

CITY OF GREATER GEELONG

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Independent Review Panel
The State of Victoria
Department of Environment, Land, Water and Planning

30 June 2021

Doc No: D21-243001
Our Ref: Wildlife Act review
Your Ref: CoGG response to the
Wildlife Act review

Dear Review Panel

Re: Independent Review of the Wildlife Act 1975

The Sustainability & Environmental Planning Unit from the City of Greater Geelong (the City) has reviewed the issues paper and identified key areas to provide comment on.

We support the review of the Wildlife Act 1975 (the Act) and thank you for the opportunity to comment.

Our responses to the relevant Issues Paper questions can be found below in Attachment 1.

We wished to highlight our experiences in interpreting and applying the Act, and in the protection of wildlife and associated habitat. We have included examples where relevant to demonstrate the challenges and issues that we face in implementing the Act.

If you would like further information or clarifications please contact Jess Cook, Strategic Environmental Planner on (03) 5272 4258 or jcook@geelongcity.vic.gov.au .

Yours sincerely

A handwritten signature in cursive script that reads "Burke Renouf".

BURKE RENOUF
ACTING MANAGER

ENVIRONMENT AND WASTE SERVICES



Attach: Attachment 1

Attachment 1

Does the Act reflect contemporary attitudes towards wildlife?

How does the Act fail or succeed in representing community expectations for, and values relating to, wildlife using examples?

There has been a significant change in attitude towards wildlife and the broader environment since the Act was introduced in 1975. The City has seen an increased expectation from the community to take more of an active role in protecting wildlife and the environment. The increased interest and expectation is shown in growth of community groups such as Landcare, the development of groups such as the City's Sustainability Advisory Committee, and is also reflected in the development of the City's Environment Strategy actions in consultation with the community.

There is limited understanding with the intent and application of the Act. The contemporary community expectation is for the City to have a very proactive role in the protection of native species, rather than just the management of wildlife. In turn, this expectation creates challenges for land managers who are bound by the limitations of our remit under the Act and other legislation.

Are there conflicts between interests or expectations of different stakeholders or community members? Using examples.

The City has a range of very active community groups with an interest in the environment, and we have strong working relationships with a number of these groups to achieve good environmental outcomes within our region. However, the City is constrained by its ability to act on matters that are within the scope of our remit and have to manage expectations from the wider community on a broad range of environmental matters.

The City has many challenges in other areas of wildlife management and protection of habitat and can struggle to meet community expectation because of a range of constraints. We face issues with managing conflicting land use requirements and having the required framework to justify decision making with regard to the Act.

An example of conflicting expectations of stakeholders is the management of the Grey-headed Flying Fox *Pteropus poliocephalus* which are roosting in the City's Botanic Gardens. The Environment Department work closely with the community groups and other internal and external stakeholders to protect and manage the roosting site, however there are challenges associated with maintaining the trees and managing safety for the community who may be accessing the area from an open space perspective.

There is also an issue regarding the boundaries of control programs for pest species such as Deer, where control programs are possible on private property, but there are significant challenges for land managers to extend these programs onto adjacent public land where the status of the animal changes from "pest" to "game". Deer pose a significant threat to a range of sites the City manages, especially in sensitive wetland areas, and we find our control options are limited and challenging, especially in areas where it would be beneficial to partner with adjoining public land to implement a holistic control program in line with best practice requirements.

How can the Act balance these interests and how could this be reconciled in legislation? Do other jurisdictions do it better or differently?

The City sees benefits in the Act providing defined obligations, and clear direction and pathways for the protection of wildlife and associated habitat, rather than the current contradictory purposes.

Reconciling the status of animals such as Deer and having defined pathways of action to protect native wildlife and habitat would benefit all.

Is the intent of the Act clear?

Are the current purposes satisfactory? What should they be? How should these relate to the desired outcomes and ensure they're achieved?

The current purposes of the Act are currently defined more as overarching goals and lack the required direction, implementation requirements, and defined responsibilities to ensure land managers can achieve them.

The conflict within the Act provides more challenges to protect wildlife and habitat in some instances, than it does pathways and direction to protect it. There needs to be clarity and a defined purpose for the Act, and clear direction to outline if it is intended to manage wildlife or protect it.

The Act in its current form proves challenging to implement and lacks detail to strengthen and ensure compliance with the purposes and intent. The lack of information available on the cumulative impacts to wildlife at a local, regional and state level adds challenges to decision making.

The City sees benefit in the revision of the purposes in line with the contemporary community view of environmental management, and the stressors our systems currently face.

If objectives are competing how could the tensions be resolved?

The development of a clear decision-making framework, developed by technical experts would assist land managers and individuals identify the requirements for management and the pathways and approaches that may be most practical to resolve tension and competing objectives.

A database on wildlife and the impacts recorded would assist in understanding the impact an action or competing actions could have at a local, regional and state level.

Could a General Duty help clarify roles and responsibilities?

Should the Act prescribe a general duty of care for wildlife conservation or biodiversity protection more broadly? Why? How would this work?

As previously stated, the City sees benefit in the review of the Act including clear responsibilities for all to ensure the intent of the Act can be achieved.

A General Duty of Care could be a pathway to achieve this goal but would need to be carefully developed to ensure practical application and interpretation can be achieved.

We note that the recent changes to the Victorian Environment Protection Act have implemented a general duty of care to all, and this approach may be useful to consider.

Definitions of terms can be unclear.

Are there any unclear definitions that create issues achieving the objectives?

The definitions within the Act do create issues to achieve the objectives. The contradiction in having non-native and pest species under the Act raises confusion about the intent to "protect".

The lack of inclusion of key native species such as terrestrial invertebrates, fish, sharks, eels and aquatic invertebrates can undermine conservation works, underestimate their importance in the ecosystem, and fail to highlight the interdependencies of many species.

Having the Act only include certain native species means that there are gaps in legislation to protect them and provides a less effective argument to ensure the ecosystem is protected when faced with issues and challenges.

Having species listed as “pests” and “game” depending on which parcel of land they are currently existing on, presents significant challenges to management of not only the pest species, but the protection of habitat.

The City is currently managing an environmentally significant site known as “Sparrovale” which is subject to extensive management requirement to manage environmental values. We are in the process of trying to manage Deer impacts to the sensitive site, however there are significant challenges with our control programs when the site borders with State land, and the movement of Deer between sites is impossible to prevent. The instant the species move into the adjoining reserve they are viewed as “game” and management becomes more challenging. We work closely with the Department of Environment, Land, Water and Planning (DELWP) and Parks Victoria on the management of the adjoining sites, however the additional work to develop a holistic control program is difficult and time consuming.

*Should any additional species or groups be included as wildlife (or excluded?)
Should game animals be defined as wildlife or in another way (or excluded?)*

To achieve the intent of “The protection and conservation of wildlife” we believe all native species (such as native terrestrial invertebrates, fish/sharks, eels and aquatic invertebrates) should be included under the definition of “wildlife”. This will allow land managers to appropriately address broader environmental issues and interdependencies of ecosystem management under the Act. Holistic management of the environment, including the role of invertebrates provides the best chance of implementing successful conservation and protection programs.

The inclusion of game under the Act provides significant challenges to the protection and management of wildlife and habitat. The removal of game species from the Act would assist in achieving the broader intent and a clear purpose to protect native wildlife. It would assist in removing the contradiction of the intent of the Act and allow for more inclusive and holistic management across land tenures.

How does the Act interact with other legislation about wildlife and animals?

Are there overlaps and gaps in the broader legislative framework

Any comments on the interactions between the Act and other legislation?

The Act in its current form does not provide adequate implementation and referral requirements to have a clear pathway for implementation in a planning environment. While consideration to the Act is given, there is no referral trigger when the City is considering impacts to habitat and wildlife unless it is covered by other regulatory legislation such as Clause 52.17 of the Planning and Environment Act 1987 (P&E Act), or if species are listed under the Flora and Fauna Guarantee Act 1988 (FFG Act).

Currently, an application to remove native vegetation under C52.17 considers the mapped native vegetation which meets the criteria set out in the *Guidelines for the removal, destruction, or lopping of native vegetation* (DELWP 2017). However, this does not include consideration of habitat for species, especially in areas of planted native vegetation or non-native vegetation that provides habitat for native fauna. Habitat for the species is considered under the FFG Act and the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), however a significant proportion of our states native fauna is currently not part of these listings and we are unable to determine the impacts to native fauna from legal clearing of native and non-native vegetation.

The lack of direction in its current form also proves challenging to implement the Act when undertaking strategic planning projects, due to lack of available information of current status and extent of species range and abundance, and how projects may influence the cumulative impacts the species are facing.

The City experiences a number of challenges when trying to meet the requirements of the various pieces of environmental legislation in meeting general obligations.

An example of this is the Nankeen Night Heron *Nycticorax caledonicus* nesting in Willow trees, and while we have obligations under the Catchment and Land Protection Act 1994 (CaLP Act) to remove Willow, but then other obligations to protect the habitat of the species, as it is listed as Vulnerable in Victoria.

We also recently had a request to allow eel fishing in a channel and wetland we manage which contains a number of species which are protected under the EPBC Act, however there is wording within the Victorian Eel Fishery Management Plan (2017) which only requires the “consideration” of interactions with threatened, endangered or protected species. The inconsistency of intent, and the lack of identifying Eel as wildlife, poses significant management challenges to meet the intent of all policies and legislation involved in such a decision-making process.

Should wildlife, flora and fauna be regulated by a more inclusive statute?

The provision of a more inclusive statute would provide opportunity to consider the holistic nature of conservation and environmental management and acknowledge the interconnectedness of nature.

This would also assist in providing a potential database of information where the state could track cumulative impacts to species and build a knowledge base on species distribution and abundance. There is currently limited information available on the overall impacts to species, and the abundance and distribution of species within Victoria. Having access to information such as this would allow for more informed decision making, effective planning, and measurable implementation processes.

Should game management be regulated under its own Act?

Yes, the current inclusion of game under the Act results in significant management challenges to protect native wildlife and habitat, and there would be significant benefit in managing game under a separate Act.

To achieve the intent of protecting native flora and fauna and preventing taxa from becoming extinct, there is significant benefits of having an Act that provides clear direction and minimises confusion and conflict within the intent and purposes.

Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act.

How do different regs between states help or hinder management using examples.

We have experienced challenges in managing migratory species such as birds and bats that migrate through different land tenures and states.

An example of this is the Grey-headed Flying Fox which is known as having one population throughout Australia and is managed as such, while being subject to different legislations in each of the states it is found in, as well as the federal EPBC Act. Balancing the requirements and trying to determine the impacts under the various pieces of legislation is challenging.

As mentioned above the City has also experienced challenges in implementing control programs when the status of species is different on adjoining land which is managed under a different land tenure.

The current legislative framework doesn't preserve and conserve habitat

In what ways does the Act succeed or fail in protecting habitat?

As highlighted above, there is some concern that the gaps which exist in the current legislative framework do not provide the required protection to ensure long-term preservation and conservation of habitat, and protection of taxon.

Given the conflicting nature of some of the goals, such as the management of Deer, the ability for regulators to ensure protection of habitat for native wildlife is flawed and limited.

The lack of guiding principles for habitat conservation can lead to issues such as habitat fragmentation and the impacts of edge effect, and the lack of connectivity through the landscape can lead to loss of genetic drift and the eventual loss of species within the conserved and protected areas. Lack of understanding on minimum size requirements, ongoing maintenance and rehabilitation works and other aspects of land management also lead to issues in meeting the principles of the Act.

How should the Act provide for protection of habitat?

Within the Act there needs to be clearly identified roles and responsibilities for protection and a framework for how this will be implemented, monitored and measured.

There needs to be an understanding of the measures required to manage the many types of habitat, and the introduction of sufficient regulation and legislation to enable the implementation of protection measures.

We suggest the development of agreed principles to ensure protected habitat remains protected and is sustainable in the long-term, in conjunction with technical experts.

We suggest the development of a state-wide database which can be utilised to inform decisions. Local, regional, and state impacts need to be understood to make truly informed choices.

The Act should investigate identifying existing gaps in legislation which sees the continued loss of habitat and ensure the proposed framework for this does not contradict or double-up on existing legislation, but instead addresses the gaps and ensures there is a framework for making decisions and ensuring habitat protection.

There is an absence of scientific knowledge when making decisions, and this must be addressed to ensure appropriate decisions are being made. The establishment of a technical advisory group or panel of technical specialists would assist in making informed decisions and establishing a clear framework for action moving forward.

The treatment of wildlife as property

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

There is some concern on how such rights would be implemented, monitored, and managed to ensure impacts were understood and recorded.

This may undermine the intent of the Act in regard to protecting wildlife by providing exemptions to allow impacts to occur.

What mechanisms does the Act need to achieve its objectives?

The Act lacks principles about how to manage wildlife.

Should the Act include statements of principle and criteria to guide regulators, duty holders and the public? Why are these important? What should they be and why?

Agreed principles and criteria to guide regulators, duty holders and the public has many benefits. It provides a clear framework for decision making, makes understanding roles and responsibilities easy, and is integral to ensuring state-wide consistency.

A failure to clearly outline principles and criteria may lead to contradictory decisions, unwanted precedence being set and lack of alignment with state-wide objectives and goals.

The Act needs to align with other legislation and policies and not contradict them. An example of this is that fish are seen as a resource rather than wildlife in the current form of the Act. Alignment with other legislation and a defined purpose within the Act will allow land managers to understand roles and responsibilities and ensure they can meet obligations under the various pieces of legislation.

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

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

The City works closely with a wide range of community groups which focus on environment and sustainability to develop and implement plans and strategies throughout the City, and to plan the management of conservation reserves. We strongly value the time, effort and information that these groups provide.

There is a significant amount of knowledge and data contained within these groups that will assist in making informed decisions that are reflective of the broader community. A failure to include these groups could exclude this valuable information from being factored in the decision-making process.

The permissions framework lacks clarity, transparency and accountability

Should the Act simplify and clarify the provisions relating to the various licenses, permits and authorities? Is there scope to reduce regulatory burden without compromising intent?

The City sees value in the regulation and transparency of permissible activities under the Act and sees significant value in the development of a state-wide database which would assist in informed decision making.

The Act needs to be a clear process with transparent decision making, where we are not trying to balance intent of the conflicting objectives.

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

Should it?

Yes. The provision of codes, standards and guidelines provides clarity and understanding of roles and responsibilities, clear decision-making frameworks, and mitigates against people applying their own interpretation of the Act.

Should expanded reporting requirements be included in the Act?

Does the Act require an adequate degree of transparency about decision making relating to wildlife? If not how can this be improved? What activities should be more transparent? Which parties should be more accountable?

In its current state, the Act does not account for the cumulative impacts to species result in actions taken under the Act. Accountability for all parties is required to demonstrate or outline the impacts of decisions made under the Act. For instance, permission to remove possums are generally considered at a singular instance level, and there is little understanding of what the cumulative impact would be or is to the species at a neighbourhood, local, regional and state level.

It is a concern that on-going small impacts could end up in a great loss for a range of wildlife, and a failure to holistically assess impacts from activities under the Act will contribute to that.

Greater state-wide reporting will assist in the development of a working database and understanding of species requirements and status and can be used to make informed decisions of broader taxon protection.

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

Should the Act include provisions that require/enable the establishment of a scientific advisory committee or advisory panels to provide guidance to key decision makers (minister/secretary) on specific matters? Why? What other approaches might be taken?

We see benefit in including provisions that require or enable the establishment of an advisory committee and/or advisory panels to provide guidance to the key decision makers on specific matters, as it increases transparency within legislative frameworks, as seen in other states.

Independent expert advice allows for un-biased and informed decision making, assists with the development of a clear framework for implementation of advice, and would assist with understanding the implications of decisions on other matters which may impact or influence biodiversity.