The consultation paper, Review of the Native Vegetation Clearing Regulations sets out proposed improvements to Victoria’s native vegetation clearing regulations. While there have been some improvements to the permitted clearing of native vegetation in Victoria the regulations are in need of significant strengthening.

After a steady decline in the past decade vegetation clearing rates in Australia are again rising dramatically due to severe weakening of environmental laws by state governments (Wilderness News Autumn 2016). Victoria is the most cleared state in Australia, more than half of our native vegetation has been cleared and on private land 80% has been cleared. Protecting and managing what vegetation remains is the best way to ensure that habitat for native flora and fauna survives.

Native vegetation and its associated greater (Bennett et al 2008) biodiversity provide us with a range of environmental services including: clean air, fresh water, plant and crop pollination, soil retention, carbon sequestration and salinity management as well as aesthetic and recreational pursuits.

Yet state-wide ‘significance’ models to be used in the proposed regulations will not consider this importance when permitting clearance, or sourcing offsets. The existing and proposed regulations barely take into account any local values or observable on-ground conditions, particularly where Scattered Trees are concerned. In the Consultation Paper, Proposed Improvement (PI) 15 mentions the reintroduction of site-specific measures for the biodiversity value of Scattered Trees, however no detail has been provided on how this would be achieved. Under the previous native vegetation framework, associated pre-1750 clearance EVCs were used to provide information on Scattered Tree significance.

One efficient and effective way to include the significance of Scattered Trees is to require that all tree removal referrals include details of their trunk size, exact location and a photo. A smart phone App could help with this process. These supplied details would then assist referral authorities in considering the tree’s context, such as tree hollows, nests and age. This could also be fed into the existing Native Vegetation Information Management (NVIM) tool, which could automate the use of pre-1750 EVCs mapping already held by DELWP and help determine the appropriate conservation significance and offset. To ensure community and biodiversity values are suitably maintained within the local landscape where losses occur, regulations need to require that vegetation offsets provide a ‘Net Gain’ in protected vegetation and are like-for-like. They also need to be sourced, preferably, from within the same or adjoining Local Government Area before considering alternatives from either the same bioregion (second-best) or the same catchment (current approach). Any revegetation approach should follow the intent of the previous Native Vegetation Management Framework (DSE Appendix 4), which limited the amount of revegetation allowed to offset losses of higher conservation significance.

- We need an independent regulator.

Having native vegetation clearance regulations means government authorities, such as DELWP and local councils, have multiple roles, as they are responsible for both the clearance and the regulation of native vegetation clearance permits. This leads to potential conflicts of interest. Of particular concern is the fact that under the current government, clearance works, policy development and regulation are all housed within the same department - the Department of Environment, Land, Water and Planning. To help manage these potential conflicts of interest, there is a need for an
independent Native Vegetation Regulator, a role recommended to be established in the Victorian Competition and Efficiency Commission’s (2009) report into environmental regulations. Once established, this Regulator needs to be adequately resourced to make sure that governance, monitoring and reporting processes are all being followed appropriately by authorities to ensure public trust can be maintained.

- Not enough funding for compliance and enforcement.

The most important factor in ensuring regulatory compliance and enforcement (and therefore policy success) is adequate resourcing. If these regulations are to succeed where previous policies have failed there needs to be a genuine and public increase in compliance and enforcement actions, including support for councils that regulate the majority of clearance on private land. To ensure sufficient compliance and enforcement actions, the Victorian Government should make a clear commitment to financially investing-in and adequately resourcing DELWP and local councils. Currently, the best-resourced councils are those with the least amount of remnant native vegetation, e.g. Melbourne City Council vs a rural shire council, and vice-versa. The proposed changes are looking to increase reporting requirements, requiring council staff and resources that simply don’t exist, particularly with the commencement of council ‘rate capping’.

To provide a real disincentive to illegal clearance, penalties for non-compliance need to be increased to appropriate amounts and clearly articulated to the public.

Currently, in some cases, it can be cheaper to illegally clear native vegetation, even if a fine is issued by the relevant authority, than to go through the planning and offset process.

Public Infringement Notices also need be issued as a further disincentive to illegal clearance. These should be in conjunction with appropriate planning and enforcement media releases to help educate and deter e.g. NSW Planning Department and the Commonwealth Government. Penalties collected should be used to improve resourcing compliance and enforcement. It is understood that currently less than half of all native vegetation offsets go through the Credit Register, as they are secured using Section 173 agreements with local councils. The Victorian National Parks Association is supportive of the Department of Environment, Land, Water and Planning requiring all third-party offsets to be included on the Credit Register for ease of identification and certainty of availability.

The creation of a Conservation Zone in Victorian Planning Schemes to identify all areas secured as offsets, regardless of tenure or security arrangement. Such a Conservation Zone would clearly identify sites on public mapping, including any native vegetation offsets on Public land, where specific management is required in addition to existing statutory requirements. It would also allow for improved transparency and in turn facilitate better public awareness, monitoring, reporting and enforcement.

- The new policy is unmeasurable.
The reviewed clearing regulation’s objective is for ‘No Net Loss in the contribution made by native vegetation to Victoria’s Biodiversity’. This cannot be measured and reported easily or effectively. The Department of Environment, Land, Water and Planning’s current Draft Strategy Protecting Victoria’s Environment - Biodiversity 2036 defines biodiversity as:

...all the components of the living world: the numbers and variety of plants, animals and other living things, including micro-organisms, across our land, rivers, coast and ocean. It includes the diversity of their genetic information, the habitats and ecosystems within which they live, and their connections with other life forms and the natural world. The regulations must have clear and measurable objectives to determine losses or gains in native vegetation ‘contribution’ to Victoria’s Biodiversity (as defined above). To achieve this a clear definition of the term ‘contribution’, as well as a baseline measurement for ongoing comparison, is required. The previous ‘Net Gain’ policy’s overarching objective was for ‘a reversal, across the entire landscape, of the long term decline in the extent and quality of native vegetation’. Under this objective, changes in vegetation cover could be assessed using remote-sensing data collection in combination with vegetation community mapping to determine the extent of any losses.

To be part of a ‘good regulatory system’, policy must be transparent, accountable and performance-based (see the Victorian Guide to Regulation). The Consultation Paper proposes to use computer modelling of a select group of threatened species as the basis for determining which areas of native vegetation are ‘significant’ and can potentially be given protection under the regulations. The policy does not state how this will be measured or reported. If a set of threatened species are used, then at the very least the regulations need to ensure consistent and regular species monitoring, along with the submitting of the modelling to a peer-review. There should also be at least annual updates of computer modelling and reporting on these species’ persistence across Victoria. A review of the number and status level of threatened species in Victoria is also required to determine the success of the regulations. This review should be presented annually to the independent regulator.

The current Victorian Government made an election promise in 2014 that it would review the Permitted Clearing of Native Vegetation(DEPI, 2013) with a view to ‘sensibly protecting sensitive vegetation’. Native Vegetation Clearing Controls were first introduced to Victoria in 1989, and the introduction of ‘Net Gain’ in 2002, with a regionally-based focus on endangered species and vegetation communities used to determine an area’s conservation value. This approach also put a value on Scattered Trees in the landscape, and enabled specific revegetation targets for losses. Numerous independent reports to government, including the Victorian Catchment Management Council’s Catchment Condition Report, the Victorian Environmental Assessment Council’s Remnant Native Vegetation Investigation, and the 2013 Victorian State of the Environment Report have all referred to the vital importance of keeping remnant native vegetation. This current review comes after the previous state government weakened clearing regulations in 2013 by changing the focus from a regional to state-wide approach, streamlining’ the clearing and permit process, shifting the intent from one-off ‘Net Gain’ to ‘No Net Loss’ in native vegetation, and relying on the provision of native vegetation offsets to make up for removals. The current policy set by the previous government also moved away from valuing Large Old Trees and threatened vegetation communities, relying almost solely on the use of computer modelling and demonstrably-flawed mapping products
for fundamental decision making. These mapping products in particular have been criticised from all quarters.

Let’s finally get the balance right the solution will not only help us meet our international commitments, it will have multiple flow on effects for our threatened plants and animals and create a landscape that is resilient and adaptable in the face of an unpredictable future.

Sincerely