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**Submission**

***Independent Review of the  
Wildlife Act 1975***

**2021**

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**JUL 2021**

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**Animal Justice Party**



**Animal  
Justice  
Party**





### Animal Justice Party

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*The Animal Justice Party 2021*

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Images by Dr Nadine Richings © 2020  
Front cover: Australian Wood Duck (*Chenonetta jubata*);  
Grey Kangaroo (*Macropus giganteus*);  
Grey-headed Flying Fox (*Pteropus poliocephalus*).  
This Page: Mount Ash Forest, Kinglake

*The Animal Justice Party acknowledges the First Nations peoples as the custodians of the land on which we live and work.*



## Introduction

This submission was prepared by the Victorian Submissions Working Group within the Animal Justice Party ('the AJP'). The working group makes this submission on behalf of the AJP with the approval and the endorsement of the Board of Directors. The AJP is a political party established in 2009 to make positive change for animals and the environment through the Australian parliamentary system. In Victoria, the AJP has an elected representative in the Legislative Council (Andy Meddick MLC) and two councillors in Local Government (Councillors Julie Sloan and Charlie Vincent); there are also two elected representatives in the Legislative Council of NSW. The AJP seeks to foster respect, kindness, and compassion towards all species particularly in the way governments design and deliver initiatives, and the manner in which these initiatives function. The following submission is underpinned by these fundamental principles and our policies. The AJP has policies on various native animals and environmental issues that are relevant to this review<sup>1</sup>.

The global Biodiversity Emergency is recognised and reported by scientists around the world<sup>2 3</sup> and by leading global organisations such as the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES)<sup>5</sup>. Threats to nature and decline in biodiversity and ecosystems are also reported in Victoria. The 2018 State of the Environment Report from Victoria's Commissioner for Environmental Sustainability<sup>6</sup> was damning; 60% of the Biodiversity Indicators are rated as "poor", none are rated as "good" and 51% of the Biodiversity Indicators are deteriorating. Victoria's nature laws, including the *Wildlife Act (1975)*, have failed. In addition, the independent review of the federal environment laws has concluded that the federal law has failed<sup>7</sup>; the biodiversity of Australia and Victoria is in dire straits.

The five main drivers of biodiversity loss are exploitation, habitat loss, pollution, climate change and introduced species and these drivers are recognised scientifically and globally<sup>8</sup>. Effective legislation for the protection and conservation of wildlife must address these five drivers.

While Australia is prone to bushfires, human-generated climate change has dramatically worsened conditions and the Australian 2019-2020 fire season was like no other. The fire

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<sup>1</sup> <https://animaljusticeparty.org/policies/>

<sup>2</sup> Ceballos G *et al.* (2015) Accelerated modern human-induced species losses: Entering the sixth mass extinction Science Advances Vol. 1, no. 5, e1400253 (DOI: 10.1126/sciadv.1400253), <https://advances.sciencemag.org/content/1/5/e1400253>.

<sup>3</sup> Ceballos G *et al.* (2020) Vertebrates on the brink as indicators of biological annihilation and the sixth mass extinction. Proceedings of the National Academy of Sciences Jun 2020, 117 (24) 13596-13602; (DOI: 10.1073/pnas.1922686117), <https://www.pnas.org/content/117/24/13596#ref-list-1>

<sup>4</sup> Waldon A *et al.* (2017) Reductions in global biodiversity loss predicted from conservation spending. Nature 551: 364–367. <https://doi.org/10.1038/nature24295>

<sup>5</sup> IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 56 pages. <https://ipbes.net/global-assessment>

<sup>6</sup> Commissioner for Environmental Sustainability (2018) State of the Environment 2018 Report. Office of the Commissioner for Environmental Sustainability Victoria; Melbourne. [https://www.ces.vic.gov.au/sites/default/files/SoE2018\\_SummaryReport.pdf](https://www.ces.vic.gov.au/sites/default/files/SoE2018_SummaryReport.pdf)

<sup>7</sup> Samuel, G 2020, Independent Review of the EPBC Act—Final Report, Department of Agriculture, Water and the Environment, Canberra, June. CC BY 4.0. <https://epbcactreview.environment.gov.au/resources/final-report>

<sup>8</sup> IPBES (2020) Models of drivers of biodiversity and ecosystem change. <https://ipbes.net/models-drivers-biodiversity-ecosystem-change>

events were extreme and burnt an estimated 97,000 km<sup>2</sup> of south and eastern Australia<sup>9 10</sup>. According to a study commissioned by the World Wildlife Fund, an estimated 3 billion native vertebrate animals were killed or displaced, making this the most devastating wildfire anywhere on the planet in modern history<sup>11</sup>. No-one knows how many invertebrates were killed.

The current *Wildlife Act* was written in 1975. Despite many amendments and additions, there has not been a comprehensive review conducted since that time. Over the 46 years that have elapsed since the Act was created, there has been a shift in the way society, and Victorians, view wildlife. The Act needs to be reviewed and updated to represent contemporary views of Victorians and to acknowledge and address the Biodiversity Emergency, the Climate Emergency and the impact of severe and catastrophic wildfires. More than 80% of Australian voters believe it is important to reduce greenhouse gas emissions and about 50% of voters state that the need for climate action influences their vote<sup>12</sup>.

Our recommendations are summarised below, and our opinion on all questions are reported in the following pages. Thank you for this opportunity to contribute to this significant legislative review.

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<sup>9</sup> Boer MM, *et al.* (2020) Unprecedented burn area of Australian mega forest fires. *Nature Climate Change* 10: 171–172. <https://www.nature.com/articles/s41558-020-0716-1>

<sup>10</sup> Nolan RH *et al.* (2020) Causes and consequences of eastern Australia's 2019–20 season of mega-fires. *Global Change Biology* 26: 1039–1041. <https://onlinelibrary.wiley.com/doi/full/10.1111/gcb.14987>

<sup>11</sup> World Wildlife Fund (2020) Australia's 2019–2020 Bushfires: The Wildlife Toll. Interim Report. <https://www.wwf.org.au/news/news/2020/3-billion-animals-impacted-by-australia-bushfire-crisis#gs.gwwbxe>

<sup>12</sup> Colvin RM, Jotzo F (2021) Australian voters' attitudes to climate action and their social-political determinants. *PLoS ONE* 16(3): e0248268. <https://doi.org/10.1371/journal.pone.0248268>

## Summary of Recommendations

1. The Act should acknowledge the Biodiversity Emergency and protect and conserve wildlife.
2. The Act should reflect contemporary attitudes to wildlife.
3. The purposes of the Act should not conflict with one another.
4. The body of the Act should not erode the purposes of the Act.
5. The Act should encourage peaceful, respectful coexistence between humans and wildlife, rather than a culture of destroying or displacing wildlife.
6. Where there is conflict between the interests and expectations of different community groups, the guiding principle should be protection of wildlife first and foremost.
7. Retain purposes (a)(i) and (ii)
8. Exploitation of wildlife, currently covered by purpose (a)(iii), should be removed from this Act, since it conflicts with the main purpose. Wildlife exploitation is not acceptable; if it is allowed, it should be described in an Act designed for that purpose.
9. To further clarify the intent of the Act, and to support and strengthen purposes (a)(i) and (ii), add (iii) to improve the level of community awareness about wildlife.
10. Consult with Traditional Custodians of Victoria to determine any parts of the Act that conflict with - or undermine - First Nations law (chthonic law)
11. Reserve the 'use of and access to wildlife' for First Nations People to ensure such activities are conducted according to their laws
12. Remove use of and access to indigenous animals from the *Wildlife Act* and integrate them into the *Traditional Owners Settlement Act 2010*
13. The recognition of culturally significant animals under the law.
14. The Act should have a duty of care, which could include a ranked series of responses:
  - a. Compassionate coexistence - demonstrate steps taken
  - b. Consultation with Traditional Custodians - demonstrate steps taken
  - c. Non-harming methods - detail methods used
  - d. Non-lethal methods - detail methods used
  - e. Lethal methods - detail methods used
15. Retain definitions for animals that ensure consistency across all legislation
16. Ensure that key terms that appear frequently within the Act are clearly defined and lack ambiguity or the ability to be misinterpreted.
17. All indigenous wildlife (living here before 1788) to be protected wildlife
18. Licenses to be issued for destroying (*etc.*) protected wildlife only for compassionate reasons
19. The Minister cannot unprotect protected wildlife; only a new Act can do so.
20. Definitions such as 'threatened' wildlife to be *in addition to* 'protected wildlife', effectively adding another layer of protection
21. Ensure that indigenous wildlife are protected and those protections cannot be eroded by other legislation
22. Where there is a gap or a conflict in legislation, apply the guiding principle that protection of wildlife comes first.
23. Where conflicts exist between different legislations or where there is a gap, apply the legislation that affords the highest level of protection to wildlife.

24. Ensure the Act recognises that preserving wildlife habitat is crucial to protecting wildlife and preventing extinction
25. Ensure that the effects of climate change on wildlife habitat are recognised within the Act and there are management plans included to mitigate this effect.
26. Landowners have a duty of care to protect wildlife, wildlife habitat and biodiversity on their property; the Act should record this duty
27. Mandatory minimum standards to conserve wildlife habitat should be applied to activities that impact wildlife habitat
28. Recognise the sentience of all wildlife under the Act.
29. Recognise the rights of wildlife to live their lives free from the influences of humans.
30. Ensure that new legislation and amendments to current legislation take into account the impact on sentient wildlife.
31. The Act should include guiding principles and clearly defined criteria and priorities to guide members of the public and regulators, with regards to interacting with wildlife.
32. The Act should include provisions for community consultation on any matters relating to wildlife that occur within their community (such as proposed kills, development that affects wildlife habitat, changes to licensing), or that impact on wildlife that move through or near their community.
33. Community consultations must ensure advertising to the community via a variety of methods, with different means of submitting a response and adequate time frames allowing all those who want to comment to have the opportunity.
34. The Act must contain provisions for wildlife management plans that cover the full range of circumstances relating to wildlife such as bushfires, drought, preservation of habitat, conservation of threatened species.
35. Immediately stop Authority to Control Wildlife permits until the application process and regulatory framework is revised.
36. Licensing regulations should adequately reflect the regulatory processes required to protect wildlife.
37. Principles of coexistence with wildlife should be outlined in the Act and a framework established for guidance; coexistence with wildlife should be expected.
38. The Act must totally revamp the ATCW system, ensuring transparency, accountability and that appropriate regulatory requirements exist; ATCWs should be a last resort and only issued in extreme circumstances when all other options have been seriously attempted and demonstrated, including coexistence and translocation.
39. Licensing fees should adequately reflect the costs of monitoring and regulating an activity.
40. Money raised from licensing fees should be directly channeled to regulating the activity.
41. The Act must contain provisions for mandating codes, standards and guidelines that are relevant and appropriate.
42. The Act must contain a transparent reporting system that permits public access.
43. The reporting system should record adequate and appropriate information to be accountable for wildlife, including who was consulted, which stakeholders were involved and why, what information was considered, what information was discarded and why, and how decisions were reached.
44. The Act should establish an independent scientific advisory committee acting for the protection and conservation of wildlife, to reduce bias and conflict of interest.



45. The Act should remove offences that restrict or prohibit the activities of those who seek to protect and conserve wildlife
46. The Act should create offences for those who influence or coerce others into contravening the Act
47. The Act should prohibit humans from forcing an animal to act contrary to their natural behaviours
48. The Act should prohibit actions which disregard the sentience of wildlife
49. The Act should create an offence for those who facilitate or assist in the illegal trading of wildlife
50. The Act must apply **proportional** penalties to all offences.
51. Penalties for crimes against wildlife must reflect and respect the lost life, and be in line with community expectations.
52. Remove and ban gun and game licences of repeat offenders, particularly if convicted of any violent crime, including aggravated animal cruelty.
53. The Act should contain provisions for additional offences and penalties against those who harm wildlife to remove them from future opportunities to reoffend
54. Penalties for harming wildlife must take into account the intention of the accused, the number of animals harmed, the length of time they suffered, the potential for the actions to cause future harm to other wildlife or animals, and the steps taken towards reparation as well as the probability of reoffending.
55. The Act should contain provisions for community-impact statements to be provided in matters relating to wildlife crimes.
56. The Act should contain additional provisions for civil penalties.
57. There needs to be greater recognition of the seriousness of crimes against wildlife within the Act and therefore greater motivation by authorised officers to pursue perpetrators of these crimes.
58. There needs to be greater collaboration between GMA and other enforcement units.
59. Serious crimes should be investigated together with a Wildlife Crimes Division within Victoria Police (as suggested by Environmental Justice Australia).
60. The Act should allow for third party civil enforcement where there exists community groups in a position to monitor and assist authorities with information and evidence gathering.
61. An Independent Animal Protection Agency should be established

## 1.1 Does the Act reflect contemporary attitudes towards wildlife?

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### **Recommendations:**

1. The Act should acknowledge the Biodiversity Emergency and protect and conserve wildlife.
  2. The Act should reflect contemporary attitudes to wildlife.
  3. The purposes of the Act should not conflict with one another.
  4. The body of the Act should not erode the purposes of the Act.
  5. The Act should encourage peaceful, respectful coexistence between humans and wildlife, rather than a culture of destroying or displacing wildlife.
  6. Where there is conflict between the interests and expectations of different community groups, the guiding principle should be protection of wildlife first and foremost.
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*1.1.1 In what ways does the Act succeed or fail in representing contemporary expectations for, and values relating to, wildlife in Victoria? Please provide examples from your own experience.*

Victorians expect the *Wildlife Act* to protect and conserve wildlife. However the protections offered in the *Wildlife Act* are fundamentally eroded through the licensing provisions. They are further weakened by lack of regulation, oversight and enforcement. In short, the *Wildlife Act* is an instrument that facilitates wildlife exploitation.

Victorian Government research demonstrated that 9 out of 10 Victorians agree that a healthy environment is critical for their wellbeing and believe biodiversity, including wildlife, is important for a healthy environment<sup>13</sup>. The restrictions imposed during the pandemic have caused many people to slow down and re-evaluate their use of time. A desire to be in nature and connect with other species, including wildlife in their native habitats, has been a priority for many.

Victorians watched helplessly as animals were killed and displaced in the 2019-2020 Bushfires. Wildlife habitat was obliterated, animals were killed or were homeless after being displaced from their homes. The value that Victorians and others place on the health, safety and continued existence of our native animals was clearly demonstrated through extensive donations to support their care<sup>14</sup>.

With the advent of the internet and the rise of social media people have ready access to ever-changing news from varied sources. People are aware of the atrocities that are committed against wildlife. They are understandably outraged by the acts of cruelty, and the failure of Victoria's legal system to realise justice for wildlife. There is little enforcement and insufficient penalties under the existing legislation.

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<sup>13</sup> DELWP (2019) Biodiversity 2037 - Victorians Value Nature: Foundations Survey Summary. [https://www.ari.vic.gov.au/\\_data/assets/pdf\\_file/0023/443381/Victorians-Value-Nature-survey-summary-2019.pdf](https://www.ari.vic.gov.au/_data/assets/pdf_file/0023/443381/Victorians-Value-Nature-survey-summary-2019.pdf)

<sup>14</sup> Claughton D (2021) Animal rescue groups race to save Australia's bushfire-hit wildlife with nearly \$200 million in donations. ABC News online. 26 Feb 2021. [https://www.abc.net.au/news/2021-02-26/animal-rescuers-raise-\\$200-million-for-bushfire-hit-wildlife/13135592](https://www.abc.net.au/news/2021-02-26/animal-rescuers-raise-$200-million-for-bushfire-hit-wildlife/13135592)



For example, in 2018 a farm worker used poison to kill 406 wedge-tailed eagles and other wildlife, and hid their carcasses to avoid detection<sup>15</sup>. He received a fine of \$2,500 and 14 days in jail. Whilst it may have represented the first jail time for wildlife crime in Victoria, the punishment of \$6.16 and 50 minutes for the life of each of these protected birds still causes outrage among Victorians.

Society has an increased awareness of how precious our populations of threatened and vulnerable species of wildlife are. As we see declining populations due to climate change, biodiversity loss and human impact, there is a strong sense of moral obligation towards protecting and preserving vulnerable wildlife for its own intrinsic value as well as for the sake of future biodiversity and conservation.

There is an expectation in society for our legislation to be an adequate tool of enforcement to hold perpetrators to account. Both to punish crimes committed and to deter future offenders. The Wildlife Act exists to protect our native wildlife. Therefore, Victorians expect that it will be consistent with the values of our society and the high regard we have for our native wildlife.

*1.1.2 Are there conflicts between the interests or expectations of different stakeholders or community members regarding wildlife in Victoria? Please provide examples from your own experience.*

Wildlife should be protected and not exploited under the *Wildlife Act*. The current allowances within the Act that support various stakeholders and community members to exploit or abuse wildlife should be removed. Instead, the protection of wildlife should be prioritised over the interests and expectations of these stakeholders.

The Act should encourage peaceful, respectful coexistence between humans and wildlife, rather than a culture of destroying or displacing wildlife.

The conflicts between interests and expectations among community members, involves the ways in which the community utilises places where wildlife is present.

There is greater use of public park spaces and nature-based tourism in Victoria due to the increase in employees working from home, COVID-19 lockdowns, and restricted travel. One example of this is the increased clashes between general purpose use, walkers and mountain bike riders. Mountain bike riders have been creating their own tracks and building jumps across wider areas in public parks<sup>16</sup>. This impacts wildlife by destroying habitat and food plants and potentially cutting them off from water sources<sup>17</sup>.

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<sup>15</sup> Lazzara K (2020) Wedge-tailed eagle deaths prompt review of Victorian Wildlife Act. ABC News Online. 04 May 2020. <https://www.abc.net.au/news/2020-05-04/wedge-tailed-eagle-deaths-prompt-review-of-wildlife-act/12210956>

<sup>16</sup> City of Moonee Valley (2020) Plea to park users about makeshift bike tracks. <https://mvcc.vic.gov.au/plea-to-park-users-about-makeshift-bike-tracks/>

<sup>17</sup> Colangelo A (2019) 'Anarchistic' mountain bikers threaten inner city park's rare plants. The Age Online. 10 Feb 2019. <https://www.theage.com.au/national/victoria/anarchistic-mountain-bikers-threaten-inner-city-park-s-rare-plants-20190205-p50vt3.htm>

Further to this, the community has seen many more dogs adopted as companion animals during the Victorian Lockdowns, leading to more dogs within the natural environs. The demand for more off-lead areas became apparent through the verbal arguments in parks and on social media. The unfortunate result of having more animals off-lead (whether intended to be off-lead or not) has resulted in wildlife being chased and harassed, such as ducks, kangaroos and the hooded-plover<sup>18</sup> (listed as vulnerable nationally, in Victoria and by IUCN). Along the beach in Ocean Grove where the hooded-plover nests, there are large and obvious signs about dogs only allowed on-leash, yet there are still multiple community members who disregard the signs and threaten the plovers, as seen on the 'Hooded Plover' Facebook page utilised for outreach.

Another example of the conflicts between the interests and expectations of community members regarding wildlife is the ways in which farming communities interact with wildlife. As it currently stands, farmers are able to obtain permits to 'manage' wildlife on their properties without having to demonstrate that all non-lethal methods have been attempted. Their interests lie solely in the 'use' of their farm animals for economic gain. The ease with which people are able to obtain an Authority to Control Wildlife (ATCW) does not consider the 'protection and conservation of wildlife', which is stated as the first purpose of the *Wildlife Act 1975*. Furthermore, the lack of a presence of a regulator during these kills ("culls") reduces community confidence that the killing was conducted humanely and in compliance with the Act.

In terms of conflicts between interests and expectations with stakeholders, there are several examples where the stakeholders have a vested interest that does not represent the majority of the Victorian community. Hunting groups such as Field and Game or Victorian Duck Hunters Association represent only a small portion of society, yet their voices are loud and their views are out of step with the majority of society. 59% of Victorians support a ban on duck shooting while only 30% are against a ban<sup>19</sup>. The duck shooting associations have a clear agenda to 'use' wildlife, while in contrast, duck rescuers attempt to conserve and protect species.

Whilst society as a whole values our native wildlife and expects them to be protected and kept safe, these minority groups view animals as a commodity available for their personal use. Where such disparity exists we need to consider what framework is best used to guide decision making. The views and expectations of mainstream society towards wildlife should be a guiding principle, as should the protection and preservation of wildlife populations and habitat. The voices of a few should never override these overarching and compassionate considerations.

There are interest groups and commercial operators whose interaction with Victorian wildlife does not conflict with the free existence of wildlife, and the general population's ability to peacefully enjoy that same wildlife. For example, bird watching groups and eco-tourism operators. In contrast, shooting and hunting groups pose a substantial conflict with almost all other interested users in terms of safety and peaceful enjoyment.

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<sup>18</sup> Birdlife Australia (2021) Hooded Plover. <https://www.birdlife.org.au/bird-profile/hooded-plover>

<sup>19</sup> Ilanbey, S (2021) One-third back moves to ban duck shooting, survey shows. The Age Online. 2 Feb 2021. <https://www.theage.com.au/politics/victoria/one-third-back-moves-to-ban-duck-shooting-survey-shows-20210201-p56yh7.html>

*1.1.3 How can the Act balance the diverse interests of Victorians in protecting, conserving, managing and using wildlife? How might such competing interests be better reconciled in legislation? Are there examples from other sectors or other jurisdictions (both in Australia and internationally) that may be useful?*

The main purpose of the Wildlife Act is “*the protection and conservation of wildlife*”; “using wildlife” conflicts with the prime purpose and weakens the Act. Some may argue that ‘*sustainable use of and access to wildlife*’ should be permitted, but where is the evidence that it is sustainable? With one million animal species at risk of extinction, according to the United Nations IPBES report<sup>20</sup>, the protection of wildlife is paramount. Recognising that wildlife exists for its own intrinsic value, rather than human use, is an important step towards preventing wildlife extinction.

The AJP does not support any use of wildlife; however, if it is permitted in the Act, a hierarchy of priorities is a possible solution to balancing diverse interests, where “protection and conservation of wildlife” is priority one in the hierarchy. Also, the sustainability of any use must be stringently assessed, reported and regularly reviewed.

**Kangaroos** are an example of wildlife that is “used” under Victorian legislation. There are many issues with the way the Victorian Government treats kangaroos; some are highlighted here. *Numbers and population:* Some people believe that kangaroos are abundant. However, the Federal Government does not count kangaroos, so no-one knows how many kangaroos there are in Australia. State and territory governments use out-dated data to guess quotas of the number of animals that can be shot to “sustain populations”; the Victorian Government quotas for 2020 are based on data from 2018<sup>21</sup>. Reporting of the numbers of kangaroos that are shot in Victoria is not accurate<sup>22</sup>. Firstly, the official records are extremely difficult to understand and interpret; information obtained under freedom of information from DELWP regarding ATCW indicates the accuracy of information is poor<sup>23</sup>. Secondly, dependent young are killed; shot or bludgeoned to death but they are not “counted” in shooting/killing records. So, the real number killed is higher than official reports. How can the Victorian Government deliver on Objective 1 of their Kangaroo Harvest Management Plan<sup>24</sup>, “Ensure that commercial kangaroo harvesting in Victoria is ecologically sustainable”, when they do not know how many kangaroos (of all ages) are shot and killed?

*Commercial Kangaroo Harvest:* The Victorian Government ran a trial (Kangaroo Pet Food Trial) to determine if commercial use of kangaroos was viable and sustainable. A government

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<sup>20</sup> IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 56 pages. <https://ipbes.net/global-assessment>

<sup>21</sup> Scroggie MP & Ramsey DSL (2019) Kangaroo harvest quotas for Victoria, 2020. Arthur Rylah Institute for Environmental Research. Technical Report Series No. 308. [https://www.ari.vic.gov.au/\\_\\_data/assets/pdf\\_file/0019/453502/ARI-Technical-Report-308-Kangaroo-harvest-quotas-Victoria-2020.pdf](https://www.ari.vic.gov.au/__data/assets/pdf_file/0019/453502/ARI-Technical-Report-308-Kangaroo-harvest-quotas-Victoria-2020.pdf)

<sup>22</sup> Hylands P (2019) Kangaroos in Victoria: status 2019. Cowboy Blog, Creative Cowboy Films. [https://www.creativecowboyfilms.com/blog\\_posts/kangaroos-in-victoria-status-2019](https://www.creativecowboyfilms.com/blog_posts/kangaroos-in-victoria-status-2019)

<sup>23</sup> Victorian Parliamentary Inquiry into Ecosystem Decline: Submission 73 - Australian Wildlife Protection Council. [https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Ecosystem\\_Decline/submissions/S73\\_-\\_Australian\\_Wildlife\\_Protection\\_Council.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Ecosystem_Decline/submissions/S73_-_Australian_Wildlife_Protection_Council.pdf)

<sup>24</sup> DELWP (2019) Victorian Kangaroo Harvest Management Plan. Department of Environment, Land, Water and Planning, Victorian Government. [https://www.wildlife.vic.gov.au/\\_\\_data/assets/pdf\\_file/0026/436067/VictorianKangarooHarvestManagementPlan2019.pdf](https://www.wildlife.vic.gov.au/__data/assets/pdf_file/0026/436067/VictorianKangarooHarvestManagementPlan2019.pdf)

department assessment of the trial recommended it should not continue; one concern was that it was an "unacceptable risk to the sustainability of kangaroo populations"<sup>25</sup>. However, the Victorian Government ignored recommendations from their own department and established a permanent commercial program.

*Shooting regime is changing kangaroo biology:* Mass killing of kangaroos across Australia is changing the social structure of kangaroo mobs. The large alpha males are the prime target of shooters and they are being eradicated from mobs. The absence of the alpha males allows smaller males to breed; males that naturally would not breed. This is altering the gene pool and the social dynamics in mobs. The sex ratios in some mobs is now heavily skewed toward females. Additionally, the older females are also being culled out of the mobs, removing the nurturing, maternal teaching of the younger individuals. However, no-one is researching or monitoring the impacts that kangaroo shooting is having on the genetics and social structure of kangaroo populations<sup>26</sup>.

An example of a conflict of interest that needs far greater consideration is the harvesting of timber. There is an inherent conflict between the economic benefits of harvesting trees and the social, psychological and environmental benefits of preserving wildlife through habitat protection. Timber harvesting should not be exempt from repercussions for damaging, disturbing or destroying wildlife habitat.

These conflicting interests could be balanced by ensuring that prior to any logging taking place, there is a thorough assessment conducted that evaluates the wildlife species native to the area and their ongoing needs. The approvals process must ensure that wildlife is minimally disturbed and that there is ongoing compliance monitoring during the logging process. This would ensure that commercial industry can continue, without removing protections for wildlife.

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<sup>25</sup> DELWP (2019) Kangaroo Pet Food Trail Evaluation Report. Department of Environment, Land, Water and Planning, Victorian Government. [https://www.wildlife.vic.gov.au/\\_\\_data/assets/pdf\\_file/0019/412723/KPFT-Evaluation-Report\\_Dec\\_2018a.pdf](https://www.wildlife.vic.gov.au/__data/assets/pdf_file/0019/412723/KPFT-Evaluation-Report_Dec_2018a.pdf)

<sup>26</sup> Coulson, G (2020) Kangaroo Biology and Population Dynamics. Webinar hosted by Nillumbik Council. June 2020. <https://youtu.be/JW1Ww1HLk6Y>



## 1.2 Is the intent of the Act clear?

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### **Recommendations**

7. Retain purposes (a)(i) and (ii)
  8. Exploitation of wildlife, currently covered by purpose (a)(iii), should be removed from this Act, since it conflicts with the main purpose. Wildlife exploitation is not acceptable; if it is allowed, it should be described in an Act designed for that purpose.
  9. To further clarify the intent of the Act, and to support and strengthen purposes (a)(i) and (ii), add (iii) to improve the level of community awareness about wildlife.
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*1.2.1 Are the current purposes of the Act satisfactory? What should the outcomes, objectives or purposes of the Act be? How should the objectives and purposes of the Act relate to the desired outcomes? How would they ensure desired outcomes are achieved?*

The purposes of this Act are:

- (a) *to establish procedures in order to promote—*
  - (i) *the protection and conservation of wildlife; and*
  - (ii) *the prevention of taxa of wildlife from becoming extinct; and*
  - (iii) *the sustainable use of and access to wildlife; and*
- (b) *to prohibit and regulate the conduct of persons engaged in activities concerning or related to wildlife.*

The current stated purpose of the Act begins well; in summary, the act exists for: *the protection and conservation of wildlife*. However the inclusion of ‘sustainable use and access to wildlife’ is a concern. The concept that wildlife is there to be ‘used’ by humans is contrary to the protection of wildlife and, in fact, causes the act to fail in its primary purpose.

Sentience of all animals, including wildlife, must be recognised, and the rights of wildlife to exist for their own purpose and to live out their lives on their land without being subjected to use or exploitation by people. In the Victorian Government reform of the Animal Welfare Law<sup>27</sup>, which is currently underway, animal sentience will be acknowledged. Acknowledgement of sentience in the *Wildlife Act* will provide consistency across legislation and be in line with science and society<sup>28</sup>.

The Act in its current format contains some objectives that work towards protecting wildlife, but it contains a greater emphasis on the ways in which wildlife can be used by humans and the regulations around this. Many of the current objectives remove protections for wildlife, by allowing it to be used, which is the problem with the current Act. On the subject of ‘prevention

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<sup>27</sup> Victorian Government. A new animal welfare Act for Victoria. <https://engage.vic.gov.au/new-animal-welfare-act-victoria>

<sup>28</sup> Mellor D. J. (2019). Welfare-aligned Sentience: Enhanced Capacities to Experience, Interact, Anticipate, Choose and Survive. *Animals : an open access journal from MDPI*, 9(7), 440. <https://doi.org/10.3390/ani9070440>

from becoming extinct' there is very little in the Act. This needs to shift towards a more sustainable approach to protecting species as a priority.

The *Wildlife Act* must exist primarily to protect wildlife. It needs to focus on protection from humans, from the effects of climate change, from losses due to biodiversity changes, from the effects of logging and agricultural land use on wildlife habitat, from exploitation and from pollution.

If the purpose of the Act was clarified/amended then there would be a flow on effect to the objectives as they would be written to greater consider the protection of wildlife and to align with this desired outcome.

*1.2.2 If objectives and purposes are likely to be competing, how could the tensions be resolved?*

There needs to be a clear framework guiding the review, creation and amendment of wildlife legislation. Under the current stated purposes: protection and conservation are at odds with 'using' wildlife, therefore these purposes need to be prioritised and these priorities used to assess and guide all legislation.

The protection of wildlife should be the primary guiding principle of the act, and all other purposes and objectives secondary to this. Conservation (of species, wildlife habitat etc.) is a close second. The 'use' of wildlife should only occur when these principles have been upheld.

Whilst this may not satisfy all the human elements of this decision making, it will ensure a consistent approach to decision making and one that values wildlife first and foremost.

*1.2.3 Are there examples of well designed legislation from other jurisdictions (both in Australia and internationally) with clearly stated objectives and purposes that could inform Victorian law?*

The 'Animal Protection Index' has been created to classify and compare the legislation in 50 countries with regards to their level of protection for all animals within their country.

On a scale from "A" to "G", Australian animal welfare receives a disappointing "D". Reviewing the legislation of "A" countries, especially in terms of their purposes, objectives and consequences for failure to comply, would guide the Victorian government as to gaps in our legislation, and how the government can ensure solid and non-erodible protections for wildlife.

For example, Austrian law (*Animal Welfare Act 2004*) holds the protection of animals as equal to that applied to humans and prohibits suffering, infliction of pain and exposure to heavy fear. The Swiss *Animal Welfare Act 2005* has similar provisions to protect animals, including prohibiting causing animals anxiety. Chilean law<sup>29</sup> recognises animals as sentient beings and cruelty offenses can be punishable by up to three years jail time.

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<sup>29</sup> <https://www.animallaw.info/statute/chile-animal-welfare-animal-protection-act-spanish>

Australia's 'D' ranking does not fit with the value our society places on wildlife. Extending the purpose of the *Wildlife Act* to include some or all of the objectives demonstrated by 'A' ranked countries, whilst removing or minimising the conflicting 'use' of wildlife would allow us to create legislation that would better protect our native wildlife.

### **1.3 The Act doesn't appear to appropriately recognise the rights and interests of Traditional Custodians and Aboriginal Victorians**

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#### **Recommendations**

10. Consult with Traditional Custodians of Victoria to determine any parts of the Act that conflict with - or undermine - First Nations law (chthonic law)
  11. Reserve the 'use of and access to wildlife' for First Nations People to ensure such activities are conducted according to their laws
  12. Remove use of and access to indigenous animals from the *Wildlife Act* and integrate them into the *Traditional Owners Settlement Act 2010*
  13. The recognition of culturally significant animals under the law
- 

*1.3.1 Is the Act a barrier to self-determination for Traditional Owners or Aboriginal Victorians? If so, what specific elements give rise to barriers and how might these barriers be reduced or eliminated?*

Totemic indigenous animals are exploited in contravention to First Nations law. First Nations People are kept out of decisions made that affect aspects of Country critical to the health and wellbeing of indigenous communities specifically, and Victorians in general.

As an example, the activity of recreational duck shooting directly commandeers large sections of Victoria and prevents and frustrates the rights and roles Traditional Custodians should have over land of immense cultural significance.

The Act does not adequately protect dingoes from being killed with poisons such as 1080. Dingoes are a totem animal for many Aboriginal groups.

The Act does not adequately protect kangaroos from being inhumanely killed for commercial and non-commercial purposes.

First Nations law ensures vast areas of Country are retained to ensure the protection of species and habitat to ensure the creation and maintenance of health communities. Genuine collaboration with First Nations people, and applying their knowledge of Country would help the government realise its intention of restoring biodiversity, protecting wildlife, and halting species extinction.

*1.3.2 Should the Act recognise the cultural significance of Country and wildlife to Traditional Owners and Aboriginal Victorians? Should the Act explicitly recognise the value of Indigenous Ecological Knowledge for the stewardship of Country and the conservation of wildlife?*

Yes. For thousands of years indigenous Australians have managed this land, referred to as 'caring for Country'. They monitored wildlife migration and population growth, being careful to conserve numbers and food sources to ensure balance and sustainability allowing the land to restore and replenish as they moved across Country. When it came to hunting and bushfire management their sophisticated knowledge of landscapes and use of fire ensured weed control, seed germination and the maintenance of landscapes for the long-term survival and flourishing of all species. These fire management practises have since been adopted and practised by Fire Authorities and Community Rangers for more than 20 years. The customary obligations for management and use of Country, underpins their responsibility and culture.

The Firesticks Alliance is a recognised authority on sophisticated ecological management of Country and should be invited as respected advisors and allies of government.

Wherever it is possible, then, Traditional Custodians should be explicitly recognised for their expertise and incorporated into the planning and implementation of strategies and procedures during all stages of wildlife management.

*1.3.3 Should the Act prescribe a role for Traditional Owners and Aboriginal Victorians as key partners in decision making about conserving wildlife? What could that role look like?*

Yes, due to their expertise in long term management.

Wildlife management resources can be written and certified by indigenous persons and training can also be delivered by First Nations Peoples. Approval of future programs should be endorsed by First Nations Peoples.

The Act should facilitate and prioritise consultation and inclusion in decision making with Traditional Custodians in all aspects of this Act.

*1.3.4 Should the Act afford additional protection and the ability to return species to country because of their cultural significance?*

The fact that the Act does not provide additional consideration and/or protections for native animals because of their specific significance to Traditional Custodian communities is a significant failing of the legislation. Hunting of animals on Country without regard to their cultural significance or consultation with Traditional Custodians on that basis is beneath community expectations of both respect for wildlife and respect for Traditional Custodians.

The return and reintroduction of species to Country where they are no longer extant is a positive and desirable outcome, however, it must be done in consultation with Traditional Custodians



and up to date scientific leaders, to prepare for impacts in the environment of such a reintroduction. Ongoing monitoring and reporting of impacts post-reintroduction will then be equally necessary. The Act should require an impact assessment be conducted and submitted to Parliament before the return to Country of a species is conducted.

*1.3.5 Does the Act provide appropriate mechanisms for Traditional Owners and Aboriginal Victorians to use wildlife? Should the Act support commercial use of wildlife by Traditional Owners and Aboriginal Victorians?*

Traditional Custodians' use of wildlife for culturally significant purposes and traditional practices is already protected in the Act. It is not necessary or appropriate to legislate for commercial use of wildlife by Traditional Custodians above and beyond the commercial opportunities available to all Victorians already facilitated by the Act. The commercial use of wildlife is not in keeping with the traditional use of wildlife as expressed by Traditional Communities since the capitalist system currently governing trade did not exist prior to white colonisation of Victoria. Therefore, the existing commercial uses of wildlife are sufficient.

## **1.4 Could a general duty help clarify roles and responsibilities?**

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### **Recommendation**

14. The Act should have a duty of care, which could include a ranked series of responses:
- Compassionate coexistence - demonstrate steps taken
  - Consultation with Traditional Custodians - demonstrate steps taken
  - Non-harming methods - detail methods used
  - Non-lethal methods - detail methods used
  - Lethal methods - detail methods used
- 

*1.4.1 Should the Act prescribe a general duty of care related to wildlife conservation or biodiversity protection more broadly? Why or why not? How could it work in practice?*

The concept of a duty of care towards wildlife and the environment may be hard to enforce in a practical sense, however it is still a valuable concept to embed into the act.

If we describe that all people have a duty of care to act in such a way as to be mindful of the potential consequences of their actions and to minimise the potential impact on wildlife, wildlife habitat and the environment at all times, then this will increase the level of awareness and understanding of appropriate and acceptable behaviour around wildlife.

It could be used as a guideline or guiding principle when writing legislation to set a minimum baseline for behavioural standards.

## 1.5 Definitions of key terms can be unclear and confusing

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### **Recommendations**

15. Retain definitions for animals that ensure consistency across all legislation
  16. Ensure that key terms that appear frequently within the Act are clearly defined and lack ambiguity or the ability to be misinterpreted.
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#### *1.5.1 Are there any definitions that are unclear or confusing or that cause problems for achieving the outcomes and objectives of the Act?*

The term 'USE' could be seen to be problematic as it is defined as "take, hold, or deploy (something) as a means of accomplishing or achieving something; employ". Commonly that word implies an action towards an inanimate object. The 'use' of wildlife detracts from the intrinsic value of the animal, allowing harm, harassment and violence towards the individual animals. The term 'USE' detracts from the purpose of 'protecting and conserving wildlife'.

The definition of 'wildlife' could be problematic as it does not include all known Australian wildlife and specifically excludes some indigenous vertebrates (fish) and invertebrates (marine or non-threatened terrestrial species) from the Act's definition of 'wildlife' meaning they are not covered under the Act.

Additionally, there is no clear definition of 'wildlife habitat' currently included within the Act. This creates issues of ambiguity if we are to ensure that future versions of the Act provide adequate protection for wildlife habitat as a means of ensuring protection and conservation of wildlife.

The ways in which definitions in the *Wildlife Act* conflict with definitions in other Acts make it difficult to fulfil the intention of the *Wildlife Act*. *Kangaroos are 'game' in the Meat Act 1993 and 'established pests' under Catchment and Land Protection Act 1993. These definitions are what deceive the public and undermine the public's collective responsibility to protect and conserve wildlife for their survival as well as our own.*

In relation to offences that occur in recreational duck shooting, a necessary definition of the scope of the offences and of the permitted behaviours are not presently confined within the specified hunting areas. This means that offences could be generated by people outside of the specified hunting area with no knowledge of the impacts of their actions. For example, under section 58, it is an offence to hinder a person in their pursuit of the killing of ducks. Since the geographical scope is not defined, any activity that reduces the number of ducks for a duck shooter could be defined as hindering, such as flying a kite in a neighbouring park or a truck using a loud horn when passing on a nearby street.

Language is important in legislation as it allows persons to exploit loopholes within the system.

1.5.2 Should any additional animal species or taxa (groups of species) be included in the definition of 'wildlife' or 'protected wildlife'? Should any species or taxa be excluded and therefore be exempt from some provisions in the Act?

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### **Recommendations**

17. All indigenous wildlife (living here before 1788) to be protected wildlife
  18. Licenses to be issued for destroying (etc.) protected wildlife only for compassionate reasons
  19. The Minister cannot unprotect protected wildlife; only a new Act can do so.
  20. Definitions such as 'threatened' wildlife to be *in addition to* 'protected wildlife', effectively adding another layer of protection
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Dingoes: Dingoes are a threatened species under the *Flora and Fauna Guarantee Act*, yet under the *Wildlife Act* they are not protected on private land.

According to the Conservation for Australian Dingoes, dingoes receive no more protection today than they did before they were listed under the *Flora and Fauna Guarantee Act*. Dingoes are still officially unprotected in the 3-kilometre buffer zone around crown land. Since they were listed as a threatened species, lethal control has actually intensified through the introduction of aerial baiting, usually of 1080 poison, and a "wild dog bounty" of \$120 per scalp.

Recreational hunters can still hunt dingoes without consequence, including on parts of public land where even government controllers are not allowed to operate.

Dingoes are not killed to protect other wildlife, but ironically to protect *introduced* farmed animals, such as sheep. It is all about economic and political considerations around farming and agriculture, rather than protecting wildlife and biodiversity.

Before Australia was colonised, dingoes acted as apex predators should; keeping the numbers of other animals under control by killing the sick and the weak and maintaining the ecosystem. They were also highly valued by Aboriginal people as companions, protectors and hunters, a relationship which still exists in many communities today.

Apart from being grossly inhumane, killing dingoes is illogical because, according to The Department of Environment, Land, Water and Planning's own figures the predation level is an average of 1500 sheep per year in Victoria out of a total of 15.1 million. (Less than 0.01% predation).

Killing dingoes has become big business and there are many vested interests in the "pest" control industry. In fact, it would be much better to compensate farmers for any proven stock losses than spend millions of dollars on baiting.

Dingoes should be highly valued in the Australian landscape. They would keep the numbers of introduced species such as foxes and cats under control saving the taxpayer literally millions of dollars per year in the process.

*1.5.3 Should 'game' animals be defined as wildlife in the Act or defined some other way or excluded from the Act entirely?*

Game animals ARE wildlife, they are just arbitrarily unclassified for a period of time to allow recreational hunting.

Attempting to reclassify them under a new heading, or removing them from the *Wildlife Act* runs the risk of allowing them to be viewed somehow differently to other animals covered by the *Wildlife Act* full time.

## **2.1 There are overlaps and gaps in the broader legislative framework**

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### **Recommendations**

21. Ensure that indigenous wildlife are protected and those protections cannot be eroded by other legislation
  22. Where there is a gap or a conflict in legislation, apply the guiding principle that protection of wildlife comes first.
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*2.1.1 Do you have any comments on the interactions between the Wildlife Act and other legislation?*

The *Wildlife Act* should protect all wildlife as a priority, as stated in the purpose. For instance, kangaroos are classified as wildlife, but are defined as game in the *Meat Act 1993* and may be established pests in the *Catchment and Land Protection Act 1993*.

#### **FFG Act**

An obvious contradiction in legislative intent occurs when the *Wildlife Act* exempts duck shooters from charges under the *Prevention of Cruelty to Animals Act* if their intention is to kill a duck, yet wildlife rescuers can be charged under the same Act whilst attempting to save a duck's life. In terms of community expectations, this is extremely disjointed and widely perceived as unjust.

Authority to Cull Wildlife permits are allowed to be issued to any individual with no regard to the person's capacity or capability to complete this activity in a manner compliant with the *Prevention of Cruelty to Animals Act* and there is no training, monitoring or compliance checks



Victoria and Australia are both beholden to the RAMSAR international convention on wetlands of international significance, yet the activity of recreational duck shooting takes place on multiple RAMSAR listed sites. This usage of such wetlands frustrates the intention of the convention in protecting certain migratory species and presents a clear challenge in compatibility. Excluding RAMSAR sites from potentially harmful activities such as recreational duck shooting would be a simple step resolving this conflict.

'Authorised officers' in the Act refers to anyone authorised under the Conservation, Forests and Lands Act 1987, the Game Management Authority Act 2014 and the Victorian Fisheries Authority Act 2016. In the Wildlife Act these authorised officers can be used in any of a wide range of divergent tasks without regard to their skill or relevance to the specific section of the Act. This indiscriminate application of authorised officers can and has led to the poor application of the legislation by officers not suited or trained for the situations to which they have been assigned. For instance, officers co-opted from Fisheries to the enforcement activities of the Game Management Authority during the duck shooting season have witnessed significant breaches of the Act by recreational duck shooters but were unaware of the nature of the offence since their training had prepared them to anticipate only a handful of the most common offences.

#### *2.1.2 Should wildlife, flora and fauna generally be regulated by a more inclusive statute?*

In the effort to streamline the legislation governing wildlife, it is beneficial for the public and the enforcement agencies to be able to refer to one Act that comprehensively covers all the relevant areas without inconsistencies that can arise when multiple pieces of legislation are involved. Having all of the areas of wildlife governed under a single act would better reflect the importance and regard in which wildlife should be held.

#### *2.1.3 Should game management be regulated under its own Act? What are the advantages and disadvantages of such an approach?*

NO. So called 'game' animals are just wildlife that have been arbitrarily deemed to lose their protected status for a period of time to satisfy the whims of hunters. To regulate them under a separate act causes an even greater disconnection from their position as wildlife. Segregating them into a separate act could cause them to be viewed differently to wildlife and will therefore eliminate some of the protection afforded to wildlife.

## **2.2 Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act**

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### **Recommendation:**

23. Where conflicts exist between different legislations or where there is a gap, apply the legislation that affords the highest level of protection to wildlife.
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#### *2.2.1 How do regulatory differences between states help or hinder wildlife management? Please provide examples from your own experiences.*

Regulatory differences between states can be in direct conflict. For example, NSW and QLD have banned duck shooting, however, Victoria still allows a recreational duck shooting season, failing to take into account the migratory nature of ducks. They will fly across the country depending on climatic conditions. With great disparity between weather and environmental conditions between the states at any one time, for example, Victoria may be flooding whilst QLD is experiencing drought, there is a very real possibility of ducks flocking to where the water is at the inopportune time of duck season. Victorians are then killing ducks that originate from a state where the legislative intention is to preserve their lives; in effect we are contravening their legislation. States should seek to have their legislation compatible with one another, even where that legislation differs.

#### *2.2.2 How can the review of the Act address differences in regulation across land tenure regimes?*

If we consider the stated purposes of the Wildlife Act and apply the hierarchy of priorities, then first and foremost, we need to consider the protection of wildlife in any decision making process. In this way, when there is a regulatory difference in how wildlife is treated across different tenures of land, we can at least be assured that we are considering the rights and needs of wildlife as our primary concern.

The examples of migratory animals such as ducks or other wildlife that may regularly cross state borders, highlights the issue that animals that may be legislatively protected in one area, lose that protection when they cross a human-enforced border that they have no concept of. In this case we need to enforce the legislation that holds the highest levels of protection for wildlife.

## **2.3 The current legislative framework doesn't preserve and conserve habitat**

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**Recommendations:**

24. Ensure the Act recognises that preserving wildlife habitat is crucial to protecting wildlife and preventing extinction
  25. Ensure that the effects of climate change on wildlife habitat are recognised within the Act and there are management plans included to mitigate this effect.
  26. Landowners have a duty of care to protect wildlife, wildlife habitat and biodiversity on their property; the Act should record this duty
  27. Mandatory minimum standards to conserve wildlife habitat should be applied to activities that impact wildlife habitat
- 

*2.3.1 In what ways does the Act succeed or fail in protecting and conserving wildlife habitat? Please provide examples from your own experience.*

Australia has the worst mammal extinction rate of any country in the world and is expected to continue on this trajectory unless we take some drastic action. Scientists predict that more than a million species are on the way to extinction in the next few decades.

**Climate change:** Our lack of action on climate change contributed to the catastrophic fires in Victoria, and elsewhere in 2019 resulting in the loss of an estimated 3 billion animals. Extreme weather conditions are eliminating habitat and food and fresh water sources are being drastically reduced.

**Human population and urban sprawl:** There is an obvious failure to protect wildlife from urban sprawl. The Act does not protect animals from land clearing. Land is cleared for housing with little thought given to the destruction of habitat. Where are the animals supposed to go? This leads to a situation where people complain about the possums, bats, birds and other animals which are then concentrated in our gardens and suburban parks.

**Animal Agriculture:** Animal Agriculture is the leading driver of deforestation, habitat loss and species extinction. According to Agriculture Australia, It accounts for 55% of Australian land use which equates to 427 million hectares, excluding timber production, in December 2020.

**The use of poisons, herbicides and insecticides:** Poisons are used extensively in Australia particularly for the control of so called “pest” species. **Sodium monofluoroacetate**, also known as 1080, is a particularly inhumane and dangerous poison banned nearly everywhere in the world except Australia and New Zealand, because of its deadly impact on wildlife. It is not species-specific and kills thousands of wildlife by primary or secondary poisoning. Government departments have extremely misleading information on their websites, which makes this substance sound benign and states that it is the same as the fluoroacetate found occurring naturally in plants.

Herbicides may reduce food, cover and nesting sites needed by insect, bird and mammal populations. Runoff into rivers and oceans can affect fish species.

Insecticides by definition, diminish insect populations, which affects insect pollinators, thereby affecting plant species.

**Logging and mining:** Logging and mining destroys enormous swathes of wildlife habitat. Legal logging has taken place in koala habitat and in that of the critically endangered Leadbeater's Possum. Illegal logging on private land at Cape Bridgewater, near Portland killed at least 40 koalas.

### *2.3.2 How should the Act provide for the protection and conservation of wildlife habitat?*

- Include action to address climate change and its effects on Wildlife populations in the Act
- Better liaison between government departments so that they are working together to preserve wildlife
- Stopping the further intrusion of Animal Agriculture
- Stop the use of poisons and in particular, 1080
- Limit the use of insecticides and herbicides via legislation
- Stop logging old growth forests. Always leave habitat for animals when logging is permitted.
- Stop deliberately killing our native species such as dingoes, ducks and kangaroos.
- Create more National Parks in arid areas and in marginal farming areas.
- Ban the hunting of native species

### *2.3.3 Should the Act prescribe duties for landowners about protecting and conserving wildlife and wildlife habitat on their land? What could those duties look like*

Most losses of wildlife have occurred on private land. Landowners should be custodians of the species on their land.

Wildlife should not be regarded as being "owned" by the land holder but as a precious resource to maintain biodiversity. Landowners' duties should include providing vegetation, shelter and allowing natural food to thrive instead of clearing land for monocultures or animal agriculture. In some areas the economic value of wildlife could provide an income for the landholder, for example, bird watching.

Killing of wildlife should not be permitted to protect introduced species such as sheep, which can be protected by good husbandry. There should be increased penalties for non-compliance.

## **2.4 The treatment of wildlife as property**



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### **Recommendations**

28. Recognise the sentience of all wildlife under the Act.
  29. Recognise the rights of wildlife to live their lives free from the influences of humans.
  30. Ensure that new legislation and amendments to current legislation take into account the impact on sentient wildlife.
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#### *2.4.1 Do property rights related to wildlife need clarifying? If so, how?*

The concept of wildlife as ‘property’ is one that we need to move away from. Victoria’s ‘Animal Welfare Action Plan’ sets the basis for how we can begin to do this: by recognising the sentience of animals.

Science demonstrates that animals are sentient. This means they experience feelings and emotions such as pleasure, comfort, discomfort, fear and pain. Sentience is the primary reason that animal welfare is so important. All people and industries within Victoria have a responsibility to treat all animals with care and respect

Viewing wildlife as ‘property’, whether the ‘owner’ is a landowner whose land houses their habitat, or whether we view the state government or the Crown as controlling ownership, suggests that they have an entitlement to the animal and can therefore use or control the animal as they see fit. This view can lead to the rights and needs of the animal becoming secondary to the human in any decision making process, or even ignored entirely.

If we recognise that wildlife (and all animals) feel emotions such as pain, fear, joy, contentment, boredom, frustration and anxiety, then we must accept that we have obligations towards protecting their inherent right to exist and to live their lives with minimal interference for humans. Wildlife must be treated as equal subjects under the law, they are not ‘property’ any more than humans are and should not be treated as such under law.

#### **The Wildlife Act fails to protect individual species:**

**Dingoes:** Dingoes are a threatened species in Victoria yet there is still a bounty of \$120 on their head. They are Australia’s native apex predator and as such, provide an important role in the management of ecosystems. Dingoes have been persecuted in Australia since the arrival of the British, ironically to protect farmers and their introduced species of sheep, cattle, goats etc. One fox bait containing 4mg of 1080 poison is twice as much as is required to kill a dingo. If the use of 1080 baits were stopped then dingoes would control introduced species such as foxes, cats, pigs and even brumbies by killing the sick and the weak as wolves do in the USA, and free of charge!

Dingoes are a totem animal of Aboriginal people. How can we respect the Traditional Custodians of this land by killing their totem animal?

**Native ducks.** Many of us have been on the wetlands during duck shooting season. Duck shooting is not a sport, it is indiscriminate killing of wildlife that is already in dangerous decline. People nowadays don't want to live without the internet, proper housing and all the trappings of civilisation, so why argue that duck shooting is 'traditional' when cave dwelling was traditional but we don't want to go back to those primitive conditions? We no longer need to kill wild, native species for food.

**Kangaroos:** According to wildlife Victoria, the overall population of kangaroos in Victoria at the time of the 2020 survey was estimated to be 1,942,000. Killing of kangaroos near houses near Dunkeld in Gariwerd National Park (the Grampians) has caused extreme distress to local residents. Why not allow them to be an attraction to visitors in the area? Similarly kangaroos who often frequent golf courses are being persecuted.

#### *2.4.2 Should private landowners have greater rights to use of wildlife on their property?*

The fact that wildlife resides on land that is owned does not translate to the wildlife also being the property of the landowner.

Landowners should be considered privileged 'custodians' of any wildlife who live on their land. Wildlife has a right to live their lives unmolested by humans. To suggest that the owner of land has a right to 'use' the wildlife that lives there, negates the fact that wildlife has a right to self determination and to live their lives freely.

The concept at law that free-living animals that unknowingly enter land owned by humans and therefore become the property of that human is antiquated and outdated. Victorians would no more accept this idea, then the concept that a cat that jumps over the fence during the course of the day becomes the neighbour's cat.

#### *2.4.3 Should the Act recognise sentience of some wildlife and, if so, what would this achieve? How would this recognition affect the rights and responsibilities of governments, businesses and individuals?*

Animals should be recognised as sentient beings in the Act as a reflection of our understanding of their ability to feel pleasure and pain. From that understanding the obligations of the community and Government Authorities can be more readily understood. By acknowledging the sentience of some wildlife in the Act, it would impose a duty of care on all people to ensure good animal welfare outcomes, as it does for companion animals.

The possible flow-on from this recognition would include more comprehensive studying and surveying of the impact on species before any development or major works can be carried out, an end to the commercial killing of animals who are declared to be sentient and the investment

of resources to support the wellbeing of declared species. While there may be a requirement of some business types to close e.g.: shooting kangaroos for pet food, there will be opportunity for businesses such as wildlife rehabilitation to exist.

Both New Zealand and Canada, as well as the Australian Capital Territory, recognise sentience in legislation, and while this doesn't directly affect the rights and responsibilities of governments under current legislation, it does affect new legislation and amendments to the current legislation to ensure animals' wellbeing is considered.

#### *2.4.4 What rights and responsibilities should Traditional Owners and Aboriginal Victorians have related to wildlife?*

Wherever possible, the guiding principle for all Victorians is that wildlife should be left unadulterated and not interfered with. When management of wildlife is necessary, the inclusion of Traditional Custodian groups should be considered of extreme importance. The specific rights and responsibilities should be negotiated with Traditional Custodian groups, subject to the guiding principle.

### **3.1 The Act lacks principles about how to manage wildlife**

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#### **Recommendation**

31. The Act should include guiding principles and clearly defined criteria and priorities to guide members of the public and regulators, with regards to interacting with wildlife.
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#### *3.1.1 Should the Act include statements of principle and criteria to guide regulators, duty holders and the public? Why are such principles important? If you do support including principles, what do you think they should be and why*

Producing a clearly defined set of principles which the Act seeks to uphold, would be a valuable guide that would assist with reviewing the Act and with the creation of any future amendments or additions to the Act.

A simple framework of principles, such as the "5 freedoms of animal welfare"<sup>30</sup>, would ensure that all legislation is consistent with the stated purpose of the act

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<sup>30</sup> <https://kb.rspca.org.au/knowledge-base/what-are-the-five-freedoms-of-animal-welfare/>

### **3.2 Does the Act facilitate an equitable and participatory approach to wildlife management and conservation?**

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#### **Recommendations**

32. The Act should include provisions for community consultation on any matters relating to wildlife that occur within their community (such as proposed kills, development that affects wildlife habitat, changes to licensing), or that impact on wildlife that move through or near their community.
  33. Community consultations must ensure advertising to the community via a variety of methods, with different means of submitting a response and adequate time frames allowing all those who want to comment to have the opportunity.
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#### *3.2.1 Should the Act include provisions for consultation with the community on certain issues? What issues should undergo community consultation?*

- Yes the Act should include provisions for consultation with the community to:
  - Anywhere that the community has access to
  - Anywhere that the community is paying for maintenance via council rates
  - Anywhere that the land owner's property and land value are impacting as a result of management and conservation activities performed
- All issues with regards to management and conservation activities, so including baiting programs, killing ('culling'), land clearing and clean up, planting, bushfire management, breeding grounds, recreational activities (i.e., shooting, culling)

#### *3.2.2 How can community involvement in decision making under the Act be improved?*

- Conducting referendums, surveys, community notices with adequate notice preceding activities, increased data and evidence by experts so that the community can make informed decisions

#### *3.2.3 Are there currently barriers to private sector actors having meaningful involvement in wildlife management and conservation in Victoria? What are those barriers and what problems do they create for achieving the objectives of the Act? How might any such barriers be removed or minimised?*

- Barriers include
  - Lack of scientific evidence to make decisions
  - Minimal notice to become involved
  - Lack of 'knowledge of how' to become involved and who to contact
  - 'Red tape' affecting the ability to become involved, for example, an inability to access sites in disaster situations.

- Removing barriers
  - Improving clarity for who and how to become involved, referring to parks where the jurisdiction between council and Parks Victoria is blurred (as an example)

### 3.3 The Act has no framework for enabling wildlife management plans

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#### **Recommendation**

34. The Act must contain provisions for wildlife management plans that cover the full range of circumstances relating to wildlife such as bushfires, drought, preservation of habitat, conservation of threatened species.
  35. Immediately stop Authority to Control Wildlife permits until the application process and regulatory framework is revised
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*3.3.1 Should the Act enable wildlife management plans? What provisions should be included for such plans?*

**Authority to Control Wildlife:** The Wildlife Act sanctions the legal killing of tens of thousands of native animals. In just one year, 3441 Authority to Control Wildlife permits were issued authorising the destruction or harm of 185,286 animals. These included 966 emus, 3655 wombats, 3152 ravens, 6919 little corellas, 4570 cockatoos, 77,300 kangaroos (on top of a commercial quota) and 6604 grey headed flying foxes, which are a threatened species.

The current framework within the Act that allows for such a large scale of killing of wildlife clearly falls short of community expectations for wildlife protection.

There should be provisions within the Act for wildlife management plans that encompass a range of situations.

Provisions would include;

- A plan for emergency response to events impacting wildlife (such as bushfire or flood)
- Minimum levels of commitment to resources spread evenly across all areas
- A minimal application of required activities to occur at regular intervals; to conduct wildlife species counts and fauna growth/disappearance to ensure continuity of species and responsiveness
- A clear, mandatory framework for applicants for an 'Authority to Control Wildlife'. This would contain the requirements for an independent count of the animals in question,



ongoing monitoring of the population, the applicant to provide evidence of having trialled ALL non lethal forms of population control and an impact statement detailing the perceived impact of the wildlife. This must all be evaluated, together with the possibility of peaceful co-existence before any application may proceed.

- Wildlife management plans should also exist for those wildlife species that are threatened or protected, to ensure we maintain their habitat and food sources, especially in crucial areas or along migratory paths (e.g. Orange bellied parrots). The plan should also detail other conservation measures that can or will be applied to protect the species.

### **3.4 The permissions framework lacks clarity, transparency and accountability**

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#### **Recommendations**

36. Licensing regulations should adequately reflect the regulatory processes required to protect wildlife.
  37. Principles of coexistence with wildlife should be outlined in the Act and a framework established for guidance; coexistence with wildlife should be expected.
  38. The Act must totally revamp the ATCW system, ensuring transparency, accountability and that appropriate regulatory requirements exist; ATCWs should be a last resort and only issued in extreme circumstances when all other options have been seriously attempted and demonstrated, including coexistence and translocation.
- 

*3.4.1 Should the Act simplify and clarify the provisions relating to the various licences, permits and authorities? Is there scope to reduce regulatory burden without undermining the intended outcomes of the Act?*

No, the licensing and permit system should not be simplified, as this runs the risk of eroding or removing some of the little protections afforded to wildlife. The current licensing requirements are already not adequate to uphold the intended outcomes of the Act; if anything, the processes need to be expanded and clarified, not simplified.

The ATCW permit has such a low level of regulation that it is not fair to even suggest that it has a regulatory process.

The game licence that allows the recreational shooting of ducks exempts the shooter from POCTA. If the licensing process was serious in its attempt to uphold the objectives of the Wildlife Act, it would also contain requirements for an accuracy test with a firearm as a bare minimum, considering the cruelty of the high wounding rate associated with duck shooting.

The regulatory burden could be eased by having the cost of licenses reflect the true cost of regulating the activity. This would ensure that there was adequate staffing funded to conduct compliance and monitoring checks and enforcement activities under the act, resulting in a fairer, smoother running system.

### 3.5 Fees imposed by the Act do not fully recover costs

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#### **Recommendations**

- 39. Licensing fees should adequately reflect the costs of monitoring and regulating an activity.
  - 40. Money raised from licensing fees should be directly channeled to regulating the activity.
- 

#### *3.5.1 Is the Act transparent about who pays for regulatory services?*

No, the Act is not transparent. The statement within the Act is too general and does not give a reasonable overview of who pays for regulatory services. Whilst there are costs prescribed for licences, there are no provisions for how these monies are spent. There is not even a requirement to use this money to fund enforcement and compliance checks on license holders. The Act should have a clear and transparent description and breakdown of what each fee is comprised of, how the money will be spent and who will oversee the process.

#### *3.5.2 Is full cost recovery appropriate, or should fees for some licences and activities be subsidised? What role is there for user pays or beneficiary pays principles? What, if any changes, should be made and why?*

Licences that are specific for hobbies/leisure activities should not be subsidised by tax-payers or non participants of the activity. Licences for wildlife rescue should be subsidised as they are volunteers and align with the purposes of 'protect and conserve'.

Current licence costs do not adequately reflect the cost of policing the activity. For example, a licence to shoot ducks costs approximately \$60 per year, yet GMA are crying out about being under-resourced, understaffed and unable to regulate the activity. Since this is a recreational activity, the shortfall should not be made up by tax-payers, instead the license cost should reflect the costs involved in enforcing the laws of the activity.

Whilst there is a risk that paying higher fees for licences may lead some individuals to think this gives them an inherent right to, or ownership of wildlife, it must be made clear that these higher fees are merely reflective of the regulatory cost of the activity and confers no such rights to licence or permit holders.

Similarly, shooters who kill kangaroos for pet food are benefiting financially from the killing of wildlife, yet they are not paying for a licence. Local residents in areas where this 'harvesting' activity takes place, have reported acts of aggression and violence and feelings of being unsafe, with very little action by authorities. A system whereby the beneficiary pays a reasonable sum for a permit would result in funds becoming available for enforcement activities by authorised officers and to keep the community safe.

### **3.6 The Act doesn't have a mechanism for the making of mandatory codes, standards or guidelines**

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#### **Recommendation**

41. The Act must contain provisions for mandating codes, standards and guidelines that are relevant and appropriate.
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*3.6.1 Should the Act contain provisions that allow for issuing mandatory codes of practice, standards or guidelines? 3.6.2 What activities could most benefit from the development of mandatory codes or standards?*

The current process under the Wildlife Act to obtain an 'Authority to Control Wildlife (ATCW)' is dependent upon the honesty, accuracy and thoroughness of the applicant. The system is largely self-regulated which leaves it open to potential abuse and/or error.

A process that controls the potential destruction of wildlife should be subject to stringent checks and balances that must be mandated, not simply policed by a series of guidelines and unwavering faith in people's intention to comply with them.

### **4.1 Should expanded reporting requirements be included in the Act?**

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#### **Recommendation**

42. The Act must contain a transparent reporting system that permits public access.
43. The reporting system should record adequate and appropriate information to be accountable for wildlife, including who was consulted, which stakeholders were involved and why, what information was considered, what information was discarded and why, and how decisions were reached.
- 

*4.1.1 Does the Act require an adequate degree of transparency about, and accountability for, decision making on matters relating to wildlife? If not, how could this be improved? For example, which activities/decisions/ criteria should be more transparent? Which parties should be more accountable and for what?*

The decision to hold a duck season, the length of time, bag limit and conditions imposed upon it, should be transparent and held up for public scrutiny. When this decision contravenes scientific evidence that suggests a season should not be called, or conditions imposed, then the Act must specify a clear process that holds decision makers accountable and that requires reporting of the considerations that lead to the decision being made.

## 4.2 Should independent expert advice play a greater role in decision making under the Act?

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### **Recommendation**

44. The Act should establish an independent scientific advisory committee acting for the protection and conservation of wildlife, to reduce bias and conflict of interest.
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*4.2.1 Should the Act include provisions that require and enable establishment of a scientific advisory committee or advisory panels to provide expert guidance to key decision makers such as the Minister, the Secretary or the regulator on specific matters relating to wildlife? Why or why not? What other approaches are available?*

The Act should include provisions for enabling the establishment of a scientific advisory committee for the sake of reducing bias and conflict of interest.

An example of why one is needed include the biased nature of currently presented scientific evidence including the influence that Game Management Authority has in the recommendations of the duck shooting season. There is a clear bias because their jobs are dependent on the season going ahead; thus any evidence they present about bird numbers in Victoria can be hand-selected data that is questionable because of the said bias. The GMA have been accused of bias in the independent Pegasus Review 2018<sup>31</sup> and more recently have deliberately underplayed the costs associated with duck shooting seasons whilst exaggerating the economic benefits. These are not attitudes that the public expects of a regulator. The lack of an independent body to provide advice to the government as to when and how a duck shooting season could proceed is a fundamental flaw of the legislation.

In a case such as distribution of 'culling permits', an independent group of advisors would ensure that killing wildlife is a last resort, all other options have been adequately considered and the impacts on the wildlife population were taken into consideration.

Rather than having one biased group of individuals with an agenda presenting information to the Ministers, having multiple expert opinions from a diverse range of individuals would allow for a clearer picture of the wildlife issues/numbers/solutions and align closer with the purpose of the Act.

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<sup>31</sup> Fisher R & Davey A (2017) Assessment of the GMA's compliance and enforcement function. Pegasus Economics. September 2017. [https://8c4b987c-4d72-4044-ac79-99bcaca78791.filesusr.com/ugd/b097cb\\_97d51dc5a28a4c9e992c231ee0e9cf1e.pdf](https://8c4b987c-4d72-4044-ac79-99bcaca78791.filesusr.com/ugd/b097cb_97d51dc5a28a4c9e992c231ee0e9cf1e.pdf)

## 5.1 It's not clear whether the Act creates the appropriate offences

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### **Recommendations**

45. The Act should remove offences that restrict or prohibit the activities of those who seek to protect and conserve wildlife
  46. The Act should create offences for those who influence or coerce others into contravening the Act
  47. The Act should prohibit humans from forcing an animal to act contrary to their natural behaviours
  48. The Act should prohibit actions which disregard the sentience of wildlife
  49. The Act should create an offence for those who facilitate or assist in the illegal trading of wildlife
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#### *5.1.1 Should the Act include other offences?*

There should be an offence that covers one person convincing, coercing, or attempting to convince or coerce another person into performing actions that contravene the Wildlife Act. This may be especially pertinent in cases of an employer/employee relationship, or a parent/child relationship where one person has more power

Any actions that involve attempting or forcing an animal to act contrary to their normal behaviour, or which prevents an animal from expressing their natural behaviours without a valid reason. For example this would not apply where an animal is being temporarily restrained for veterinary care, but would apply in a situation where wildlife is being used for entertainment purposes.

Any actions that result in an animal being subjected to fear or anxiety either for themselves, or for another animal in their family group e.g. their young or their mate.

Facilitate or assist in the illegal trading of wildlife, including;

- Advertising the sale of wildlife without a permit,
- Falsely declaring illegally taken wildlife as wildlife permitted for trade,
- Transporting of illegally traded wildlife,
- Encouraging another person to engage in the illegal trade of wildlife,
- Disguising the carriers or packaging in which illegally taken wildlife are transported or concealed, and
- Obfuscating the sales, communications, transactions or transport of illegally taken wildlife to avoid detection.



### 5.1.2 Should any offences be repealed?

58E - Remove the law against '*harass and hinder of hunters*'. No other law says that perpetrators of violence need to be left alone to be violent undisturbed.

58C - Offence for certain persons to enter on or remain in specified hunting area (before 10am or 2 hours before sunset). This law effectively removes wildlife rescuers from being present at the prime shooting times when wounding of native waterbirds is most likely to occur. In effect it removes a layer of protection for wildlife. Either the law should be repealed, or there should be the creation of a 'rescuer licence' which does not require a gun and game licence, but allows rescuers to search for and rescue shot wildlife at their times of distress.

## 5.2 Do maximum penalties deter or sufficiently reflect the seriousness of offences?

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### **Recommendations**

50. The Act must apply **proportional** penalties to all offences.
  51. Penalties for crimes against wildlife must reflect and respect the lost life, and be in line with community expectations.
  52. Remove and ban gun and game licences of repeat offenders, particularly if convicted of any violent crime, including aggravated animal cruelty.
- 

### *5.2.1 Are the maximum penalties in the Act adequate to punish and deter offenders? If not, what should they be?*

The Act contains a wide range of offences as it covers so many areas, however, it is confusing for the public to understand or respect the maximum penalties for some offences when they seem so disproportionate to others. For example, the maximum penalty for removing sand from a wildlife reserve is 25 penalty units, whereas the maximum penalty for molesting or injuring wildlife is only 20 penalty units. The community expectation is clearly that the Act should first and foremost be about protecting wildlife, but the opposite message is sent when the penalty for injuring wildlife is less than taking sand. There may be excellent reasons for the penalty for taking sand to be equivalent to 25 penalty units, but the offence of injuring wildlife should be considerably more than that if the legislation is to keep true to its core purpose, and be in line with community values and actually serve as an effective deterrent.

In 2018, 406 wedge-tailed eagles were illegally poisoned with the offender receiving only 14 days prison sentence and a \$2500 fine<sup>32</sup>. When the penalty imposed is equivalent to just over six dollars and 50 minutes incarceration per offence, the message being loudly sent out to other would-be offenders is that this is a crime worth committing as the penalties are negligible.

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<sup>32</sup> <https://www.abc.net.au/news/2018-09-24/man-poisoned-wedge-tailed-eagles-in-gippsland-jailed/10298426>

In 2020 a reported koala 'massacre' took place in western Victoria, with more than 40 koalas killed, bulldozed out of trees and left injured in piles. The penalty of up to \$8,000 and an additional fine of \$800 per head of wildlife was not a disincentive to the logging interests that pursued this callous course of action. As long as penalties remain so low it is the kind of act that can be expected to be repeated.

Penalties for mass killings of wildlife should consider not just allowing a fine per head of wildlife killed, it should allow the option to have an escalating scale for each additional animal unlawfully killed. This would serve as a true deterrent, otherwise offenders having already killed one animal would see no real difference to killing another and to keep killing.

Community expectations are that wildlife killings are especially heinous and should be met with maximum penalties far in excess of the current standards. Something akin to 100 penalty would be a minimum to satisfy the Victorian public in this regard.

Violent behaviour is more prevalent in people who engage in violent activities, like shooting and hunting. Hunters are significantly more likely to be abusive to animals or to damage property than non-hunters<sup>33</sup>. This association between hunting and animal abuse is concerning given the well-established connection between animal abuse and violence towards people, in particular child abuse, elder abuse and domestic violence<sup>34</sup>. In Australia, on average, one woman is killed every nine days<sup>35</sup> by her partner or ex-partner and 83% of perpetrators of family and domestic violence (FDV) are male; 84% of Victorian perpetrators of FDV are male<sup>36</sup>. The annual cost of violence against women and children was estimated to be \$22 billion in 2015-2016 in Australia<sup>37</sup>. Recent changes passed through state parliaments in NSW<sup>38</sup> and Victoria<sup>39</sup> will address animals in family and domestic violence. Continued violence against animals, including poisoning, trapping, shooting and hunting, is a driver of various forms of violence in our communities.

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<sup>33</sup> Flynn C (2002) Hunting and Illegal Violence Against Humans and Other Animals: Exploring the Relationship. Society and Animals. 10(2):137-54. <http://www.animalsandsociety.org/wp-content/uploads/2015/11/flynn1.pdf>

<sup>34</sup> Diemer K & Humphreys C (2021) In Victoria, animal abuse may soon be considered a form of family violence. Here's why that matters. The Conversation, 03March 2021. <https://theconversation.com/in-victoria-animal-abuse-may-soon-be-considered-a-form-of-family-violence-heres-why-that-matters-156284>

<sup>35</sup> Australian Government (2021) Useful statistics: What we know about violence against women. National Plan to Reduce Violence against Women and their Children. <https://plan4womenssafety.dss.gov.au/resources/useful-statistics/>

<sup>36</sup> Australian Bureau of Statistics (2021) National statistics about defendants dealt with by criminal courts including demographic, offence, outcome and sentence information. Criminal Courts, Australia. <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2019-20>

<sup>37</sup> KPMG Australia (2021) The cost of violence against women and their children in Australia. Final Report: prepared for the Department of Social Services, Australian Government. [https://www.dss.gov.au/sites/default/files/documents/08\\_2016/the\\_cost\\_of\\_violence\\_against\\_women\\_and\\_their\\_children\\_in\\_australia\\_-\\_summary\\_report\\_may\\_2016.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2016/the_cost_of_violence_against_women_and_their_children_in_australia_-_summary_report_may_2016.pdf)

<sup>38</sup> NSW Government (2020) Domestic violence reforms pass Parliament. Media Release, 19Nov2020. <https://www.dcj.nsw.gov.au/news-and-media/media-releases/domestic-violence-reforms-pass-parliament>

<sup>39</sup> Andy Meddick MP (2021) Victorian Parliament votes for animals to be considered victims of family violence. Media Release, 03Mar2021. <https://andymeddick.com.au/2021/03/03/victorian-parliament-votes-for-animals-to-be-considered-victims-of-family-violence/>

So, offences where the accused persons are in possession of firearms, bows or crossbows are of significant public concern; we refer here to those offences not covered by the Firearms Act, for example, “hunting” offences. Such offences should also have a much greater maximum penalty to encourage the utmost responsibility with firearms and reassure the community that such behaviours are regulated most seriously by the Victorian Government. A maximum of at least 60 penalty units is appropriate. Additionally, gun and game licences should be cancelled and banned for repeat offenders, particularly if convicted of any violent crime, including aggravated animal cruelty. This point should be made as an amendment in the *Firearms Act*, under which gun licences are regulated.

### **5.3 Continuing offences and additional penalties could be strengthened**

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#### **Recommendations**

53. The Act should contain provisions for additional offences and penalties against those who harm wildlife to remove them from future opportunities to reoffend
  54. Penalties for harming wildlife must take into account the intention of the accused, the number of animals harmed, the length of time they suffered, the potential for the actions to cause future harm to other wildlife or animals, and the steps taken towards reparation as well as the probability of reoffending
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#### *5.3.1 Should the Act contain general provisions creating continuing offences and allowing for additional penalties?*

At present, the Act lacks any serious range of penalties against those who unlawfully kill or harm wildlife and as such, the Act is inadequate as a deterrent to such actions. Offenders found to have wilfully harmed wildlife should, in addition to fines and custodial sentences (if and when imposed), be banned from having other animals in their care, whether that be through companion animal ownership, a work situation requiring the custodianship of animals or an informal care arrangement.

Exclusion penalties for short time periods, for example 12 months, does not serve a purpose where recreational hunting is involved, because hunting seasons are prescribed for specific parts of a year only. Instead, penalties could exclude the offender for a specific number of seasons.

Where duties arise or are imposed upon people to protect or serve wildlife and those duties are not met, prosecution for continuing offences is an essential tool for authorities and they should have access to it. For example, if a person fails to remove their toxic materials that put wildlife at risk, a single offence or penalty is not proportional to the increasing risks posed to wildlife over the time-frame of the offence.

Where wildlife is harmed and no remedy is attempted, the community expects that penalties would reflect not only the number of animals affected, but would also increase proportionally with the duration of the suffering.

#### **5.4 The sentencing process does not provide sufficient guidance for judges**

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##### **Recommendation**

55. The Act should contain provisions for community-impact statements to be provided in matters relating to wildlife crimes
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##### *5.4.1 Should the Act contain provisions to permit community impact statements relating to the harm caused to wildlife?*

The impact of wildlife losses can be felt keenly by surrounding communities, as well as individuals and the wildlife themselves.

In the instance where a case is being prosecuted, the act should make provision for impact statements from a number of sources and perspectives.

For example, the recent case of kangaroos being killed at Heritage Golf course. When the killing of these local kangaroos was proposed, the community was up in arms. This supposedly stopped the proposed cull, yet kangaroos have been found dead daily. This has saddened and upset the local community who enjoy observing the kangaroos and value their existence.

If this case were to be prosecuted, it would be appropriate to hear statements from the local community regarding what the kangaroos' loss has meant to them, as well as from First Nation's people who may have a connection to kangaroos and from a local vet or wildlife carer who may be able to comment on the impact that losing half the herd will have on the remainder of the mob.

Community responses should be presented to hearings and should influence both the penalty for this crime and any future applications an offender has in relation to owning animals and/or any future activities involving wildlife, or other animals.

##### *5.4.2 Should the Act contain specific provisions to guide sentencing of offenders convicted under the Act?*

Whilst judges should be left with the ability to apply their judgement to the specific situation without having their hands tied, sentencing guidance is important to appropriately convey the

community expectations, especially around the willful harming of wildlife, where the community expects severe penalties.

## **5.5 The Act could also contain a number of other sanctions and remedies to help achieve its objectives**

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### **Recommendation**

56. The Act should contain additional provisions for civil penalties.

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*5.5.1 Should the Act contain civil penalty provisions? If so, what penalties should be included? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

The introduction of civil penalty provisions under the act would allow for greater possibilities and flexibility in pursuing lesser crimes, for example licensing issues. The burden of proof is less and therefore the administrative burden is less for authorised officers. However, with substantial penalties, the possibility of deterring future offences is significant.

*5.5.2 Should the Act allow for infringement notices for minor offences? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

Whilst it is definitely advisable to ensure that enforcement agencies have the option of issuing infringement notices for lesser offences, care must be taken that this does not have the opposite of the desired effect by giving more serious offences a lesser penalty. It is likely that this lesser penalty for a case that should be indictable, would be more often chosen by enforcement officers and that would lead to an erosion of the deterrent effect.

For example, it seems sensible to have a infringement option for trading wildlife with an expired licence since the deterrent effect is aimed at encouraging people to keep current with their licensing obligations; conversely, a fine for someone wantonly killing wildlife with no permit at all would be viewed by the community as far too lenient and would also be seen by the perpetrator as little more than a nuisance rather than a serious reprimand.

*5.5.3 Should the Act contain provisions enabling regulators to enter into enforceable undertakings? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

Yes



*5.5.4 Should the Act contain provisions allowing for compensation orders or mandated bonds/ financial assurances? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

Yes

*5.5.5 Should the Act contain provisions allowing for the making of costs orders? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

Yes

*5.5.6 Should the Act contain provisions allowing for the making of a monetary penalty order? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

Yes

*5.5.7 Should the Act contain specific provisions to allow for the forfeiture of property used in the commission of an offence under the Act? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

It should be an assumption at law that the items of property used in the harming of wildlife in an offence against the Act would be forfeit unless a compelling case is argued to the presiding judge.

The offences in relation to the “hunting” of animals should result in the loss of the “hunting” equipment specifically used in the commission of that offence.

The community expectation is also that any person found guilty of offences against the wildlife act in relation to “hunting” animals should not be allowed to retain the weapons used in that hunting activity, in particular, firearms, and those firearms should then be forfeit as well.

*5.5.8 Does the Act contain adequate regulatory tools, sanctions and remedies to punish and deter wildlife crime? If not, what additional tools, sanctions and remedies should be included within the Act?*

Given the scope of the wildlife Act relates to most of the natural areas and the flora and fauna of Victoria, there is fundamentally no possibility of the state ever being able to provide sufficient enforcement resources to monitor areas or even adequately investigate reports of possible offences. It is usually only when members of the public, often acting within a community group that has an interest in the natural environment, that allegations even come to light. The duck shooting season is an excellent example of this, where the Game Management Authority officers rarely detect any offences of duck shooters first hand because there are too few officers and too many locations, coupled with the fact that the officers mostly patrol only the perimeter of the shooting locations. The large-scale massacres and subsequent dumping of duck bodies

were only uncovered by volunteers, as was the illicit substance use by shooters prior to their hunting activities, as have been innumerable cruelty reports.

Enforcement authorities can be given the tools to work more collaboratively with community organisations and NGOs for the collection of evidence to uncover and prosecute offences. Without this scope it is commonly understood by the broader community as well as potential offending duck shooters, that the Game Management Authority are unlikely to ever catch them in commission of an offence and therefore the legislation poses little to no deterrent to their behaviour.

## **5.6 Authorised officers may not have the necessary powers to enforce the Act**

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### **Recommendations**

- 57. There needs to be greater recognition of the seriousness of crimes against wildlife within the Act and therefore greater motivation by authorised officers to pursue perpetrators of these crimes.
  - 58. There needs to be greater collaboration between GMA and other enforcement units.
  - 59. Serious crimes should be investigated together with a Wildlife Crimes Division within Victoria Police (as suggested by Environmental Justice Australia).
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*5.6.1 Does the Act contain the necessary powers and provisions to enable authorised officers to enforce the Act? What powers and provisions should be available to authorised officers? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?*

The Act already contains most of the powers needed for enforcement officers to pursue offences against Wildlife. What is needed, aside from the proper resourcing and training of the enforcement agencies, is the legislative motivation and commitment to pursue offences against the Act. Currently the Act reveals a bias from the legislators to facilitate human exploitation of wildlife for profit, rather than to the purpose of the ACT - the protection of wildlife - or acknowledging the intrinsic value of wildlife.

## 5.7 Are appeal and review provisions sufficient?

### *5.7.1 Does the Act provide appropriate provisions for the review and appeal of decisions?*

The review and appeal provisions in the Act are adequate as they stand. It is likely that the animal hunting community would like to weaken the ability of the authorities to impose penalties like licence cancellation and to make appeals easier. This would not be consistent with community values or the standards of law in other Acts of Parliament and so should not be permitted.

## 5.8 Should the Act provide for third-party civil enforcement?

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### **Recommendation**

60. The Act should allow for third party civil enforcement where there exists community groups in a position to monitor and assist authorities with information and evidence gathering.
  61. An Independent Animal Protection Agency should be established
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### *5.8.1 Should the Act provide for third-party civil enforcement under the Act? How might this make a difference in achieving the intended outcomes of the Act?*

Given the long history of government regulators failing to take action under the Act, as well as the growing frustration at the ongoing damage being inflicted on wildlife in Victoria, it is an excellent and necessary development of the Act to allow for third-party civil enforcement where genuine interests in accordance with the purpose of the Act can be established.

An Independent Animal Protection Agency<sup>40</sup> or similar would act as a reference agency to resolve any tensions.

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<sup>40</sup> <https://animaljusticeparty.org/wp-content/uploads/2020/10/AnimalLaw2020.pdf>