

Reform of Victoria's Flora and Fauna Guarantee Act 1988

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The Flora and Fauna Guarantee Amendment Bill 2019

“This Bill is not a reinvention of the Act but seeks to modernise it and revive its use.”

But do the reforms go far enough to address past problems and current challenges?



Cause for optimism?

1. Restatement of the “guarantee”, refreshed objectives and new principles
2. New requirement for “public authorities” to give “proper consideration” to biodiversity conservation objectives
3. New national listing criteria and processes
4. Revised “critical habitat” declaration making powers

So a new legislative mandate for biodiversity conservation in Victoria *if it is implemented.*

A new obligation on public authorities: “proper consideration” of objectives and more

- New section 4B – a new across government requirement
- Key changes:
 - Broader, clearer definition of public authorities
 - Where functions impact on biodiversity, public authorities (which includes local government) and Ministers “must give proper consideration” to the objectives of the Act, the Biodiversity Strategy, Action Statements, critical habitat determinations etc
 - “proper consideration” – same language as used in Charter of Human Rights and Responsibilities = established meaning interpreted by courts (authority can’t just “invoke like a mantra” – need to seriously turn mind to possible impacts.
 - Minister can issue guidelines and also “request information to ensure objectives are being considered”.

The new threatened list

- The new Common Assessment Methodology
- Covered thoroughly by Vanessa
- Key points from my perspective:
 - Single point of truth – up to date and comprehensive, single list
 - Accompanying information also important given absence of Action Statements in most cases
 - An important move to nationally consistent foundations for biodiversity protection laws?

A new approach to critical habitat

- Designation of critical habitat a key conservation tool (eg under US Endangered Species Act) but basically never utilised
- Reforms are a chance for a fresh start (see new section 20):
 - Broader and more flexible criteria
 - No immediate regulatory effect – which limits the power of declarations, but should also remove an obstacle to declaring critical habitat in the first place
 - Declaration does set in train process for working out protection of the habitat with private landowner or public land manager
- This is an important reform where we should have high expectations of a new approach

Concluding remarks

- The reforms to the Act will commence 1 June 2020
- Guidelines and subordinate legislation are under development now
- Commitment to implementation will be critical to avoid repeat of failures with original 1988 Act – most conservation tools remain discretionary
- Importance of state based legislation like the FFG are likely to increase with Commonwealth government continuing to retreat from their role in biodiversity protection