

# Nillumbik PALs - Pro Active Landowners

/ DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING

## Review of the Flora and Fauna Guarantee Act 1988

### *Submission by Nillumbik Pro Active Landowners (PALs)*

*28 March 2017*

#### ENVIRONMENTAL CONTEXT

Although only 30 kilometres north east of the Central Business District, Nillumbik Shire sits on the northern fringe of Melbourne. Rural Nillumbik lies just outside the Urban Growth Boundary. Appropriately named a Shire, approximately 91 per cent of the whole land mass of the Nillumbik Local Government Area is rural. This includes a little over 6000 properties and families.

Much of rural Nillumbik is inappropriate for intensive urban development, and long-term Government planning has allocated the relevant parts of Nillumbik Shire the protection of being one of Melbourne's 12 green wedge areas. Rural Nillumbik contains a mix of agriculture, hobby farms, recreational and environmental properties and other low density activities, as is appropriate in a rural environment. The area is undulating, has variable soil quality, and is home to some areas of high environmental and ecological significance and value including some biodiversity conservation areas.

The Nillumbik Green Wedge includes major infrastructure in the form of Sugarloaf Dam. Although also containing Kinglake National Park and Warrandyte State Park, the Nillumbik Green Wedge differs to other green wedge areas in Greater Melbourne, as 79% is privately owned.<sup>1</sup> Rural Nillumbik does not have the availability of sewerage or town water across the vast majority of its area.

Of particular significance is Melbourne's peri-urban areas vulnerability to bushfires. The vulnerable area extends approximately 160 kilometres from the urban growth boundary to the outer rural boundary and is broadly recognised as one of the most bushfire prone areas in the world.<sup>2</sup>

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<sup>1</sup> The 12 Green Wedges surrounding Melbourne average 66% of landholdings owned privately.

<sup>2</sup> Buxton, Alvarez, Butt, Farrell, Pelikan, Densley and O'Neill. (2011) *Scenario Planning for Melbourne's Peri-Urban Region*, Melbourne RMIT;

Buxton and Haynes (2009) "To plan or Perish: preventative Planning for Bushfire Risk." *Planning News* 35; Gill, Stephens and Carey (2013) ""The world "wildfire" Problem", *Ecological Applications* 23(pp438-454).

## Review of the Flora and Fauna Guarantee Act 1988 Consultation Paper

### Consultation and information process:

- PALS has provided feedback on both this and the proposed amendments to the ***Native Vegetation Clearing Regulations***. It is not clear why DELWP did not combine these and the overarching and interconnected Biodiversity initiative into a single public consultation request in the first instance. This would have allowed for a holistic approach to legislative reform, a reduction in confusion and duplication, and the strategic consideration of the wholesale replacement of dated legislation rather than the current piecemeal approach to reform.
- The consultation paper constantly uses the terms “stakeholders say” “there is general support for” “many stakeholders” – without noting who these stakeholders are. PALS is aware that direct evidence supports the assertion that DELWP practice appears to be to engage with stakeholders who are sympathetic to agendae DELWP proposes. This is not genuine community engagement and our observation is that the practice appears to be endemic to DELWP’s review processes and to the formulation and review of much of the environmental regulation regime at State and local government levels. There is scant if any evidence provided to support statements DELWP makes about what stakeholders have actually said, how many said it, who they were or what was the support for the statement. In all cases they are statements that support a perspective. If they are taken from submissions to the Biodiversity and Native Vegetation workshops then there is an apparently obvious dearth or outright absence of engagement of major stakeholders such as rural communities, agricultural producers or mainstream environmental NGOs. Such an approach invalidates the consultation process when taken from the perspective of planning to legislate and regulate human and constitutional rights, rural land owner activities, the safety of rural communities and the social, economic and environmental sustainability of rural Victoria. Where there is no evidence base to support these types of statements, or the data is insufficient, they should be deleted and ignored for the purpose of legislative and regulatory review. Where there is an evidence base then this should be presented.
- A valid, transparent and inclusive public consultation process must be undertaken so that the broad views of all relevant stakeholders can be assessed, valued and incorporated into a comprehensive informing document. Where proposed legislation is to impact on private land owners it is reasonable that substantial or indeed the primary input to this legislation is that of private landowners.

### **Purpose of the *Flora and Fauna Guarantee Act 1988* (“FFGA”) and the effect of proposed changes are not consistent:**

- The range of potential proposed changes in the review of legislation and regulations needs to provide sensible, reasonable and feasible protection of native vegetation. The current iteration provides absolute protection for all native vegetation on private land outside the urban growth boundary of metropolitan Melbourne, and all flora and fauna listed by anyone for any purpose. This response is inappropriate and disproportionate.
- It is not possible to guarantee all flora and fauna survive and thrive and the act should not commit to something that is not achievable.
- The Act should limit its scope to key threatening processes, endangered and critically endangered flora and fauna and remove any reference to non-significant habitat, community, flora and fauna. PALs do not support the Act and subsequent regulatory application to all native vegetation, all flora, all fauna, all community and all habitat.
- PALs recommend DELWP consider including within the act a specific exclusion statement confirming that all native flora, fauna and habitat is to be considered not in danger or under threat unless specified on the endangered species and habitat list, and so exempt from the impact of this legislation and regulation.

### **Compliance and Enforcement is not evidence based:**

- There is no evidence provided in the review to support the assertion that the existing legislation does not provide a suitably strong deterrent to “illegal” behaviour. By increasing the scope of what constitutes illegal behaviour, the legislation and regulation requires additional compliance officers, additional penalties, additional imposition of rules. This may lead to additional distrust and conflict between government and rural land owners – an outcome which is neither desirable, nor has it been costed, modelled or demonstrated to provide benefit.
- Over the entire Nillumbik Shire (suburban, peri urban and rural), evidence from a recent investigation by Christopher Wren QC identified that council planning, environment and enforcement officers routinely breach their own Code of Conduct in their aggressive pursuit of land owners - for no benefit. An FOI request to Nillumbik Shire Council confirmed that over a 5 year term (2011 – 2015) a total of only 143 investigations were initiated in relation to claims of illegal vegetation removal. Of these investigations only 41 resulted in a fine being imposed, and all of these fines were the minimum fine available, which suggests they were nominal offences.

Over a 5 year term in the Shire of Nillumbik:

- 0.65% of properties were investigated over allegations of illegal vegetation removal; and
- 28% of the investigations, or 0.18% of properties received minimum fines.

This evidence indicates that existing legislation is appropriate and provides an effective deterrent for offending activity. It supports the assertion that an overwhelming majority of rural landowners protect and virtually always tend to serve the interests of their families and the environment. This further demonstrates that landowners do not wish to clear their vegetation, rather, the vast majority only wish to make their environment safe for their families, properties and livestock. So DELWP should take a more collaborative or conciliatory approach and attempt to develop positive relationships to assist, rather than seek new means to prosecute or even persecute, landowners.

## The Law, regulation, and Government Policy

- It is not clear why the principle of net gain is supported in the review of the Act. Current government policy supports no net loss. As DELWP is well aware, these are not interchangeable goals and until such time as government policy changes, DELWP should limit legislation to appropriately and faithfully support government policy. Net gain supports a regime of payment of financial penalties into the opaque offsets scheme where clearly inadequate accountability or transparency exists with respect to penalties or monies levied and/or funds spent. The Nillumbik Shire Council investigation undertaken by Christopher Wren QC found that the native vegetation clearing offset scheme requires investigation. It is not transparent, there appears to be limited accountability, it is poorly understood and provides opportunity for inappropriate behaviour and outcomes. PALs support the findings of Christopher Wren QC and recommend them to this review.
- Any legislative review (Figure 2 consultation paper) should be amended to include:
  - 1. **Country Fire Authority Act 1958 (Vic)**
  - 2. **Emergency Management Victoria Act 2013 (Vic)**
  - 3. **Commonwealth of Australia Constitution Act 1900 (Cth)**
  - 4. **The Charter of Human Rights and Responsibilities Act 2006 (Vic)**
- Any and all native vegetation, land use planning and environmental legislation and regulation should be specifically subservient to the abovelisted legislation. To protect the safety of rural Victorians, PALs recommend EMV be recognised as an endorsement body for any and all regulation, guidelines, procedures, recommendations and decisions made by DELWP around environmental conservation in fire-prone areas so that rural Victorian residents can have a degree of reassurance that bush fire preparation has been accommodated and human safety, survival and viability has been promoted and prioritised prior, to the Minister being briefed.
- The proposal should include consideration of:
  - Human rights;
  - The primacy of human life;
  - Individual private property rights;
  - Reducing the regulatory burden on rural residents and landowners by removing any duplication, simplifying process and reducing the private cost burden of bureaucracy; and
  - All elements and potential impacts of climate change and issues raised by the Climate Change Council.

- The *FFGA* currently requires that the Minister not consider social, economic, safety or other consequences of decisions, not consider Traditional Owners or landowners in making decisions, and that the Minister make decisions on the basis of the environmental considerations to the exclusion of all other considerations. This is, in a broader policy context, entirely unacceptable. Environmental decisions for government exist within the context of government's role being to provide for the safety and prosperity of communities as well as the environment and should be mandatory that all decisions are made within this context.
- It is of concern to PALS that the proposal is that the "Secretary" be empowered with sweeping authority across broad sections of the proposal. Government department practice includes the delegation of powers and responsibilities, and these powers and responsibilities rely on briefing material from subject matter experts. PALS is concerned that subject matter experts at DELWP are demonstrably and disconcertingly expert in the development of environmental proposals that are not appropriate, not fit for purpose, and are likely to present a significant risk and danger to rural Victorians. The creation of policies or plans that gather information from limited perspective but have a wide reaching impact over a range of disciplines will lead to skewed and bias decision-making. Demonstrated expertise in the provision of balanced, appropriate, independent advice to the Secretary to exercise their authority is needed. PALS oppose expanding Secretary powers on this basis.

### **Other considerations and changes**

- The proposal claims to support shared responsibility but, in fact, it does not. It imposes a crippling regulatory and compliance burden on rural residents. It is likely that the proposal breaches the four Acts noted above, and it is certainly discriminatory against people living and working in areas outside-the urban growth boundary of metropolitan Melbourne.
- All DELWP proposals viewed to date by PALS promote the penalising of landowners rather than partnering and supporting desirable practices. This culture is disturbing. Further, the imposition of financial penalties appears to be an attempt by DELWP to shift the full funding of these proposals from government to private land owners with no compensation for the imposition, and with no evidence funding is likely to be fulfilled.
- The government policy emphasis of no net loss should be the guiding principle in relation to all applications for permits. The use of cash transactions should be avoided: particularly where there is no transparency and accountability as to the use of any monies collected, and the collection/enforcement agent and the distribution/sales entity are the same, as this is a direct financial conflict of interest (as is the case in Nillumbik Shire Council). The only acceptable form of "transaction" should be using the currency of vegetation. In rural Victoria, all permit application requirements should be worked on the principle of replacing vegetation with vegetation and should be restricted to replacing vegetation on the properties that are the subject of any application in the first instance or through private bilateral arrangements.

- The proposal should appropriately :
  - recommend incentives that are meaningful to rural landowners;
  - provide evidence supporting the heritage conservation for nature “incentive” legislation and regulation including how many properties have voluntarily transitioned, how many have been forced to and how many have chosen not to participate so that the viability of this scheme is confirmed, or otherwise; and
  - mandate the requirement for a fully costed social, economic and environmental impact assessment to support any action and recommendation to inform decision making in legislation and regulation including these proposals.
- PALs support the *FFGA* including reference to the importance of involving Traditional Owners. PALs also support the *FFGA* including an acknowledgment of the importance of involving all rural property owners in a positive and constructive way.
- PAL’s acknowledge that Traditional Owners have a strong and constructive role to play in the proper preservation of both habitats and flora. There is a strong history of traditional owners and their generations of experience with country including the creation of natural spaces with broad areas of grasslands through regular cool burn regimes. Their land-use led to the consequential outcome of the minimisation of the likelihood of catastrophic bushfire events through a managed environment. This is what, in reality, has evolved over thousands of years of traditional owner stewardship.
- PALs believe that the recognition of indigenous rights vis-à-vis endangered species protection is the first step in the broader recognition of human rights considerations relative to the environmental management paradigm. In the extreme fire prone rural setting of south-eastern Australia this relates to a substantial body of human rights law and the manner in which it is applied to the right to protect person and property from destruction.
- In consideration of a risk based approach, rural Victorian fire events are expected and predictable and as such it is appropriate that the legislation require the appropriate routine and regular active management of public and private landholdings across Victoria to reduce the incidence and severity of bushfires as well as limiting their spread. Consideration of pyro-diversity is likely to significantly improve the ability of native flora and fauna to survive and thrive.
- It is essential that all Key Threatening Processes are considered in rural Victoria including all pest species (rabbits and deer) and all feral animal species (foxes, dogs and cats). In addition legislation should further consider how better protection for fauna from these ever present threats can be achieved.
- The legislation, regulation and guidelines should use evidence to inform decisions. Where public opinion is relied on it must be from the full range of interests and stakeholders, not simply one sympathetic conservation based view.

- The proposal is very vague in relation to the crossover between vegetation areas of significance, vegetation areas that are of no particular significance and the wildlife “communities” that may, or may not, use these areas for hunting, foraging, nesting or traversing. For example, if a community of native field mice is discovered, their territory may cover just a few hundred square metres and may be a manageable target for preservation without any significant detriment to existing landowner uses. However, if a family or “community” of powerful owls or wedge tailed eagles is discovered, their territory may extend for up to 1000 hectares. If the proposal establishes a legal framework to protect the mouse community, it may well affect only a very small and contained area. If the proposal also establishes the same legal framework to protect the powerful owls’ or wedge tailed eagles’ community, it may well involve hundreds of hectares. The impact of the second scenario would affect possibly hundreds of landowners and potentially prohibit and severely restrict works and uses of all those affected landowners on their own properties. While this may have been appropriate when restricted to public lands, the consequences of any expansion of the statutory range onto private land has been poorly considered. In such a scenario this legislation may deliver overt control over all affected land under the guise of the protection of an endangered species.

It also once again raises the question of the tendency of regulators to elevate the conservation of charismatic megafauna over that of other less visual species. Given the clear and obvious use that migratory or wide ranging species such as birds of prey, foraging animals, hunting animals, water birds and water based animals make of the open grazing lands that currently exist for their ongoing survival and health, it is critical that existing land uses related to farming activities, dams, gardens, cropping and open areas be maintained, encouraged and valued as being an integral component of our rural environment.

### **The Management of Private Rural Land**

- PALS support, in principle, the management of private rural landholdings under the direction of a single, simple land management plan, where for a reasonable cost, owners outline the property use, future aspirations and intentions, condition and conservation land management activities and practices that will be undertaken on their property. Landowners should maintain their ability to pursue these activities as of right. PALS support an appropriate term for a land management plan being a period of 10 years, and support the automatic renewal of the plan at that time unless circumstances change, in which case a review of the plan can occur and be amended by mutual consent. Any land management plan must protect existing use rights. Any agreement must pay due regard and incorporate the appropriate guiding principles of proper property maintenance, particularly with a view to the minimisation of fire risk. PALS is of the view that no power should be given to DELWP or any other relevant authority to force any management plan upon landowners involuntarily.

- PALS do not support multiple land management plans for the same landholding. PALS do not support area and regional plans, action Statements, flora and fauna management plans, biodiversity plans, native vegetation plans or the requirement to use environmental specialists to prepare expensive and often unintelligible reports that provide no benefit to landowners in the ongoing management and maintenance of their private landholdings. PALS is of the view that the administrative burden of establishing “as of right” maintenance and management of private landholdings in Victoria should be as simple and affordable as possible for routine land management activities.
- In reviewing legislation, regulation, policies, guidelines and processes, DELWP should consider direct and indirect stakeholder input with the end result in mind. PALS are aware that there is a growing group of normally law abiding rural Victorian landowners that have already made public announcements to the effect that they will not comply with DELWP Biodiversity and Native Vegetation proposals or Flora and Fauna proposals. This suggests to PALS that the DELWP position, consultation process, change management program, and recommendations are critically flawed and DELWP community engagement processes should be recommenced and will need significant modification in going forward.
- PALS understand that the development of contemporary best practice environmental law works best when primary stakeholders are engaged to develop appropriate and respectful environmental protection for endangered and critically endangered flora, fauna, native vegetation and biodiversity. For private landholdings the primary stakeholder is the landowner and their families. They are the stewards, the champions and protectors of the land and are ultimately the individuals who make the choice as to how they will manage the land.
- DELWP’s clear failure to achieve any championship by private landowners to date is evidenced throughout the ongoing major review of Victorian environmental biodiversity legislation, regulation, policies, guidelines, initiatives, process and engagement. Meaningful stakeholder engagement needs to occur as a matter of priority in the best interests of all Victorians, endangered and critically endangered flora and fauna, private rural landowners, and Victorian law.

## Context

3.3 Table 1	
Guarantee	The objective to guarantee all flora and fauna can survive and flourish is admirable but unrealistic.
Content of Objective	<ul style="list-style-type: none"> <li>• Must include the primacy of human life</li> <li>• Should acknowledge traditional owners</li> <li>• Should acknowledge the past and ongoing rights of private land owners</li> <li>• Should acknowledge climate change</li> </ul>
Measurability	Objectives need to be able to be measured
Emphasis	The act should focus on the protection of native flora and fauna that is endangered or critically endangered. Objectives that seek to address past impacts and restore biodiversity are laudable but not an emphasis of the legislation.
Public authority duties	Public authorities are specialists in regulation and often favour easily implementable punitive based frameworks. They often avoid more subtle, difficult yet long-lasting tasks of influencing behavioural change. They are often constrained in regard to the undertaking of activities they are not required to do by law due to lack of resources.
Link to other provisions	Link to Human Rights, constitutional rights, safety and fire-preparedness.
Incentive program	There is evidence that the current incentive program appears corrupt, and does not provide an incentive as is demonstrated by the number of voluntary properties that have been handed over to trust for nature heritage covenants. If incentives are to be used they need to provide real value to those they target and the system needs to be transparent and accountable.
3.3.2 Table 2	
Scientific Advisory Committee	A Scientific Advisory Sub-Committee should be used to feed information into a more multifaceted Committee. This should include social, economic and environmental assessment and evidence as well as Climate Change Council input. The Committee should have dual responsibility and also report to Emergency Management Victoria.
Multiple Lists	Reducing duplication is one of the roles of contemporary government. Of significance are national perspectives, as well as the need to recognise that a national listing specificity may not be appropriate for all local areas, as flora and fauna species may thrive in some places and not others, or may be scarce in some areas whilst a pest or weed species in others
Listing categories and threatened species and communities	The Act should focus on the protection of flora and fauna of critically endangered and endangered species and delete any reference to non-significant status. This will reduce regulatory burden and duplication. Protection of vegetation, habitats and native animals should be through specific listing under the relevant legislation.
3.3.3 Table 3	
Critical habitat determinations	Delete the requirement for flora and fauna management plans on private land holdings as this duplicates existing land management plans. Delete - The Secretary can overturn any exemption – it is not clear why this is appropriate.
Public Authority Management Agreements	Delete – this is deeply concerning. Public Authorities are not required under the Act to prepare management agreements, and so most will not because it is not their core business. If this is a legitimate need, then the legislation should require it. If it is not, then delete the requirement altogether. Public Authorities include Local Government. Does this mean Nillumbik Council Officers can make a Management Agreement with DELWP without public consultation?
3.3.3 Table 4	Public consultation is not a requirement of the Act. This is understood but clarification and certain circumstances must be inserted so that, where appropriate, public engagement should be a requirement. Public consultation for regulation over public landholdings is appropriate. It is not as clear what appropriate public consultation is for private landholdings but it would appear reasonable that private landowners be consulted with and have input into any policy and law impacting upon their land. It would not be appropriate for public consultation with local environmental lobby groups to be a requirement of the Act for private landholdings, unless these bodies own the landholdings that are to be the subject of legislation or regulation.

3.3.4 Table 5	
Complexity	The regulatory system is needlessly and overly complex. Legislation and regulation should always make every attempt to integrate with other relevant statutes. For the <i>FFGA</i> this should require legislation, and regulation to: <ul style="list-style-type: none"> <li>• Be subservient to the CFA Act 1958 and the EMV Act 2013;</li> <li>• Minimise duplication of regulation;</li> <li>• Reduce the administrative burden on land owners, both public and private;</li> <li>• Promote and protect the primacy of human life and the safety and stability of all Victorians as per the Black Saturday Commission findings;</li> <li>• Promote human rights and support the constitution; and</li> <li>• Protect landowner rights and existing uses provisions.</li> </ul>
Risk base	The <i>FFGA</i> must consider and make decisions based on social, economic and community impacts as well as environmental impacts including the no net loss principle for landowners – so financial recompense for economic loss must form a part of decision making
Trigger for a permit	Permits must be a last resort and the requirement to apply for a permit should only exist for critically endangered and endangered species, and requirements for each permit be within the reach of the ordinary person.
Guidance on permits and Governor in Council Orders	If guidance is required, it suggests the requirements are too complex and should be simplified. There is too much of a burden on landowners impacted upon by proposals, no recognition of their rights, and no incentive for compliance. Some permit requirements border on state sponsored extortion.
Compliance and enforcement	There is no evidence that compliance and enforcement are lacking in existing regulation and much evidence that the compliance burden is far too restrictive, expensive and burdensome. In Nillumbik over the total of the last 5 years there have been 41 instances of successful enforcement orders (which is 0.18% of properties). In Nillumbik, it is normal for permit requirements to cost over \$100,000 almost all of which is environmental reporting and offsets, which for a residential home is blatantly and obviously ridiculous. PALS oppose any state sponsorship or support of public initiated enforcement. PALS experience shows that some minority environmental activist groups already take this role upon themselves, with no concern as to the danger their actions pose to life and property in the rural Nillumbik area.
3.3.5 Table 6	
Listing	The Minister must make decisions based on social, economic, community and environmental considerations, not on conservation matters only. The Scientific Advisory Committee should report all findings to EMV and CFA for consideration and based on social, economic, environmental and community considerations, EMV may refer a recommendation to the Minister
Action Statements	Should evaluate, assess, acknowledge and address all factors including social, economic, community and environmental factors in making decisions
Interim Conservation Orders	Should be used as a last resort and land owners must be assisted, supported and compensated for any delay in land use including the development of commercially appropriate acquisition order provision, in the event that conservation orders are sought over private landholdings. There is a lack of clarity around what decisions may and may not be open to appeal and this needs to be specifically addressed
Issuing of permits and licences	Only to apply for critically endangered and endangered species

3.3.5 Table 7	
Access to information	The offset scheme is an example of a lack of transparency where bush brokers are able to access vast sums and landowners very little recompense (PALs understand it to be as little as 6% of that available to bush brokers) for providing offsets.
Criteria for decision making	The lack of guidance to inform safe and appropriate decision making provides a platform for environmental activists to have the unfunded right to impose their ideology on private landholders across Victoria
Public participation	On private land the broader public has (appropriately) limited rights to challenge decisions and arguably, if they wish to achieve a particular environmental outcome on land, the community can exercise this right by buying the land and placing a heritage trust or Trust for Nature covenant over it. Community input to decisions on public land should be balanced rather than enforced by environmental activists in the first instance – it is public land.
Expert advice	Expert advice sought in social, economic, community and environmental impact assessments is currently extremely limited and should be broadened. All reports should go to the EMV for endorsement to provide for public safety. Referring to the Climate Change Council, accountants, actuaries and financial management specialists will enable the development of appropriate compensation and incentive schemes for landowners. Landowners, through their own expert advice, should also be able to have a constructive and meaningful input – after all they are the owners and stewards of private land holdings.
Partnerships with Traditional Owners, and Owners	Government needs to improve the way it engages with private landowners and traditional owners when considering legislation and regulation. This needs to happen at the first opportunity, be appropriate resourced, better coordinated and allow adequate time for genuine collaboration. Very low take up rates of voluntary heritage trust incentives and Trust for Nature covenants are evidence of a deeply flawed incentive and nature preservation system
Private landowners	The current system, and this proposal, ignores the rights of private landowners to own and manage property, undermines the economic stability of rural families by reducing the asset appreciation of rural land holdings outside the urban growth boundary and places rural land owners at risk of harm by exacerbating the risk of bush fire. This is not acceptable to private land owners.
4.1	The Act must recognise human rights to safety, property ownership and to live free from discrimination. The Act must also recognise and clearly acknowledge that private land owners have these rights. The Act should focus on species survival in the wild and that private landholdings are not the wild. Many of the existing uses related to private land in fact enhance and significantly contribute to the health and foraging / hunting capabilities of widely varied forms of native fauna already. This should be actively recognised and encouraged.
4.1.1 Objectives Review	Delete the requirement for biodiversity targets on private land Delete the requirement to restore and enhance biodiversity and focus on protecting endangered and critically endangered species Delete the requirement for securing the greatest possible number in the wild on private land – private land is not the wild, it is private land Delete promoting a landscape based approach to biodiversity planning and conservation action to maximise biodiversity benefit Add the involvement of landowners and the protection and promotion of private landowner's rights and government's obligation to protect these rights. It is not clear why fire events and droughts are noted within the context of unexpected events due to climate change. Neither event is unexpected in rural Victoria. Both events are totally predictable and can be planned for. The Climate Change Council provides absolute clarity around the expected climate change impacts and it is not clear why DELWP has not considered this. Include the importance of fire preparation and management activities on private and public landholdings to reduce the frequency and severity of bush fires to assist in protecting and preserving endangered and critically endangered species.

4.1.2 Principles	<p>Delete all potential improvements with the exception of the primacy of prevention and intergenerational equity</p> <p>Enhance the primacy of prevention to include the rights of land owners and that EMV will be an endorsement body for all recommendations, regulation and guidelines.</p> <p>Insert in the intergenerational equity the requirement for government to account for all decisions including compensation to landowners for current or future loss.</p> <p>Insert bush fire preparation and management activities to reduce the frequency and severity of bush fire events to assist in protecting and preserving endangered and critically endangered species.</p>
4.2 Coordination and integration	<p>Limit legislation and regulation to critically endangered and endangered species only</p> <p>Delete all other requirements</p> <p>Ensure this legislation, regulation and guidelines are subservient to the Emergency Management Victoria Act 2013, regulation and guidelines and the Country Fire Authority Act 1958, regulation and guidelines</p> <p>Limit the role of DELWP – DELWP has demonstrated a propensity to support and promote the environmental movement in Victoria and no ability to engage in the development of legislation, regulation or guidelines that support the constitutional, human rights, safety or equity of private landowners. This is dangerous and so the active role DELWP plays needs to be managed to provide for the social, economic and environmental protection of the environment in Victoria and those living in it. It is recommended this occurs by requiring DELWP legislation, regulation and recommendations are submitted to EMV in the first instance, and are subservient to the role of EMV and its agencies</p> <p>Delete all potential improvements with the exception on the guidance and information of how to consider biodiversity on public land, and critically endangered and endangered species</p> <p>Retain the proposal to take reasonable steps to avoid exacerbating listed threats, acting in accordance with Ministerial guidelines or standards and preparing standards for the management of public land.</p> <p>Delete any reference to strengthening the powers of DELWP. DELWP has demonstrated a tendency to represent the interests of minority environmental lobby groups and limited tendency to consider Australian or Victorian law, reduce bureaucracy, or plan for the safety and wellbeing of rural Victorians. Given this demonstrated position, PALS recommend all environmental legislation, regulation and powers be directed via EMV so that safety is appropriately considered</p>
4.2 Table 10	<p>Maintain the ability to enter into voluntary management agreements</p> <p>Delete all other changes</p>
4.3 Strategic Approach	<p>The Climate Change Council and EMV have specific forecasts to future likely emergencies and threats and there are few unforeseen events that are not considered in emergency response planning. DELWP should appropriately serve Victorians and the environment in considering this in their review of legislation</p> <p>Delete all other recommendations</p> <p>It is not clear what a listing threatening process is.</p> <p>Refer to previous comments about DELWP. Given DELWP's demonstrated position in relation to appropriate consideration of the law or the safety of rural Victorians, and their tendency to represent the interests of minority environmental lobbying interests, refer all decisions through EMV</p> <p>It is not clear, beyond the creation of employment opportunities in the environmental lobby movement in Victoria, what is the purpose of creating a whole new reporting arm of DELWP. Refer through Climate Change Council – they seem to be able to report now and it would reduce duplication, improve consistency of reporting nationally, and capitalise on this specialised resource that already exists</p> <p>Reporting should be rolled out to include all EMV prevention activities as these will have an impact on protecting flora and fauna and meeting regulatory responsibilities.</p>

4.3 Table 11	Delete all recommendations of change
4.3 Table 12	Private land owners own, and manage two thirds of land in Victoria. Much of this review appears exposed to being unlawful on a range of constitutional, human rights and safety grounds There is no evidence conservation and heritage trusts are successful and no evidence they have or are meeting performance targets None of the proposals provide a meaningful incentive for private landowners to practice positive behaviours Delete all proposals
4.3.1 including Table 11	Delete all potential improvements Limit the act to considering critically endangered and endangered flora and fauna Change should never be applied by stealth to private landholdings without compensation or provision for safety. Private landowners secure livelihoods against homes and DELWP undermines financial stability and personal security when private landowners experience enforced secretive changes in circumstances without knowledge, consent or compensation. DELWP seeks to include stakeholders with a role in biodiversity conservation planning but excludes landowners, who are the only parties with a role in biodiversity conservation planning on private landholdings. Delete Table 11 Delete Table 12 and Box 3 – this fails to reduce bureaucracy, supports duplication of effort and work, fails to engage landowners, fails to engage and refer to the Climate Change Council (Australia’s Climate Change specialist) and appears to support expanding the offsets scheme, which a Nillumbik council investigation suggests is not operating appropriately in the first instance and should be investigated. Box 4 deals with the S173 agreements and allocation of land for conservation status – there is no evidence this program is effective, although it is the preferred encouragement to rural landowners supported by the Victorian Government. It is not transparent. There is no reporting on features and benefits, targets or achievements. The Nillumbik experience of this (collective) program is that council staff bully, harass and threaten landowners and insist on delegation to and then compliance with this “incentive” for no benefit.
4.3.2	Delete all potential improvements Limit the act to considering critically endangered and endangered flora and fauna
4.3.2 Box 5	Limit the act to considering critically endangered and endangered flora and fauna Assessment is important, but the Nillumbik experience is that National to State to Local to Sub-Area provides opportunities to create restrictions not protect the environment – and this alienates landowners in rural areas

<p>4.4 habitat protection and regulation and Table 14</p>	<p>Limit the act to considering critically endangered and endangered flora and fauna and their habitats</p> <p>Remove any reference to regulation being fit for purpose – Victoria’s environmental legislation should be significantly reviewed, simplified, amended and reduced and should demonstrate a commitment to working with the Victorian rural community to achieve positive environmental change.</p> <p>Remove any reference to compliance and enforcement as there is no evidence that this commentary is factual – an FOI request of Nillumbik shows that over the 5 years to 2015, with council enforcement staff who routinely breached the council code of conduct more than 99.82% of property owners were compliant over the 5 year term. At the same time, penalties imposed as part of the standard permitting process are prohibitively expensive and onerous for land owners.</p> <p>It is not appropriate for DELWP to promote and share deception as part of stakeholder engagement programming to promote self-interest.</p> <p>Delete all potential improvements and exempt private landowners from any requirement to comply with threatened community’s changes.</p> <p>This document uses and readily interchanges the terms penalty, deterrent, encouragement and incentive, compliance and enforcement - they are not the same thing. Delete this section.</p> <p>Planned and regular ground fuel management and maintenance must form an integral part of any flora and fauna protection legislation for public and private landholdings and yet is not mentioned at all – this is -in PALS view- negligent.</p> <p>Definitions of communities should be reviewed as different fauna have different habitat reaches to consider – again, limiting the legislation to consider endangered and critically endangered species will provide clarity.</p> <p>Delete references to DELWP vegetation classifications – they are unintelligible – refer the PALS submission on Native Vegetation and Biodiversity (Attached with this submission).</p> <p>Delete any requirements for the Secretary to be required to map areas – this is DELWP building an empire for no benefit – mapping of endangered and critically endangered species has merit, the rest should be deleted.</p>
<p>4.4.2 Regulation and Table 15</p>	<p>Delete strategic approaches with the exception of streamlining approvals processes including across multiple regulation frameworks.</p> <p>Ensure regulation from DELWP is subservient to EMV and CFA and SES.</p> <p>Limit the use of Governor in Council Orders as the limitation of use at present is probably in support of the current use not considering social, economic, community and environmental grounds – which ignores safety and stability of communities which for the most part are rural communities.</p> <p>Delete the concept of earned autonomy. Experience in rural Nillumbik is that environmental planners routinely breach the council code of conduct and promote personal environmental views. If this is the case, a concept of earned autonomy provides the opportunity for corrupt environmental planners to reward their mates and act punitively to penalise everyone else.</p> <p>Delete the multiple lists – either flora and fauna is endangered or critically endangered according to an international definition used in Australia’s listing criteria, or it is not.</p> <p>Retain the risk-based approach of protecting flora and fauna on public land</p> <p>Delete all potential improvements with the exception of the establishment of decision making criteria to guide consideration of permit applications, limiting the scope to critically endangered and endangered flora and fauna and providing reasonable requirements that are able to be progressed by the average land owner</p>
<p>4.4.3 Compliance and table 16</p>	<p>The experience in rural Nillumbik is that public officers routinely breach their code of conduct and are insufficiently constrained in their exercise of legal processes</p> <p>This section is not supported by evidence and should be deleted in its entirety as it supports legislative reform being entirely dependent on an archaic command and control practice</p> <p>It is immoral for regulation to suggest civil penalties, where private land-owners are prohibited by law from pursuing civil action against DELWP, public servants and the Minister where inappropriately considered and where actions negatively impact on safety, human rights, property rights and constitutional rights and are discriminatory.</p> <p>Delete this section</p>

<p>4.5 Accountability and transparency and Table 17</p>	<p>Delete all changes proposed</p> <p>There is no place for the public to inform the use of private land as they have no interest in it.</p> <p>There is a place for all Australian and Victorian people to inform the use of public land, however this is not DELWP practice, DELWP common practice is to consult minority environmental lobbying interests how they would like land used, and act accordingly. It can reasonably be expected that these proposals, for no benefit, will</p> <ul style="list-style-type: none"> <li>• increase administrative and bureaucratic burden on rural land owners</li> <li>• increase cost to rural landowners of owning and managing rural land holdings</li> <li>• further reduce the economic value of rural land holdings</li> <li>• further exacerbate economic disadvantage in rural communities in Victoria</li> <li>• further exacerbate levels of distrust between rural communities and government agencies</li> <li>• further support the rural resident view that government agencies in metropolitan Melbourne are city folk who are inappropriately influenced by environmental lobbying interests who are also city folk</li> <li>• restrict existing land use rights on rural lands</li> <li>• increase the risk and danger of bush fire in rural communities</li> <li>• increase the risk of loss of life, property, flora and fauna in rural Victoria</li> <li>• undermine existing community engagement with government</li> <li>• undermine the safety of rural Victorian communities</li> <li>• undermine the equity of representation of rural Victorian land owners and communities</li> <li>• undermine public confidence in government</li> <li>• duplicate existing effort across a range of government agencies</li> </ul> <p>for no demonstrable benefit.</p>
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Nillumbik PALS commends this submission to the Department of Environment, Land, Water and Planning and welcomes any contact for further information or clarification.



Damian Crock  
Chair  
Working Group  
Nillumbik PALS



28 March 2017

Enc : ***PALS submission to the Review of Victoria's Native Vegetation Clearing Regulations dated 8 March 2017***



















































































