Environment Victoria submission to the review of the Flora and Fauna Guarantee Act 1988

Introduction

Environment Victoria warmly welcomes the Andrews government's review of the Flora and Fauna Guarantee Act (FFG Act) and its commitment to 'strong and effective protection for Victoria's native species and important habitats'. The Consultation Paper (CP) is a step in the right direction and offers many improvements on the current legislation, but much more is needed to ensure that 'strong and effective' protection becomes reality and our species have the chance to survive and thrive in the future.

The failures of the current FFG Act have been well documented by the Auditor-General and others[1]. Many of the problems arise not so much from the Act itself but from failure to implement its provisions. Listing processes have blown out, Action Statements have not been written, acted on or reviewed, exemptions abound and critical habitat provisions including Interim Conservation Orders have never been used. Much of this is due to the lack of priority Government gives to biodiversity conservation and threatened species. The FFG Act is low in the hierarchy of considerations in decision-making and even within DELWP it is often ignored, for example in fire planning. Until this basic reality changes our species will continue to go backwards.

The review acknowledges the failure to use the provisions of the existing FFG Act, leading to a continued decline in the status of our threatened species, and that a whole of government approach and more funding is needed to achieve the Act's objectives. However it does not provide detail on how the whole of government approach is going to be achieved or how the profile of biodiversity considerations will be raised. It should follow the lead of the recently amended Climate Change Act and place requirements on government agencies to incorporate biodiversity considerations into decisions made under other legislation. This would be a stronger requirement than the currently proposed 'duty' on public agencies and begin to elevate consideration of biodiversity in the decision-making framework. Another option would be to require government agencies to make pledges about how they will consider biodiversity and actions they will take to protect habitat and meet the targets in the Biodiversity strategy, similar to the departmental and sector pledges in the Climate Change Act.

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[1] VAGO (2009) *Administration of the FFG Act;* EDO Vic (2012) *Where's the Guarantee? Implementation and enforcement of the FFG Act and the Wildlife Act* and others

The review flags a welcome change in direction for threatened species conservation, moving towards prevention and acting before species become threatened rather than waiting until they are in dire straits. As a consequence, there will need to be a much stronger emphasis on addressing threatening processes that affect many species. There is also a need to deal with cumulative impacts and incremental losses, that taken together have a devastating impact on vulnerable species.

The review also suggest a shift towards landscape scale intervention. This is a positive initiative but will need great care in its implementation to ensure actions are effective, the scale is appropriate and individual species don't slip through the cracks. While applying a 'one action benefits all' approach may drive effective use of scarce resources, there is no 'magic bullet' solution to species decline and some species will still require individual attention and action.

Finally, the provisions of the reformed Act must apply to all land tenures and government agencies without exceptions or exemptions. The Act should have the capacity for intervention when planning regulations fail to control native vegetation removal in sensitive habitats.

Environment Victoria has consulted widely with concerned individuals and community groups in the preparation of this submission. We have heard many stories of concern for individual species and habitats and some stirring accounts of the actions that groups and individuals have taken to protect their species, from nominations for listing, to monitoring or fencing, to crowdfunding for planting projects. Common to all the stories was the need to conserve habitat, the devastating cumulative impact of incremental losses and the lack of priority given to biodiversity protection and threatened species conservation. Our thanks go to all the people who have shared their stories, which we use to illustrate this submission. The submission is organised around the 5 key themes for reform we have developed in conjunction with EJA and VNPA. These are:

- **A fair go for threatened species** with no exemptions or special treatments for government departments or certain industries.
- **Stronger stop and protect powers** so the Minister can intervene when important species or habitats are under threat
- **A nature cop on the beat** with strong enforcement, real penalties and proper monitoring
- **Clear targets and timelines** to direct investment and programs for threatened species protection and recovery
- **Community power to act**, including the ability to initiate legal action to protect threatened species.

1. A fair go for threatened species with no exemptions or special treatments for government departments or certain industries.

For the FFG Act to be effective, it must set a strong standard of protection for all threatened species and provide a framework to halt and reverse the seemingly inexorable decline in biodiversity and slide towards extinction. This standard has a number of components:

Objectives of the Act strengthened.

Environment Victoria supports the Review's intent to modernise and strengthen the objectives of the FFG Act (CP, s4.1.1), particularly to drive restoration and enable a long-term turn-around of biodiversity decline across many species, and the inclusion of restoration as well as protection of biodiversity. We strongly support the proposal to involve Traditional Owners in biodiversity conservation. However, the proposed objectives need strengthening:

- Biodiversity conservation should be included as a key function of government;
- A focus on reducing the impacts of threatening processes rather than just 'managing' them;
- Clarification of what constitutes 'sustainable' use of native flora and fauna in the context of current population decline;
- The loss of the concept of a 'guarantee' is very concerning. While we appreciate we cannot guarantee the survival of all species in the face of climate change (given the global causes underlying it), we should be able to guarantee that our species will be safe from the impacts of activities that can be controlled within Victoria – for example clearing for roads, urban expansion or logging. The guarantee is a means of raising the profile of biodiversity in government decision-making and embedding consideration of threatened species in decisions made under other legislation.

As the Australian Panel of Experts on Environmental Law notes, objectives are a set of statements about what the legislation aims to achieve and they serve as an aid in interpretation to the provisions of the Act. Objectives should clearly set out the level of ambition that the law envisages for the environment, but they do not need to be 'measureable' statements as such[2]. The Act should establish the type of measurable targets to be included in the Biodiversity Plan elsewhere than in its objectives (see our section 'Clear targets and timelines' below).

Principles to sit alongside Objectives of the Act

We support the need for principles to sit alongside the Objectives of the Act (CP, s4.1.2). However we strongly object to the inclusion of a principle to 'integrate and balance environmental, social and economic objectives'. The FFG Act is the primary legislation that protects biodiversity and threatened species in Victoria and should place an explicit priority on environmental considerations over social and economic. The only situation in which such a requirement for 'balance' (which is any case a value judgement and subject to widely differing interpretations) would be acceptable is if it was included in a meaningful sense in every other Act in Victoria, which is highly unlikely to occur. Too often the natural environment is treated as subservient to other interests, despite our ultimate reliance on it. Building further compromise into the principles of the key laws to protect nature will fundamentally undermine their effectiveness.

We are also concerned by the failure to include the precautionary principle as defined in other Victorian Acts such as the Environmental Protection Act: 'If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation'. This ought to be included along with the principle of inter-generational equity.

The Act would also benefit from inclusion of the prevention principle which states that action should be taken to prevent known risks of environmental harm from materialising. It sits well alongside the precautionary principle because it deals with known and anticipated risks whereas the precautionary principle deals with more hypothetical risks.

Duty on public authorities

We agree with the Consultation Paper in that 'successful achievement of the Act's objectives and statewide biodiversity targets will require a whole-of-government response.' We further agree that more needs to be done to ensure effective incorporation of biodiversity into government decision-

[2] See http://apeel.org.au/#/introductory-paper/

making. To that end, we broadly support the potential improvements listed in Table 10 of the Consultation Paper.

The challenge with these reforms is how to ensure any changes lead to meaningful consideration of biodiversity issues, rather than create a token box-ticking exercise. Other parts of DELWP are currently grappling with this issue in the context of climate change, in response to Recommendations 9 and 10 of the Independent Review of the Climate Change Act.

The Climate Change Act currently requires certain decision-makers to "have regard to" climate change when making their decisions, including the possible impacts of climate change and the potential contribution to emissions (this part of the Act has not yet been amended since the Review). The Independent Review Committee noted that the list of decisions that need to have regard to climate change (listed in a Schedule to the Act) is too limited and fails to include many decisions that could have significant climate-related consequences. The work being done within DELWP to guide improved climate-focused decision-making should be used to inform how the FFG Act could better require improved biodiversity-focused decision-making.

If public authorities need to only 'have regard to' biodiversity, it is simply another factor to consider. Unfortunately, given the lack of priority that is traditionally given to biodiversity and nature conservation by government, in contrast to development projects or industry approvals, requiring decision-makers to merely "have regard to" biodiversity is unlikely to result in better decisions.

To that end, we support the view, on page 41 of the Consultation Paper, that public authorities should not be able to make a decision that is inconsistent with the objectives and principles of the Act. An alternative wording of this duty could be that public authorities must not make a decision that makes it harder for the state to meet targets in the biodiversity plan.

While we support the creation of new powers for the Minister to require information from public authorities about how they are managing biodiversity threats/assets (eg. point 6 in Table 10 of the Consultation Paper), we would prefer to see the onus of providing information placed directly on the public authority, rather than creating an optional power that the Minister *may* exercise.

The definition of 'public authority' must be amended to explicitly include government departments, as well as all other government agencies. Some departments have a very poor public reputation for managing biodiversity.

Exemptions to the FFG Act

Many of the issues raised by community groups revolved around exemptions to the provisions of the FFG Act granted to government agencies. VicRoads, VicTrack and VicForests in particular have been granted exemptions to native flora controls that have allowed them to clear vegetation including listed species and contribute to threatening processes, such as loss of hollow bearing trees or sedimentation into waterways. Orders made under the Act[3] also render protective native flora controls on private land effectively useless.

The Consultation Paper is notably silent on these types of exemptions. The practice of issuing Orders that render the FFG Act ineffective must stop, and provisions that allow the preparation of these Orders should be removed from the Act.

[3] Flora and Fauna Guarantee (taking, trading in, keeping, moving and processing protected flora) Order 2004.

Listing process

The threatened species listing process under the current Act has not kept up with changes to the conservation status of vulnerable species. Additions to the list have depended on nominations by the public, and while this has been great for community participation it has not resulted in a comprehensive list of threatened species. The proposal to comprehensively revise the list of threatened species and communities according to IUCN criteria (CP s4.3.2) is strongly supported. The Victorian government should sign the Memorandum of Understanding on agreeing to adopt the Common Assessment Method. However the process needs a timeframe for completion – we suggest two years from the commencement of the reformed Act. The list should be reviewed every 5 years to ensure it is up to date and comprehensive, and subject to a strategic audit to be published at the same time as the State of the Environment report.

Action Statements/Recovery plans

The shortcomings of Action Statements (AS) are well known. More than half of the listed species and communities do not have an AS and the Auditor-General estimated it would take more than 20 years to address the backlog. Despite the best efforts of DELWP this situation has not significantly improved. Even when statements have been produced they have often been ignored by other departments and other sectors within DELWP, and there is no requirement for identified actions to be put into practice or for the effectiveness of the AS to be reviewed.

The solution is not to abandon Action Statements as suggested by the Review, but to upgrade them to make them more effective. The Auditor General suggested the following minimum content for an AS:

- Identify the flora or fauna to be protected, or the threatening process to be controlled
- Identify the location or locations involved
- Identify the other government agencies that help facilitate the achievement of the strategies
- State the actions to be taken and who is required to undertake them
- Outline the mechanisms to monitor and report on compliance with the actions and the department's performance in achieving measurable objectives for the plan.[4]

We would add:

- Identification of critical habitat (discussed below)
- Opportunities for community input
- Regular review of the AS, say at 5 yearly intervals
- Reporting on effectiveness as part of the State of the Environment report.

The required content of the Action Statement should be set out in the Act, and the relationship to national recovery plans made clear. The ASs should be the building blocks for constructing the landscape biodiversity plans envisaged by the review.

In summary, the Act should set out mandatory content for Action Statements, including mechanisms to monitor and report on the implementation and effectiveness of actions and provision for review. Action Statements should be produced within two years of a species being listed.

[4] VAGO op cit p 31

2. Stronger stop and protect powers so the Minister can intervene when important species or habitats are under threat

Critical habitat and interim conservation orders

The FFG Act includes provisions for the Minister to declare critical habitat and issue interim conservation orders. However these provisions have never been used, largely due to difficulties of definition, perceived resistance from landholders and unwillingness by the department to expose themselves to the potential for compensation.

Declaration of critical habitat would be very useful in helping direct conservation efforts for our most endangered species such as Leadbeaters possum, Brush-tailed rock wallaby, Murray hardyhead and Orange bellied parrot which are down to their last few remaining individuals or populations. Critically endangered plants such as the many threatened orchids would also benefit.

But perhaps even more useful would be the declaration of critical habitat for species such as the Southern barred bandicoot that are in decline but not yet in that critically endangered state. Residents of the Mornington Peninsula have watched in dismay as more and more bandicoot habitat has been lost to housing and other development and have felt powerless to stop the disappearance of the animals from their region. Declaration of critical habitat could have stopped the eradication of Southern barred bandicoots from the area.

Many people have shared with us their concern about the decline or disappearance of species from their local areas – koalas, small birds, blue-tongued lizards, frogs and Bogong moths to name a few. While not all the species of concern are listed as threatened, they are clearly under pressure. An investigation into if and how critical habitat declaration could arrest this decline would be very useful.

The review recognises the shortcomings of the current situation and makes useful proposals for reform that will definitely drive improvements on current practice. However the proposals should be strengthened in the following ways:

- The definition of critical habitat and criteria under the Act should include habitat for survival and conservation, and for recovery and for future needs under climate change.
- The Secretary should be required to identify and map critical habitat at the time of listing of threatened species. Experience in the USA shows that species with identified critical habitat were more than twice as likely to show an improving population trend as those without.[5] The Scientific Advisory Committee could provide advice on the definition and extent of critical habitat.
- The Act must spell out when and under what circumstances critical habitat should be declared or registered (as opposed to mapped) and an interim conservation order put in place. EJA recommends that declaration take place within one year of listing[6]. Another option would be to declare critical habitat for endangered and critically endangered species at the time of listing to give these species the best chance of survival. For species in these categories already on the list, the declaration could be made on publication of the revised list following reform of the Act.
- Interim conservation orders (ICOs) should be retained in the Act. The regulatory and compliance mechanisms proposed by DELWP could be built into the ICOs as tools to make

[5] Martin et al (2005) *The Effectiveness of the Endangered Species Act : A quantitative analysis* BioScience vol 55
[6] Environmental Justice Australia (2016) *Fixing Victoria's broken nature laws*

them more effective. ICOs are essential back up if voluntary agreement to protect habitat does not eventuate.

- Critical habitat protections need to prevail over planning schemes, including native vegetation regulations, and major projects. Actions approved under other schemes or Acts, such as the Mineral Resources (Sustainable Development) Act, which contravene an ICO should be suspended.
- Incentives and expectations for improved land management on private property have evolved significantly since the FFG Act was passed in 1988. Compensation should be considered within the framework of land stewardship and the environmental 'duty of care' for landholders to prevent land degradation established under the Catchment and Land Protection Act.

Mitigation of threatening processes

Threatening processes have been poorly served by the current Act. 42 processes have been listed, ranging from the highly specific such as 'Human activity which results in artificially elevated or epidemic levels of Myrtle Wilt within Nothofagus-dominated Cool Temperate Rainforest' to the very general such as 'Invasion of native vegetation by environmental weeds.' It is likely that important threatening processes have not been listed, simply because no-one has nominated them – the impact of carp on native fish, of endocrine disruptors on native fauna or the expansion of the urban growth boundary would seem obvious processes that have been missed. Only one threatening process (the use of lead shot) has been removed from the list.

Table 1 Threatening processes listed under the FFG Act

Listed threatening processes	Action statements (pre 2005)	Action statements (2005-15)	Action statements (post 2015)	Removed from list
42	12	0	1	1

The potentially threatening processes that are listed have not been dealt with in any systematic way. Only 13 have Action Statements and of those 12 were written in the early 2000s. While some of the Actions have been completed, or in other cases subsumed into national action plans, they have not been enough to halt the threatening processes, which in most cases have become worse. While hard data on fox and feral cat numbers is hard to come by, they are likely to have increased substantially since their respective Action Statements were written. Out of date Action Statements are also likely to miss modern control measures, such as using strategic planned burning to advantage native wildlife while disadvantaging pests, as pioneered by the Australian Wildlife Conservancy in the Kimberley. In other cases the Actions did not deal with the problem – for example the AS for 'Alteration to the natural flow regimes of rivers and streams' was mainly confined to unregulated rivers and did not include the key issue of providing environmental flows.

There is only one example of a 'modern' AS for a threatening process, that for 'Soil erosion and vegetation damage and disturbance in the alpine regions of Victoria caused by cattle grazing'. This AS is undated but was presumably written in 2015 following the Andrews government decision to remove all cattle from the Alpine National Park. It outlines actions to remove any remaining cattle and measures to begin to restore some of the damage caused by previous cattle access. This type of AS is very useful once a decision has been made to address a threatening process, and the approach could be taken for other processes such as the damage caused by feral horses.

In some cases government policy actually contributes to the threatening process. For example around 9,000 grazing licences are on issue for thousands of kilometres of Crown water frontages across the state. The AS for 'Degradation of native riparian vegetation along Victorian rivers and streams' specifically recognises grazing as the key cause of the degradation, yet the provision of grazing licences actively promotes the activity and therefore degradation. To make matters worse, protecting the riparian zone from grazing is a key action to mitigate other threatening processes such as 'Alteration to the natural temperature regimes of rivers and streams', 'Increase in sediment input into Victorian rivers and streams due to human activities' and 'Removal of wood debris from Victorian streams'. Despite years of effort by CMAs and the development of the Regional Riparian Action Plan, a single government activity, the issuing of grazing licences, continues to exacerbate four threatening processes.

In another example, the low habitat value given to scattered trees in native vegetation regulations makes it more likely that applications to remove them will be approved. This policy contributes to the threatening process 'Loss of hollow-bearing trees from Victorian native forests'.

A further issue is the replacement of one threatening process with another. For example the *StopPitt* program in the Dandenong Ranges aims to control the spread of Sweet Pittosporum and addresses the threatening process 'Spread of Pittosporum undulatum in areas outside its natural distribution'. However the volunteers have to be careful about what happens once the Pittosporum trees have been removed to avoid contributing to another threatening process 'Invasion of native vegetation by Blackberry Rubus fruticosus L. agg'.

This kind of problem of interaction between threatening processes is very common. Land managers need to consider the impacts of removing foxes on cat and rabbit populations, or if removing one environmental weed allows another to colonise. At a larger scale, habitat fragmentation exacerbates the impacts of most other threatening processes as small, isolated populations are far more vulnerable that larger, connected populations.

The consultation paper is light on detail about how threatening processes will be managed under the revised Act. We support the move to a more comprehensive list of threatening processes as a first step, but the CP does not spell out the interaction between the state list and the national list under the EPBC Act. Is it the same as for threatened species and covered by the MoU? How will the backlog of processes be managed? What about the many processes that are listed in Victoria but not nationally?

The EPBC Act does not require the development of Threat Abatement Plans unless the Minister considers them to be 'a feasible, efficient and practical way' of managing the threatening process. We consider the identification of feasible, efficient and practical ways of addressing threatening processes should be a key objective of the FFG Act and the discretionary approach is inadequate.

The Victorian Minister should be required to develop a plan (Action Statement or Threat Abatement Plan) to address each threatening process within 2 years of the listing date. As the focus shifts from individual species to landscape scale action, these plans will become the key tool for protecting species. Much more than a 'conservation advice' is required to deal with these processes, particularly in terms of defining who is responsible for what and how threatening processes interact with each other. The effectiveness of the plans should be reviewed at 5 yearly intervals. Considerable effort will be required to develop threat abatement plans for all currently listed processes, as well as yet to be listed threats. A decision by government to address a threatening process, as occurred with the alpine cattle, is a key step in driving action.

In summary, a comprehensive list of potentially threatening processes should be established within 12 months of the reformed Act coming into force. The Scientific Advisory Committee should make

recommendations about additions to the list (eg carp, endocrine disruptors, urban growth) and information in DELWP's data bases used to back up nominations

Action Statements or Threat Abatement Plans should be developed for all threatening processes within 2 years of listing. These plans would identify responsibilities and interactions between threats, be used to drive the landscape scale action envisaged in the review. If the threat is already covered by other legislation (eg climate change abatement) then this should be acknowledged and not duplicated, but complementary actions to mitigate the impacts should be included.

3. A nature cop on the beat with strong enforcement, real penalties and proper monitoring

The inability of the FFG Act to prevent destruction and fragmentation of habitat and control threatening processes has been much commented on. The enforcement provisions within the Act have not proved much of a deterrent and the split between the FFG Act, the Wildlife Act and the native vegetation regulations under the Planning and Environment Act has added further complication and confusion. Many people do not know where to turn for enforcement and are then dismayed by what they see as minimal penalties, for example for illegal tree removal, that are no deterrent to developers or agencies. On the other hand farmers and landholders often feel burdened by red tape and regulation, so clarity and simplicity is an advantage all-round.

The review makes useful suggestions (CP s4.4.3) to improve compliance and enforcement and extend the range of tools beyond criminal prosecution, particularly the possibility of civil enforcement in addition to criminal penalties. Civil compliance has a lower burden of proof than criminal prosecution so is easier to enforce, however penalties need to be sufficiently severe to be a significant deterrent. Increased penalties are strongly supported, as is the proposal to make damage to the habitat of threatened species and communities an offence (CP p57).

However the suggested improvements could be strengthened by including the following:

- An independent authority to monitor private and public sector compliance with the FFG Act and enforce its provisions. This authority would be independent of DELWP and report to the Minister for Environment. It would be responsible for investigating breaches and undertaking both civil actions and criminal prosecution, and its establishment would make all the proposed changes in enforcement easier to implement. Similar regulators and compliance authorities exist in other sectors, for example the Essential Services Commission or the Earth Resources Regulator, and are well accepted by the community as impartial and fair.
- Bringing all protected flora and fauna controls under FFG Act. They are currently split between the FFG Act (flora) and the Wildlife Act (fauna) which just leads to confusion and doubling up. The proposed ability for the illegal removal of native vegetation to be enforced under the FFG Act rather than through planning regulations is a welcome step to bringing all enforcement under the same legislation and under the control of our proposed independent authority.
- Protected flora controls should apply equally to private and public land without exemptions except in the most extraordinary circumstances.

4. Clear targets and timelines to direct investment and programs for threatened species protection and recovery

The review of the FFG Act is taking place along side the development of the new Biodiversity Plan *Protecting Victoria's Environment – Biodiversity 2036.* According to DELWP, this strategy will mark a 'step change' in the way biodiversity is managed in Victoria, with intervention focussed on the prevention end and a strong leadership role for government. The plan will 'strategically identify a cost-effective suite of actions that benefit the most species' and set targets to drive improvements in 'suitable habitat' for threatened species.

The development of the Biodiversity Plan (which is yet to be released) has been used to inform the review of the FFG Act and identify issues that need attention. However it is not clear from the consultation paper exactly what those issues are and what legislative change is required to support an effective biodiversity strategy. The framework set out on page 49 provides only partial answers and is not sufficient to drive improvements in biodiversity in Victoria. We make the following suggestions to strengthen the framework:

- The Biodiversity Plan should become, and remain, an up to date, detailed and focussed strategy that drives real improvements in the state's biodiversity. The FFG Act should set out what sort of targets should be included in the Plan. Targets should be ambitious, SMART (specific, measurable, agreed upon, realistic and time-based) and push beyond a government 'business as usual' approach, from 'no net loss' to 'net gain'. Draft targets shared with the Biodiversity Plan Stakeholder Reference Group did not meet these criteria and would not have been adequate to drive real improvements in biodiversity or habitat restoration. The FFG Act should also direct the content of the plan and set time frames for review and reporting against the targets at 5 yearly intervals. The Act should make the Minister responsible for achieving the targets, in the same way that the Climate Change Act makes the Minister responsible for emissions reduction targets.
- The biodiversity planning framework should retain Action Statements as discussed above, rather than the conservation advices and priority actions proposed in the review. Action Statements should set out responsibilities and time frames, and be subject to regular review for their effectiveness. They would also provide the building blocks for the 'strategic mechanism' that is intended to drive landscape scale actions.
- The Act should provide an enabling framework for the proposed area based response or landscape action plans. It should outline what the plans should cover, what the consultation requirements are and how they are going to work, the timeframes for action and who is responsible and accountable for implementing the plans.

5. Community power to act, including the ability to initiate legal action to protect threatened species

We support the proposals to improve transparency and accountability under the FFG Act (CP, s4.5), in particular the proposal for independent reporting of progress in achieving biodiversity targets and the establishment of a monitoring framework.

Access to justice and the ability to challenge decisions is essential to maintaining public confidence in environmental decision making. We support moves towards expanding standing to enable judicial review of decisions made under the Act and the ability to seek injunctions to prevent or stop a

breach of the FFG Act (page 65). As the CP states, these improvements will enable the public to help enforce breaches of the Act and to prevent illegal impacts before they occur. However the proposals are limited to an internal merits review. Public confidence would be greatly enhanced if the merits review were conducted by an independent agency such as VCAT.

The FFG Act should also include provisions for a court or VCAT to grant an injunction to restrain a breach of the Act, or any instrument made under the Act, or anticipated breach. The courts and VCAT should also be able to compel an action where there is a failure to undertake an action required by the reformed FFG Act.

6. Funding

In her foreword to the Consultation Paper, Minister D'Ambrosio acknowledges the contribution the natural environment makes to our social and economic wellbeing. It provides many billions of dollars' worth of services to Victorians every year and the loss of biodiversity and decline in our natural capital is costing us dearly. The Future Economy Group has estimated the cost of continuing our current trajectory of decline will cost the state up to $78 billion in lost output by 2028.[7]

Investment in protecting biodiversity and addressing threats is money well spent. A successful FFG Act and its product, the Biodiversity Plan, will require cross-government support and significant investment to achieve its objectives. Fortunately a dedicated source of funding exists in the Sustainability Fund collected through waste levies. The DELWP Annual Report 2015-16 states that the fund currently holds $446 million in unexpended funds, against an expenditure of $23 million in that year.

Now that a new priority statement has been written, Environment Victoria expects the Sustainability Fund to be accessed to support the full delivery of the Biodiversity Plan and the landscape area plans as they are developed. Further resources will be required to implement the other provisions of the Act, such as listing, production of action statements, monitoring, reporting and enforcement.

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[7] Nous Group (2014) *The Future Economy Project: The economic impact of diminishing natural capital in Victoria.*