<p>‘Five times’ higher than the penalty for individuals is still a very small penalty for a large corporation.  Otherwise supported.</p>
<p><b>16.3</b> Introduce imprisonment as a penalty for the most serious breaches, consistent with related legislation such as the Wildlife Act.</p>	<p>Encourages compliance with the Act by creating an additional deterrent to illegal behaviour.</p>	<p>Strongly supported</p>
<p><b>16.4</b> Consider introducing a tiered suite of enforcement tools including: • infringement notices • stop work notices • remediation notices • enforceable undertakings.</p>	<p>Allows for flexibility in the approach taken in response to non-compliance and for the response to be proportionate to the impact.</p>	<p>Supported</p>
<p><b>16.5</b> Improve the powers of authorised officers to enable them to: • seize plants or animals taken illegally (or other equipment used in the process) • release seized plants or animals to the wild • require plants or animals to be retained pending further investigation.</p>	<p>Improves authorised officers’ ability to gather evidence, halt ongoing non-compliance, improve survival and welfare of seized plants or animals and reduces costs of storing evidence.</p>	<p>Supported</p>

Potential Improvement	Rationale	VNPA Comment(s)
<b>16.6</b> Investigate introducing civil penalties for breaches of the Act.	Provides an alternative to criminal prosecution which allows for more flexibility of enforcement options.	Supported. Critical that there be opportunities for third party rights.
<b>16.7</b> Provide the ability for the illegal removal of native vegetation to be enforced under the Act (see section 4.4.1)	Improves compliance and enforcement arrangements for the illegal removal of native vegetation on public and private land.	Supported – also other habitat types should be considered. (eg non-vegetative habitats).
<b>Accountability and Transparency (ch.4.5, pg. 64)</b>		
<b>17.1</b> Require a five-yearly independent public report on progress in achieving the statewide biodiversity targets.	Enable the public and government to better understand progress in achieving biodiversity outcomes and facilitate changes to conservation approaches when progress is not adequate.	Supported – clarity required on how it fits with SOE reporting or catchment reporting. Perhaps consideration for streamlining.
<b>17.2</b> Reporting will be supported by a monitoring and evaluation framework under the Biodiversity Plan. This will ensure adaptive changes to conservation approaches (such as changes to priority actions or levels of investment) are implemented where necessary to ensure the targets are achieved.	[As Above?]	More information about clear targets etc. of the Monitoring and Evaluation Framework.  Independent oversight required to ensure proper process.
<b>17.3</b> Require a 10-yearly review of the effectiveness of the Act.	Ensures the Act continues to achieve its objectives and is responding to contemporary challenges for biodiversity.	Supported, but do not make it a sunset clause. The experience is that reviews are not done in a timely manner etc,e.g RFA reviews. So it should not be allowed to impact on the operation of the Act
<b>17.4</b> Specify consultation periods for important decisions made under the Act, such as: • Listing • Governor in Council orders • Critical habitat declarations.	Ensures public consultation on key decisions under the Act continues to be carried out.	Supported, more detail required.

Potential Improvement	Rationale	VNPA Comment(s)
<p><b>17.5</b> Require key decisions made under the Act to be made publicly available online (subject to privacy considerations), such as:</p> <ul style="list-style-type: none"> <li>• Listing</li> <li>• Permits/licences/authorisations</li> <li>• Governor in Council orders</li> <li>• Critical habitat declarations</li> <li>• Compliance and enforcement action taken.</li> </ul>	<p>Improves the transparency of the Act's administration which enables greater public awareness and participation in the Act's processes. Improves awareness of the Act's regulatory instruments such as Governor in Council Orders which may lead to improved compliance.</p>	<p>Supported. Clarification also on which one will be disallowable instruments etc.</p>
<p><b>17.6</b> Establish a mechanism to enable internal merits review of some important decisions made under the Act. This enables a person affected by a decision to have the decision reconsidered and made again by another decision maker within DELWP.</p>	<p>Improves the fairness of the Act's operation for persons affected by decisions made under it.</p>	<p>Supported, should be routine, but should not exclude review by an independent tribunal such as VCAT.</p>
<p><b>17.7</b> Consider expanding standing for the community to:</p> <ul style="list-style-type: none"> <li>• Seek judicial review of decisions made under the Act, such as granting of permits/authorisations.</li> <li>• Seek injunctions in court to prevent/halt a breach of the Act, such as illegal damage to critical habitat.</li> </ul>	<p>Improves accountability in decision making and enables interested persons to ensure decisions made under the Act have followed all the required processes. Enables the public to help enforce breaches of the Act and to prevent illegal impacts before they occur.</p>	<p>Strongly support. Should include:</p> <ul style="list-style-type: none"> <li>• Open standing provisions</li> <li>• Cost protections for public interest proceedings</li> <li>• Capacity for merits review.</li> </ul>

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<sup>i</sup> EDO 2008

<sup>ii</sup> Victoria Naturally Alliance 2007. Submission to Land and Biodiversity White Paper, June 2007

<sup>iii</sup> Victorian Competition and Efficiency Commission 2009, A Sustainable Future for Victoria: Getting Environmental Regulation Right, final report, July.

<sup>iv</sup> EDO 2008

<sup>v</sup> EDO 2012

<sup>vii</sup> EDO submission 2008, citing P Sutton.

<sup>viii</sup> VAGO 2009

<sup>ix</sup> The *Sustainable (Forests) Timber Act 2004 (SFT Act)* regulates the allocation of public-owned timber to Vic Forests and creates obligations to comply with certain management prescriptions in relation to threatened and/or protected flora and fauna. These specific management prescriptions are contained in the *Code of Practice for Timber Production 2014 (the Code)* and its 2 incorporated documents – the *Management Standards and Procedures for timber harvesting operations Victoria's State forests 2014 (Management Procedures)* and the *Planning Standards and Procedures for Timber harvesting operations in State Forests 2014 (Planning Standards)*. The Code was made under s31 of the *Conservation, Forests and Land Act 1987*, and the Management Procedures and Planning Standards are documents incorporated into the Code under s31(2) of that Act.

Section 46 of the SFT Act requires Vic Forests to comply with the Code Clause 2.2.2 (p34), 2.3.1 (p36) and 2.5.1 (p42) of the Code set out key provisions relating to biodiversity management, including mandatory compliance with the precautionary principle and a requirement to identify and address risks to biodiversity values prior to commencing timber harvesting operations. Cl 2.3.1.1 and 2.2.2.1 of the Code require Vic Forests to comply with the Management Standards (item 3). Cl 4.2.1.1 of the Management Standards requires Vic Forests to apply the management actions for rare and threatened fauna outlined in Appendix 3 Tables 13.

<sup>x</sup> *Management Standards and Procedures for timber harvesting operations Victoria's State forests 2014* and the *Planning Standards and Procedures for Timber harvesting operations in State Forests 2014*

<sup>xi</sup> EDO 2012

<sup>xii</sup> EDO 2008?

<sup>xiii</sup> EDO 2012

<sup>xiv</sup> EDO 2012

<sup>xv</sup> EDO 2012