



Submission

in response to

Protecting the Yarra River (Birrarung) Discussion Paper

prepared by

Environmental Justice Australia

4 August 2016

About Environmental Justice Australia

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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1. Introduction

Environmental Justice Australia (EJA) is pleased to make submissions in response to the Yarra River Protection Ministerial Advisory Committee's (MAC) Discussion Paper on the future management arrangement for the Yarra River.

As the MAC is aware, EJA, with the Yarra Riverkeeper Association (YRKA), has been engaged in an extended exercise in community discussion and collective thinking on the future of governance of the Yarra River, including the enactment of a Yarra River Protection Act. For EJA, this exercise commenced in earnest in 2014 following the announcement by the then ALP Opposition of its intentions to establish such an Act, alongside an entity such as a Yarra River Trust. Subsequent to the ALP's election to Government in November 2014, EJA and YRKA have sought to mobilise and work with community groups and interested sectors and individuals in considering and designing proposals for a Yarra River Protection Act. This work commenced with a successful community forum in February 2015 and has continued in 2016 through a collaboration with community groups and environmental NGOs in a series of workshops culminating in a set of proposals for Yarra River legislation. Between February and June 2016, we ran a series of four workshops in which we collectively dealt with these aspects of Yarra River legislation:

- issues
- models
- vision
- draft proposals.

Following the last workshop, final proposals were published in our joint report *The Future of the Yarra: Proposals for a Yarra River Protection Act* on 20 July 2016.

These submissions essentially adopt our report, which is attached with this document. Following some further discussions and thinking following the completion of the report, we add into these submissions additional detail on certain aspects of our proposals.

2. A Yarra River Protection Act

In summary, our proposals for a Yarra River Protection Act would establish and implement landscape-scale governance arrangements for the Yarra River corridor and key parts of its catchment (floodplains, significant tributaries). In doing so, the approach taken represents a form of 'nested governance' and management over various scales:

- geographic scale, integrating local management and restoration within an overall vision and intention;
- temporal scale, in the establishment of long-term vision and objectives within which legislated targets and medium-term planning occurs; and
- institutional and regulatory scale, in which existing public actors (such as local government, Victorian public agencies, and nongovernmental actors) coordinate and integrate actions within landscape-scale frameworks and with landscape-focused institutions.

These scaled and nested governance arrangements would establish a governance system capable of accommodating both vision and ambition, on the one hand, and a pragmatic and viable approach to achievement, on the other hand. For instance, existing public institutions and actors would continue to play central roles in river and catchment management but do so in a manner far more coordinated and integrative than at present. Further, landscape planning instruments would take a ‘stepped’ and progressive approach toward the achievement of long-term legislated outcomes – as long-term targets (River Health Targets), medium-term strategic planning (Yarra River Plan), and consistent agency planning in the short term (e.g. annual operational budgets and plans).

Within this framework, the governance model we propose functions as a form of integrated river management, better coordinating the work of agencies and communities, but also adding value in three new, crucial areas:

- working toward a vision(s) of systemic restoration – as well as protection – of the river (river health);
- placing greater institutional emphasis on public participation; and
- providing independent tools for accountability and integrity.

We recommend the adoption of our proposals for a Yarra River Protection Act as ‘best practice’ arrangements for the long-term management and restoration of this iconic waterway. Our model represents what we view as a middle course between governance arrangements that are solely advisory, on the one hand, and involve direct management of all aspects of river management,¹ on the other hand.

Further, it is our view that governance of the type we propose can be adapted appropriately and successfully to other waterways, both in Victoria and elsewhere, specifically where those waterways have substantial urban characteristics (e.g. Maribyrnong River, Barwon River) and/or where management arrangements are of a certain level of complexity and sophistication. In respect of this latter point, we note that this model of governance can be transposed to circumstances of functional complexity outside major urban centres. An example in Victoria may be management of the Gippsland Lakes system, which is influenced by substantial industrial activities (e.g. power industry) as well as urban areas (e.g. La Trobe Valley, Bairnsdale and East Gippsland towns) and a complex natural catchment.

3. Additional matters

3.1 *Funding models*

Funding for and investment in long-term management of the Yarra River will be an integral feature of the legislative project. Without clear sources of revenues and without clear directions for its expenditure, successful outcomes will be unlikely, and vision and ambitions for a healthy river and its public benefits will be defeated before they start.

¹ For example, assumption of direct responsibility for land—use planning, water management, public lands ownership and management, amenity and environmental protection by a single authority and/or under a single regulatory system.

Funding and investment needs to be implemented in a coordinated manner and with a view to long-term results so that ambitions of river health, ecological restoration, public values and good governance can be achieved.

Investment occurs now through a range of organisations including Melbourne Water, local government, Parks Victoria and other public agencies. Many community groups invest large amounts of time, effort and resources in looking after and improving the river and adjacent lands and waterways. Public sector funding is directed toward both governance functions (e.g. policy, planning and advice, and administration) and toward restoration and management programs (e.g. land management, waterways improvement, environmental flows, habitat management).

In our Future of the Yarra report, we propose the establishment of an Investment Framework complementary to the Yarra River Plan, a Yarra River Fund as a source of revenues, and coordination and collaboration of funding from this source and investment from existing sources.² These proposals were expressed quite generally in the report. In refining these ideas, we propose the following further arrangements for funding and governance.

3.1.1 Alignment of local government and agency budgets with Yarra River Plan

In coordination with the Yarra River Trust, public authorities obliged to protect or restore ecological or public assets (e.g. Councils, Melbourne Water, Parks Victoria) should prepare an annual budget for works, measures and programs consistent with the Yarra River Plan. Such budgetary measures can sit alongside other 'operational' plans or arrangements within agencies, prepared as measures consistent with the 'strategic' planning and management functions of the Yarra River Plan.

3.1.2 Establishment of a Strategic Fund for major, long-term restoration projects for the Yarra

Establishment of a strategic fund, called the 'Yarra River Fund', which would supply the mechanism to plan and deliver leading, if not iconic, projects aimed at restoration. We see this type of fund as a 'Future Fund for the Yarra'. This type of Fund could, for example, concepts of a 'habitat highway' in the lower Yarra, restore the ecological character of drainage channels that have been diverted underground, act as a 'water trust' by connecting wetlands, undertake major invasive species removal (e.g. deer in the upper Yarra catchment), or acquire land or water rights deemed important to long-term projects. It is envisaged that such as Fund would operate in accordance with longer-term planning and vision, such as the 5-year Yarra River Plans, or even longer. The Fund could receive contributions systematically from existing charges, from local governments in the catchment (i.e. from rates revenues), from the Victorian government, federal grants, and from donations or bequests.

² Environmental Justice Australia and the Yarra Riverkeeper Association *The Future of the Yarra: Proposals for a Yarra River Protection Act* (2016), 25

3.1.3 Opportunity to rationalise strategic environmental funding

There are currently a range of environmental funds or funding mechanisms which can or may have a role in strategic environmental management, or water management or land-use planning in the Yarra River corridor and relevant parts of its catchment. These include, for instance, the Environmental Contributions Levy, the Environment Protection Fund, the Sustainability Fund, the Parks Charge, and developer contributions levied by Councils (as well as ordinary council rates). These funds have differing statutory purposes, broadly attached to environmental and planning functions. While the Yarra River Protection Act is unlikely to provide the forum through which to rationalise the variety of levies and charges, we do think that one or more of these sources of funds should be used to establish and contribute to the strategic funding approach to Yarra River restoration.

Given the integrated river management (NRM) approach taken under our proposals, we submit that the Environmental Contributions Levy might serve as the primary strategic funding source but with contributions also from affected Councils and the other funds noted. In the longer term, we suggest that the shift in governance toward landscape-scale management can serve to further rationalise environmental and NRM funding toward comparable landscape-scale models.

3.2 *Aboriginal representation*

In deference to Wurundjeri and Boon Wurrung traditional owners, we have included only limited discussion on the role of traditional owners and Aboriginal representation in both the governance structures proposed under the Act and incorporation of Aboriginal perspectives into ‘operational’ measures under the Act, such as the Yarra River Plan. We feel it is, in general, appropriate for traditional owners to determine how their interests and views should be best incorporated into the legislative and regulatory frameworks. We have not had discussions with traditional owners over these issues. Nonetheless, we have included certain strategic proposals in relation to Aboriginal representation in our Future of the Yarra report. These include the requirement that Aboriginal ‘uses and values’ are incorporated into regulatory arrangements, such as the Plan.³ This language is adopted and modified from the Basin Plan, under which *regard must be had*, for instance, to indigenous uses and values in the preparation of State water resource plans.⁴ Our proposed language is more emphatic, *requiring* Aboriginal uses and values to be integrated, as far as practicable, into planning instruments. In so doing they would form part of the overall (binding) planning framework for the river.

We think further detail is needed on the question of Aboriginal representation, however:

1. Subject to the preferences of the traditional owners, Aboriginal organisations should be represented in governance either through dedicated membership of the Yarra River Trust, membership on the Yarra River Panel and/or or through separate advisory arrangements.

³ Environmental Justice Australia and the Yarra Riverkeeper Association *The Future of the Yarra: Proposals for a Yarra River Protection Act* (2016), 19

⁴ *Water Act 2007* (Cth), subs 22(3)(ca); *Basin Plan 2012* (Cth), s 10.52

2. Consistent with a shift that is already underway, albeit marginally, we think that there is great scope for Wurundjeri names, concepts and places to be (re)integrated officially into the *cultural identity* of the Yarra River and its catchments. In this respect, the Yarra River Protection Act can serve as an important vehicle for a shift in cultural perspective and norms, and perhaps even a shift in attachment to places and ways of knowing places. Subject to the consent of traditional owners and provisions of the *Geographic Place Names Act 1998*, we suggest that preference be given to Aboriginal place names in any naming or re-naming of places affected by the Yarra River Protection Act.

4. Response to the MAC Discussion Paper Questions

Further to the summary of our proposals above, we make the following submissions in response to the questions posed by the MAC on page 52 of the Discussion Paper:

4.1 *What would you like to see included in a vision for the Yarra?*

At a landscape scale, it is our view that a vision for the Yarra should be built around three core elements: river health, accountability in decision-making, and the protection and fostering of public values (including amenity, Aboriginal uses and values, well-being, recreation, and so on). In our proposals this vision is firstly embedded in the objects of the Act, then in legislative targets for river health criteria, and strategic planning instruments (a Yarra River Plan). We concur that vision should and will best be formulated and delivered at local levels as well (e.g. reach, tributary, sub-reach levels) and these localised visions should be embedded in appropriately scaled instruments, especially a Yarra River Plan and the regulatory and policy tools of local government and public agencies.

4.2 *What elements would you like to see covered in a Yarra strategic plan?*

Insofar as this concerns the content to a strategic plan, our view is that certain mandatory content will be essential, such as baselines, objectives and outcomes, strategies and measures (e.g. for delivery of objectives and outcomes), systems of monitoring and review, identification of risks and how they are to be managed, and identification of management areas and actors.

Additionally, consistent with longer-term targets we have proposed and the variety of management actors and functions, the strategic plan will need to establish outcomes and delivery in relation to the variety of river management functions, including land-use planning, public lands management, water management, environmental protection, amenity, Aboriginal uses and values, and so on. We have proposed that developed of detailed content to the plan should occur over a period of 12 months through collaborative and participatory processes.

4.3 *What would you like to see included in legislation to protect the Yarra?*

Our proposals extensively respond to this question, so we will not labour the point here. Suffice it to say, in addition to overarching legislative mechanisms such as objects and guiding principles, the

‘operational’ features of our proposals include statutory targets and planning mechanisms, as well as institutional reform and development. We note in particular the importance of establishing targets and a strategic plan as legislative instruments, including binding obligations. We note also the importance, in our view, of establishing an overall management framework that functions at scale – geographic scale, regulatory scale (local, functional, whole-of-landscape), and temporal – in a clear and integrated fashion. Further, we have posed the need for Yarra-specific institutions to be established through legislation. The emphasis here is the need to institutionalise key management and governance tasks that enable integrated management of the river actually to work – those tasks being: planning, leadership, public participation, advice, oversight and accountability (through performance monitoring and reporting).

4.4 What do you think are the key criteria for evaluation of options for management arrangements?

In addition to the criteria articulated at Table 9 of the Discussion Paper, we refer to the guiding principles in our proposals and see these as informing an evaluation framework.⁵ For example:

- Will the options lead to better structural integration of river management?
- Will the options facilitate adaptive management and responsiveness of institutions and actors over time?
- Will the options embed not only ecological sustainability in governance and decision-making but also restoration of river health and ecological processes?
- Will the options emphasise and embed active involvement of communities and citizens in governance and restoration?

In addition, some of these approaches noted at Table 9 would benefit from alternative articulation or expression, including:

- General principles
 - whether the options focus on long-term improvement in outcomes
 - whether timeframes for action and planning are clear and well-established
 - whether options are likely to facilitate or stimulate innovation in management and practice
 - whether options embed and/or advance public participation in governance and decision-making.
- Development of Yarra strategic plan and community vision and reporting on delivery
 - Design of a Yarra strategic plan should include a clear framework to determine its contents
 - A Yarra strategic plan should be enforceable.

⁵ Environmental Justice Australia and the Yarra Riverkeeper Association *The Future of the Yarra: Proposals for a Yarra River Protection Act* (2016), 13-14 (‘Principles of the Act’)

- Service delivery
 - Options enable and focus on alignment of programs to overarching plan and objectives.
- Independent audit
 - Audit functions should encompass performance audit of public agencies (against the Yarra plan) as well as assessment of river health.

4.5 *What are your thoughts on options for a new management model?*

Our proposals cover this question in detail.⁶ In essence, our model can be summarised as an ‘integrated river management’ model, operating at the landscape scale.

4.6 *What are your thoughts about establishing a new organisation to oversee development and monitor delivery of the Yarra strategic plan?*

Our proposals canvass the issues of organisations and institutions in detail.⁷ We propose three new bodies to oversee and participate in managing the Yarra River, alongside existing bodies and institutions. Our proposed bodies correlate to what we view as key tasks in integrated river management for a complex urban river system.

4.7 *Are there any other management models/options we should consider?*

The scope of legislative models available for the task of river management in these circumstances likely ranges from solely advisory arrangements through use or modification of the existing land-use planning system (e.g. establishing a planning authority and separate planning scheme for the Yarra River) and establishment of new arrangements (institutional, regulatory, policy and managerial) to directly manage the river corridor and environs, displacing existing schemes and arrangements. In our view, the model we have proposed is an appropriate and optimal balance between direct regulation and take-over of management and a ‘hands-off’ approach, in the context of an urban river system.

⁶ See in particular Environmental Justice Australia and the Yarra Riverkeeper Association *The Future of the Yarra: Proposals for a Yarra River Protection Act* (2016), 11 (‘A Framework for the Act: Landscape Governance’), 13 (‘A landscape approach’ and ‘A coordinative approach’)

⁷ Environmental Justice Australia and the Yarra Riverkeeper Association *The Future of the Yarra: Proposals for a Yarra River Protection Act* (2016), 22-24 (‘Institutional Arrangements for River Health’)