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Submission into the review of the Flora and Fauna Guarantee Act 1988

The FFGA was a landmark piece of legislation introduced by the Cain/Kirner Government in 1988. It set the standard for other countries nature conservation legislation.

To date the Andrews Government has shown itself to have a commitment to improved environmental policy, particularly with the recent legislation to ban fracking. We anticipate the review of this Act will be used as an opportunity to strengthen our legislative frameworks to protect threatened species and ecosystems and again lead the world.

However the FFG Act was never appropriately resourced and contains very minimal enforceable language or components. As a result of this the Act has remained a substandard tool for species protection.

EEG would like to see the revisions to this Act make the FFGA a model nature conservation act which other states (or other countries) would aspire to reproduce.

This Act must not be even further weakened through this review.

Environment East Gippsland (EEG) is a not-for-profit community organisation which has been working to protect the forests and environment of East Gippsland since the early 1980s. We have a membership of over 350 and a supporter base of over 1,000. Internationally renowned biologist Professor David Bellamy once described East Gippsland as having the most biodiverse forests he knew of on Earth.

Since Bellamy made that statement 30 years ago, East Gippsland's diversity has been partially reserved in national parks but has also suffered massive impacts from the logging industry and other poor land management practices. These threats remain.

East Gippsland is extremely rich in flora and fauna species, and is especially crucial for many rare and threatened plants, animals and communities. The protection of this richness has been estimated as being seven times more important than other areas in the state.

Ongoing threats to this region include:

- clearfelling in high value conservation forests,
- inappropriate coastal development,
- huge and unrestrained planned burns over important habitats
- chronically low flows in the Snowy River due to the Snowy Hydro,
- threats from mining and resource-extraction,
- poor catchment management and ongoing problems for streams and waterways
- multiple sources of water pollution which causes aquatic biodiversity losses and blue-green algae blooms
- the deepening of the Lakes Entrance bar which has seriously impacted the Ramsar listed area due to increased flows of salt water and
- devastating forest fires over the last 15 years.

Over the last decade EEG has worked to ensure that the spirit of the Flora and Fauna Guarantee Act 1988 (FFG Act) is adhered to in order to protect endangered species in East Gippsland. We have done this through working with the Department responsible for the operation of the Act and through the courts. Our legal actions were necessary when we believed the department and/or its logging entity VicForests, was not meeting its legislative obligations. Despite winning several cases we remain extremely concerned that rare and threatened species are being further endangered by ongoing activities (listed above), that no monitoring is carried out and there has been deliberate disregard of legislative obligations under various Acts.

The ambiguity and weakness of the FFG Act is a serious failing which we firmly believe must be corrected and the law strengthened. This chance to ensure our flora and fauna receive proper protection, research and decent

monitoring can't be understated or undermined. They need a *guarantee* of being able to survive and flourish as well as their populations restored to a level where the list greatly reduced.

Some of our legal cases have not relied so much on the FFGA but on the Sustainable Forests (Timber) Act, the Code and the EG Forest Management Plan. Their requirements were in fact far clearer and more effective than the FFGA Action Statements – where Action Statements existed.

Previous internal government reviews have shown the serious weaknesses in the FFGA which render it ineffective as a means to protect Victoria's species and ecosystems. The review must take these criticisms and recommendations into account.

Although some of the proposed changes outlined in the discussion paper would be welcomed, those which weaken this Act further with changes and omissions will mean the Act will again be unworkable and pointless. It will be a similarly expensive façade as the previous Act was. After so many decades the general public would love to see the balance shifted to favour our diminishing environmental values.

Comments on the proposals for changing the FFGA

1. The need for inclusion of the Precautionary Principle

This is a key environmental law principle and its absence from the proposals for improving the Act is a significant and glaring omission. In the Brown Mt case (EEG vs VicForests) 2010 Justice Robert Osborne cited the precautionary principle as a reason for the finding against VicForests. This is a recognised and important principle of environmental law and MUST be incorporated.

2. Removal of Action Statements

The discussion paper proposes that Action Statements be removed from the legislation. This would gut the Act, and make it even more toothless than it already is. We believe the detail and descriptions contained in AS are crucial to being able to protect individual species and habitats. The expertise and associated funding which once existed within the department could have produced the needed Action Statements and periodic reviews. Chronic underfunding of the department's teams of

biologists and expert staff has seriously diminished its capacity. It is essential to have this level of knowledge and skills to protect natural values and obtain crucial data that underpins the operation of the Act.

Unless such complimentary restoration of government expertise is reinstated, it calls into question the commitment of the Government to species protection. There is no avoiding the reality that to have an effective environment law, adequate resourcing for research, monitoring and enforcement is crucial. Without this, it would be like having road laws without ever policing them.

The determinations for listing must be also made on an informed scientific basis.

3. Transparency and Accountability

The consultation paper's suggestion for improved accountability is welcome. But to ensure transparency is effective, there would need to be created an office for an independent entity – a quasi 'Ombudsman for the Environment'. This would help to ensure that the suggested provisions of the Act are enforced and that there is independent monitoring of its implementation. As an example, updating and maintaining the state's Biodiversity Atlas would be one crucial part of the data needed to apply the FFGA. To update this, strategic surveys should be undertaken on a regular basis.

4. Strengthening of the Act

In this review process we urge the government to **strengthen the existing Act, rather than further weaken it.**

One of the various reasons the existing act is weak is due to it applying only to public land. As well, there are some categories of land use, such as forestry, which are exempt despite clearfelling and burning having the most devastating impact on natural forested catchments and their habitat which the government allows. We urge the government to broaden the scope of the Act to cover both public and private land, without any exemptions. Private land must come under this law.

Public land covers only 38% of the state with 62% being freehold. Private land that still retains natural values is therefore just as important for species and habitat conservation. Seeing the Act extended to cover

private land is also critical when we think about having the best legislative framework possible when responding to climate change. Species can't make a distinction between lines on a map or a boundary fence. Plants grow where there are optimal conditions, young faunal species need to disperse, some migrate, and others roam during breeding season. As pressure mounts on available habitat through burns and policies such as hazardous tree removal private land is essential to provide habitat. We need one set of rules that covers all players.

The Act can be applied to private land in the same way that the current Native Vegetation Clearing Regulations apply, and in fact could replace them. It could use a 'Maintain or Improve' test to strengthen clearing controls making them more strategic. It is also noted that the clearing of native vegetation is not listed as a threatening process under the FFGA 2016 list.

We also welcome the plan to require permits for any activities that could damage critical habitat, but would prefer this include all important or high value habitat, not simply areas listed as critical. This would be useful if based on the 'Maintain or Improve test'. This should also be the dominant legislation and prevail over other schemes and Acts, especially the Native Vegetation Clearing Regulations.

In conclusion:

East Gippsland supports a proportionately greater numbers of rare and threatened species than other regions of the state. The application of the FFGA in our area can be considered a 'report card' for its effective operation over the last thirty years. This report card is a straight fail. The Act has been too weak to protect rare and endangered species and habitats here. Our group has ironically been forced to use the Sustainable (Forests) Timber Act, to enforce protection of rare and FFGA listed species. Besides the seemingly deliberately weak wording of the legislation, the other key weakness of the Act has been its chronic under-resourcing by the department.

In 2017, 30 years since its creation and after hundreds of species have since been added and their status worsened, *reviewing the Act must result in it becoming strong and workable:*

- The *Guarantee* must stay and this time be acted upon and appropriately resourced.

- It must be extended to cover private land.
- There must be robust accountability and transparency mechanisms built into the new Act, such as the introduction of an independent entity to monitor its implementation and provide for its enforcement.
- The precautionary principle needs to be included in guiding decisions made about threatened species.
- Action Statements need to be retained and government obligations to create detailed and unambiguous protection plans met. Those existing Action Statements must be reviewed and updated as required.

It is the government's proper responsibility to protect threatened species. This authority is an international obligation under the IUCN. Our government's processes must therefore be internationally credible and workable.

The Andrews Government has a golden opportunity with this review to produce a piece of world-class legislation. If strengthened this legislation will give our natural systems and biodiversity the best chance it has to survive as the impact of climate change is being felt across all ecosystems.

This Act must not be even further weakened through this review.

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