

Submission regarding the Victorian Government's Flora and Fauna Guarantee Act Review

I wish to make a submission with respect to the Review of the Flora and Fauna Guarantee Act 1988 as currently proposed.

This submission is broken into 2 parts: recognition of the problems facing our flora and fauna (why a better Flora and Fauna Guarantee Act is necessary), and what the current Review of the Flora and Fauna Act needs to achieve.

1. Recognition of the problems facing our flora and fauna (why a better Flora and Fauna Act is necessary)

The problems facing Victoria's native flora and fauna are extreme and diverse, with many having been well documented for decades. Whilst Australia overall has a poor record of maintaining its biodiversity, Victoria's record is dire.

Land clearing in Victoria has been the most extensive found in any state, with 50-70% of public land being cleared (along with 80-90% of private land). Such massive habitat loss has had immense impacts upon the biodiversity present before European settlement. Indeed more than 80 terrestrial species are already extinct, with more than 1000 individual species of flora and fauna currently being considered as threatened or critically endangered. When ecological vegetation classes or habitat types are considered instead of individual species, the situation is even worse as more than half of all Victoria's habitat types are considered as threatened. Eleven habitat types, and consequently their ecological communities, are listed nationally as endangered or critically endangered. Ecosystems are complex interactive and inter-related systems – habitat loss through vegetative removal also quickly reduces many of the fauna species present. Even what might be considered as minor changes in a given area, such as the removal of a single old hollow-bearing tree, can have significant, negative effects on species that require tree hollows for reproductive and shelter purposes.

Biodiversity loss from habitat destruction is particularly prominent when looking at ecosystems or species associated with specific water resources, whether the latter involve fresh, brackish, or marine water. Victoria's coastal and marine habitats, wetlands, rivers, and even small local water resources are often extensively degraded in various ways, affecting any associated flora and fauna species. Coastal areas, for example, often face competing demands, with commercial interests usually being given precedence over the demands of native flora and fauna. Indeed land development and recreational human

activities have severely impacted much of Victoria's coastline, with inadequate reserves and protections being set aside to protect our indigenous species. In fact, an example of how little the needs of our indigenous species (or community desires) are valued is to be found in the new but continued use of the beach for racehorse training in areas such as Belfast Coastal Reserve, despite the beach area concerned being a nesting area for the vulnerable hooded plover. Any human activity, however unnecessary in a particular area, takes precedence over the possibilities of extinction. Furthermore government decisions are often designed to appear as if concern is being shown whilst in reality there is none: in this particular example licence conditions are supposed to apply but these are difficult if not impossible to enforce.

Moreover approximately a third of our wetlands have been lost altogether and many of the rest are substantially degraded. Nor are our rivers in much better shape: close to a third of known rivers lengths are considered to be in poor or very poor condition. Even small local water resources often vital for wildlife (and particularly so in a warming world) can be severely degraded in diverse ways, with one example of such degradation being the increasing concentrations in the water of endocrine disruptors from the chemicals used in near-by agricultural production. Cutting-edge research is showing such endocrine disruptors can, and are, able to cause severe, negative, and long-term changes in local fauna species: a newer and previously undocumented risk to our wildlife.

Whilst such newer risks to our biodiversity appear, many of the risks (and the already parlous state of much of our native flora and fauna) have been documented for decades, yet Victoria's flora and fauna species continue to decline in both numbers and range because of a lack of effective and immediate action by successive governments. Scientific evidence and conclusions have continually been disregarded and long-term solutions ignored, much as the evidence for climate change was initially ignored or derided for decades. In both cases political expediency has continually taken precedence over empirical scientific evidence, so that the latter has not directed and informed effective decision-making aimed at the mitigation or reduction of the processes driving extinction possibilities (or climate change). Consequently both extinction probabilities and global warming continue to increase.

Science must be made a much greater contributor not only to governmental decision-making, and the policy represented by legislation, but to the implementation and enforcement of such policy.

Indeed the Victorian State of the Environment Report 2013 stated the most common threatening processes for native flora and fauna were habitat loss, weed invasion, grazing and inappropriate fire regimes. Knowledge of the factors causing extinction possibilities to increase means actions to help prevent extinction could have been taken but effective action has been consistently lacking. In fact this Report is only one of a long series of ongoing reports and reviews that include numerous Auditor-General Reports, peer-reviewed academic research papers, State of the Environment reports, community group assessments, and conservation and environmental organizations statements. All document

the fact that Victoria's native biodiversity, represented by its various indigenous flora and fauna species, is continuing to decline (often rapidly).

Given the many, many decades of scientific evidence concerning the state of Victoria's native flora and fauna, much of this decline can be laid at the door of inadequate responses by governance to an endless litany of empirical evidence that shows how Victoria's environment continues to be degraded and destroyed. It is vital that the Review of the Flora and Fauna Act improves upon past responses by governance so that a stronger, more focused approach breaks the pattern of failure and deficiencies that have occurred so far. This is especially the case as new threats such as climate change and changing agricultural chemicals shall continue to impact upon our species and habitats.

Indeed listing some of the systematic flaws that have been highlighted by the above reports may help in strengthening my case for some changes in the proposed Review as it currently stands, as many of the problems seem to indicate a lack of political will and focus in prioritizing the needs of our environment and our native species rather than a lack of scientific evidence as to what needs to be done. There seems to be a low political commitment to the environment endemic to both major political parties in Victoria.

This lack of effective commitment has been demonstrated by extremely inadequate funding, weak laws and even weaker enforcement of what laws there are, poor co-ordination between various governmental departments, and a lack of integration between laws, administration, and overall planning. Report after report has criticized such deficiencies without any major governmental response that ensures better environmental governance. Nor have resources such as community groups and citizen science been utilized and supported.

2. What the current review of the Flora and Fauna Act needs to achieve, and how improvements to the Review are necessary for such achievements.

Obviously the changes in the Review of the Flora and Fauna Guarantee Act should be such as to render it more effective in stopping the decline in Victoria's native flora and fauna species. Greater funding, more realistic enforcement of the Act, and more relevant actions such as management plans must also be incorporated and accompany any changes to the Act.

Not only must the Review greatly improve the importance given to biodiversity in government decision-making, and increase critical habitat provisions, but the provisions of the Act should also apply across, and to, the various government departments and industries found in Victoria.

Yet, as it currently stands, the Review displays weaknesses with respect to a strong standard of protection being offered to all threatened species without exemptions, so that the Act remains able to be disregarded in certain cases by both private and public authorities. This is unacceptable. Exemptions have already played a crucial role in

diluting the current Flora and Fauna Act so that it becomes meaningless in practice in given areas, as illustrated by the operations of both VicForests and VicRoads.

Indeed the operations of VicForests by itself clearly indicate why such exemptions and special status should not be made for government departments. Without such exemptions, greater public scrutiny and better accountability within the relevant government departments could occur, with benefits not just for our wildlife but for the better use of taxpayer money. The 2009 Supreme Court Brown Mountain logging case clearly displayed poor management of logging by VicForests and this case is not a single isolated example of poor management. Indeed the Age (23/5/15) reported that internal government documents considered “Logging in East Gippsland is not commercially viable and cutting down native forests across the region is racking up losses of up to \$5.5 million a year” but, despite this, the logging was not stopped immediately. It would seem that the logging industry possesses a corporate culture concentrating upon only one factor (ever more logging) and fails to remember other government priorities. If exemptions did not occur and permit applications were required, they would bring in the ‘bigger picture’ of more embracing and wider government and community priorities. Such priorities would include both our remnant native vegetation (in the way of Old Growth forests) and a healthy but sustainable economy.

To make the same point again, the Sydney Morning Herald, as far back as 12 September 2011, reported that research published in the prestigious peer-reviewed US journal the *Proceedings of the National Academy of Sciences*, disclosed that continued logging over the decades (and bushfire) meant nearly all the Central Highlands old-growth forest was gone and that this type of Mountain Ash forest was on the verge of becoming unrecoverable, given the associated and enormous reduction in the number of trees present. Yet the old growth mountain ash forest is crucial not only for biodiversity but for Melbourne’s catchments. Despite this, and ignoring this report and its findings, the logging went on, protected by exemption from any effective permit process involving the necessity of listed empirical data and public scrutiny. Logging is still happening today, five years later, although recent Federal intervention has slowed logging in some habitat areas of the now critically endangered Leadbeaters Possum.

Another, more historical example of poor management, occurred when the then DSE wrongly claimed there was more timber in the Wombat Forest than actually existed, despite queries by those ‘on the ground’. The situation was eventually resolved when anti-logging protestors paid for satellite imagery that showed the protestors were correct and the timber claimed by the department was not there. The current Review, still granting exemptions, does not seem to solve the difficulties created by such logging activities not receiving the scrutiny of a permit process. The result is that Victoria’s own faunal emblem – Leadbeaters Possum (the only species in the petaurid genus *Gymnobelideus*) - is now **critically** endangered because of habitat loss through logging that continued in its known habitat areas until Federal intervention occurred.

The operations of Vic Roads also show why exemptions should not occur, as without the need for a permit, a focus or awareness on biodiversity is often completely absent. Yet a

major example of the importance of government departments paying greater attention to the retaining of native vegetation remnants is displayed by road and railway reserves. Such narrow and seemingly insignificant areas of public land often form crucial habitat areas: in three of Victoria's bioregions more than 15% of the native vegetation remaining on public land is found *solely* within road reserves and, overall, public land road reserves contain approximately 570000 hectares of native vegetation. Yet conservation values do not always operate in the maintenance of these areas and the various responsible authorities do not always seem aware that conservation values associated with these reserves even exist (and it is a sad commentary on how Victoria has protected its biodiversity that such narrow remnant areas should even be so vital).

If exemptions were not given, the authorities responsible for roadside reserve operations would have to check to see if conservation requirements exist, so that any actions taken could be modified accordingly (just as authorities in built up areas must check to see if infrastructure such as pipelines exist). Again, the proposed Review, by allowing exemptions, also allows the problems of the past to continue.

Indeed, according to the Victorian National Parks Association, "In addition to the direct losses from exemptions, the Victorian Government's own reporting shows that the third-largest cause of native vegetation losses occurs through 'insufficient management of threats on public land'." The wide range of exemptions that allow this must be tightened and narrowed, and more funds made available for Departmental staff. In fact the government needs to provide more training to help the relevant departmental officers focus upon the importance of preserving our threatened biodiversity by increasing their understanding of the scientific necessity to do so. The departmental officers should then endeavor to do more than just meet the minimum requirements the current regulations demand. Such requirements should not be seen simply as a target that must be met but more as a 'bottom line' that should be exceeded at all possible times and in all possible cases and the new Review does not stress this concept enough.

If the same controls do not apply to government as to citizens then this whole consultation process becomes a farce – a public relations exercise designed to allay community concerns rather than any meaningful endeavor to work out how best to protect our flora and fauna. Yet the large and possibly excessive extent of clearances via Agreements, Public Authority Exemptions, and the insufficient management of threats on public land, is not adequately addressed in the Review since exemptions are still allowed to apply.

Again, the Review does not do enough to afford stronger 'stop and protect' powers that enable the Minister to intervene in specific situations involving important species or habitats under threat. Indeed the Review should more clearly articulate the necessity to declare when a habitat is to be considered critically endangered and therefore to be protected and the role of scientific evidence and data also needs to be strengthened in the Review through a clearer acknowledgement of decision-making needing to be driven by empirical science rather than political expediency.

Similarly the Review does not establish sufficiently that an independent authority should be responsible in monitoring and enforcing the Flora and Fauna Guarantee Act. The composition of this authority should also be specified so that scientific and community groups are involved in a real and decision-related manner. Moreover there should be new and better obligations about informing the community of the “current state of play” – relevant information about our flora and fauna needs to be more widely available, particularly at the local level, and the community needs greater rights to review government decisions.

Another way the Review could be improved is by presenting better targets and timelines in the biodiversity plan, ensuring a more focused and detailed approach that uses the latest contemporary scientific evidence. It is crucial that scientific evidence and empirical data both guides and informs the decision-making process and the Review needs to more adequately address the issue of some of the scientific methodology used in the current decision making processes. For example, peer-reviewed scientists have criticized the inadequacy of the computer generated maps and models that are often used - computer generation is useful but only as accurate as the data fed into the computer. The emphasis should be on best current scientific knowledge and the Review fails to display this. The Review should also involve a more extensive return to greater on-the-ground assessment and it is here that greater use could be made from liaison with citizen-science and other community groups.

However even more major concerns with the Review are to be found below:

The Review is greatly weakening the Flora and Fauna Guarantee Act by the loss of guarantee. The landscape approach is important, and the preservation of habitat types is vital, but such gains should not be made at the expense of the protection of individual species. Both approaches are crucial and they should operate together (as the bio-elements in any ecosystem are linked by the necessities of food and shelter etc.). Indeed, without the guaranteed protection of individual species being incorporated as an integral part of the Act, it may well become an easily manipulated process operating under political criteria rather than biodiversity ones.

An empirical example of how important it is to use both approaches in an integrated way is demonstrated by the role of hollows or food supply in isolated but significant single trees that may not be part of a specific habitat but that may still form a crucial role in boosting population numbers of animals such as bats or birds.

Nor is the loss of mandatory action proposals in the Review acceptable, as once again this shall weaken rather than strengthen the Act, particularly as the Review also postulates public authorities as model guardians. History demonstrates all too clearly that the latter is wrong and the Review should specify a much greater role for community and citizen science groups. Biodiversity information available to the public must be continually updated and easy to obtain, so that the accountability gained through public scrutiny operates at all times. However it is not just the lack of accountability but also the lack of adequate financial resources that causes management difficulties so that mistakes are

made through a lack of available funding, as well as an insufficient focus on saving our native flora and fauna. The Review must allow for much more funding for research, management, and enforcement so that the regulations are more encompassing, and it should also increase the transparency of all relevant processes. Indeed there is a continued need, ignored by the Review, for Action Statements or Recovery Plans and Threat Abatement Plans that spell out the actions required to help species recover and reduce threatening processes. The fact that current requirements have not been put into such proactive use is not a reason to abandon such essential management tools but a reason to simply make certain such plans are put into place and used.

*The Review **must** be strengthened, not weakened by the above concerns not being addressed.*

Finally I would like to point out how much is at stake. Our native flora and fauna are continuing to decline in number through the lack of appropriate and strong governmental action. Short-term commercial or private interests continually over-ride the needs of our native species despite massive community concerns about the state of our natural environment, and many individual species are already faced with extinction. Climate change will exacerbate the problems greatly. Yet extinction is forever and ecosystems, once destroyed, are difficult to restore. We must build healthy ecosystems now if we are to retain our native biodiversity at all. ***We must improve this situation of little effective action and result.***

Moreover, given the consistency with which Victorians have indicated they want their native biodiversity saved, there are even wider issues at stake. This is because, when the wider community sees that its wishes and desires are overwhelmingly ignored and held in contempt and suspects that this is simply because of political ‘wheeling and dealing’, there is set in motion a causality that gradually but inevitably corrupts the whole concept of governance and democracy held by community members. The dangers of such a slide towards establishing nothing but contempt towards governance and its institutions can be currently seen in the much more extreme case of Trump in America, but even smaller losses of community trust in the concept that governance and its institutions hold and possess democratic meaning has deleterious impacts. There *must* be a greater match between stated policy, which implies our native vegetation should be saved, and the actions and regulations actually undertaken by the government. It is time for ethical behaviour on the part of a government that should follow the science when considering biodiversity loss.

