

Submission to the Review of the Wildlife Act Victoria

I offer this submission as an ordinary resident of Victoria with interests in wildlife conservation and in the legislation and government processes which may support biodiversity and the restoration and preservation of the natural environment.

Below I respond to particular points and questions raised in the Wildlife Act Review Panel's Issues Paper.

- 1.1 Does the Act reflect contemporary attitudes towards wildlife?
- 1.2 Is the intent of the Act clear?

I agree that the Act's stated purposes present a degree of contradiction, mainly in referring to the 'use' of wildlife. 'Use' is a problematic term in light of current community – and global – concerns about diminishing native wildlife populations. Simply prefixing 'use' with 'sustainable' doesn't remove the association of use with consumption. 'Use' isn't defined in the Act and it seems to skew the other stated purposes of the Act towards protection and conservation for use by humans, rather than having an Act which protects and conserves wildlife in its own right. This notion of 'use' in the Act does not correspond with current community expectations about why the Act exists (put another way: do bird watchers consider themselves to be 'using' wildlife?). The terminology relating to 'use' needs to be recast so that it supports, rather than detracts from, the other primary purposes: protection and conservation and the prevention of extinction. The Act needs to recognise the intrinsic value of native wildlife in particular and its essential role in halting biodiversity decline.

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

A reclassification of the non-native species afforded protection under the Wildlife Act might assist in reducing some tensions between the purposes of the Act (see below regarding deer and separate legislation to better manage 'game').

- 1.3 The Act doesn't appear to appropriately recognise the rights and interests of Traditional Owners and Aboriginal Victorians

The Act should include greater recognition of the cultural significance of wildlife to Traditional Owners and Aboriginal Victorians and include greater protections for native species on that basis. The Act should enable Traditional Owners and Aboriginal Victorians to be key partners in wildlife conservation strategies and processes.

- 1.4 Could a general duty help clarify roles and responsibilities?

Yes – given the recent changes made to the *Environment Protection Act 2017* specifically included a General Environmental Duty, including a general duty of care in the Wildlife Act would give consistency in approach across these related pieces of legislation. A statutory duty of care for native wildlife can make the protections in this Act more robust for those species, at a time when we all need to be giving much more focus to the impacts on native wildlife across all kinds of decision making: about land use, development, tourism, energy, disaster prevention. The Issues Paper points to the likely cost of establishing a duty of care in the Wildlife Act but it is a necessary cost to bear if we are to halt ecosystem decline and diminishing native fauna populations in Victoria and more broadly. It is more important than ever for State-level wildlife protection legislation to be strengthened, given the weaknesses evident in the operation of the Commonwealth's *Environment Protection and Biodiversity Conservation Act* (1999).

- 1.5 Definitions of key terms can be unclear and confusing

The definition of 'wildlife' needs substantial revision to include many native species not currently included in its scope: for example, marine or aquatic species such as sea dragons, sea horses, octopus. Including such species in the definition of wildlife in this Act can support their protection and conservation rather than just relying on a listing (or potential listing) in the Victorian *Flora and Fauna Guarantee Act (1988)*. Wildlife should include all native species and recognise the cross jurisdictional character of species.

By contrast, the definition of 'wildlife' for the purposes of this Act should expressly **exclude** deer, and other non-native wild pest species. In their submission to the *Inquiry into Ecosystem Decline in Victoria* (EPC Parliament of Victoria, August 2020), the Victorian National Parks Association emphasised introduced pest animals and plants as 'one of the top contributors to ecosystem decline' in Victoria and noted the detrimental impact of deer in particular. I reiterate the points I submitted to that same review on the need to remove the protected status of deer:

The VNPA calls for more effective legislation and better funded pest control and for deer, in particular, to be declared a pest species. I fully concur with this view and draw to the Committee's attention the research undertaken by Alex Maisey at La Trobe university and the work of the Sherbrooke Lyrebird Study Group. Alex was a guest speaker in a research presentation offered by the Knox Council Biodiversity team and he spoke to the disastrous impact feral animals are having on conserving lyrebird populations in Sherbrooke forest and surrounds, noting the lyrebird habitat destruction being caused by an augmented deer population as particularly grave. The destructive impacts of an increasing feral deer population is being felt throughout Victoria. Neither government authorities nor the hunting associations have managed to keep the deer population at levels where their environmental impact is negligible. The protection currently given to deer as 'game' needs to be removed, legislation for their control need to be strengthened and urgent control measures implemented by government authorities to arrest the environmental damage caused by feral deer. Controlling pest animals and plants is vital to reversing ecosystem decline in Victoria. Clearer legislation at the State level, better resourcing for state and local authorities and more comprehensive integrated plans for pest reduction and control are urgently needed to ensure government actions at all levels are sustained and effective against pest species.

The Game Management Authority has also clearly struggled to manage Victoria's deer population through regulation of hunting. The GMA seems to be the most likely body to undertake this task, as the functions set out in the Game Management Authority Act 2014 suggest:

Part 2—Game Management Authority; Division 1—Establishment, powers and functions
Section 6 paragraph e)

to develop operational plans and procedures addressing—

(i) the sustainable hunting of game animals; and

(ii) the humane treatment of animals that are hunted or used in hunting; and

(iii) **strategies to minimise any negative impact on non-game wildlife, including protected and threatened wildlife; and**

(iv) the conservation of wildlife habitats;

and paragraph i)

to make recommendations to relevant Ministers in relation to—

(i) game hunting and game management; and

(ii) the control of pest animals;

However, the GMA doesn't seem to be effective in actually *managing* game – actually implementing those operational plans and strategies - as far as deer control is concerned, and this is even despite a stated 460% increase in the licences issued for deer hunting over the period 1996-2019 (ref. GMA *Game Licence Statistics Summary Report – 2019*, p. 6).

The Issues Paper (p. 17 ref 2.1.3) suggests the potential for deer and other game to be managed through their own Act. This may be an advantageous solution, given that game relates to a specific activity (hunting), revolves around a limited group of species and given the Game Management Authority already exists to administer such an Act. However, a specific Act for game would need to be construed so that deer and other non-native game species are not protected (because that would perpetuate the same competitive problems already arising from protected status under the Wildlife Act).

Moreover, I do not support any native Australian species being defined as 'game' whether in the Wildlife Act or any other Act.

With further regard to key terms and definitions, I note the point made in the Issues Paper (p. 16) regarding the complexity of the terminology and Governor in Council processes regarding 'protected' and 'unprotected' wildlife species, especially the specificity of area and circumstance in orders, but the flexibility of this approach may still be valuable. Retaining the broad definition of 'protected wildlife' encompassing all native wildlife unless otherwise specified in an order or in another Act (Catchment and Land Protection Act 1994) may be necessary. The lack of definitions in the current Wildlife Act for the terms 'destroy' and 'disturb' seems an obvious gap needing repair, given the various authorisations and offences set out to regulate those actions.

- 2.2 Managing wildlife populations that span jurisdictions
- Part 5 Are current enforcement and compliance mechanisms adequate?

I agree with the points raised in the Issues Papers (2.2) regarding the need for the Wildlife Act to integrate better with similar protective legislation in neighbouring jurisdictions, and especially the points concerning the need to regulate impacts on wildlife in relation to whole populations of species irrespective of property boundaries or state borders. The critical issues raised in the Paper (2.2 p. 18) and throughout Part 5 about the deficiencies in the current Wildlife Act in preventing, policing and penalising wildlife crime, particularly across jurisdictions, are very concerning. They point to the urgent need for the Act to be greatly strengthened in this aspect. The Act should bring the penalties in line with those in other states (5.2.1) and should ensure the more severe penalties are focussed on those causing harm to wildlife. The Act should provide for impact statements on harm inflicted on wildlife to support adequate penalties for offences (5.4.1) and should include the range and kinds of penalties and compensations suggested in section 5.5 of the Issues Paper. Expanding the powers of authorised officers to stop actions which harm wildlife (5.6.1) and to require remedy can strengthen enforcement and also act as a deterrent to potential offenders, though this needs to be well resourced. Including provision for third-party civil enforcement (5.8.1) may also help enforcement and deterrence.

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

Strengthening the Wildlife Act by including specific provisions for habitat protection and conservation (including definitions relating to habitat), and to impose more stringent penalties for damage or destruction of wildlife habitat (5.1.1), is essential to have a 'closed loop' approach to wildlife protection. The Issues Paper refers to the Victorian planning provisions clause 52.17, regulating vegetation removal to 'ensure no net loss to biodiversity'. However, in practice the biodiversity protections offered by clause 52.17 are severely weakened by the government tendency for 'streamlining' development approvals processes and the reluctance of local government, in particular, to refuse development approvals in the face of housing targets. If I may again reiterate points I made to the *Inquiry into Ecosystem Decline in Victoria* :

In my area, sites of biological significance continue to be severely degraded through over development. Inconsistencies in the local planning scheme and an unwillingness to uphold

environmental and biodiversity aims in the face of development targets has resulted in, for example, multi-unit and townhouse developments proceeding in locations where a 'bush suburban' neighbourhood designation was supposed to preserve large blocks, substantial canopy tree coverage and limit the building 'footprint' to low level single or dual occupancy. To mitigate this situation the council tries to impose landscaping and revegetation requirements in these developments in an attempt to maintain some viable local natural ecosystems and wild life corridors. However, these revegetation efforts often fail and the requirements are not enforced with any rigour. Councils seems to lack the will and sufficient resources to undertake enforcement and ensure compliance.

Having habitat protections in the Wildlife Act could have supported efforts by local resident and conservation groups in Knox to protect the endangered Blue Billed duck which inhabits 'Lake Knox', a well established deep water habitat which otherwise seems to lack adequate protection against a proposed medium density housing development, despite the blue billed duck being officially recognised as endangered.

- 2.1 There are overlaps and gaps in the broader legislative framework
- Part 4 Does the Act promote transparency and accountability ?
- 4.1.1 Does the Act require an adequate degree of transparency about and accountability for decision making on matters relating to wildlife?

The spread of responsibilities and administration of the Wildlife Act between two ministries and across different government agencies and departments is problematic for accountability and transparency, especially in relation to hunting and 'game'. For example, having control of hunting or management of kangaroos split between parts of DEWLP, DJPR and the GMA is confusing and allows for significant gaps in accountability, with a consequent lack of protection and welfare for kangaroos. Recent decisions made under the Kangaroo Harvest Management Plan suggest that plan is open to abuse and the agencies/departments involved have not demonstrated the high degree accountability and transparency set out as clear objectives in the plan. I sent a letter of complaint in April jointly to the Plan's contact email (Kangaroo Harvesting (DJPR) <kangarooharvesting@ecodev.vic.gov.au>) and to the CEO of the GMA, regarding a proposed cull of grey kangaroos on a golf course which had been authorised as part of the Kangaroo Harvest Management Plan. Apart from expressing my general objection to the 'harvest' cull, I asked for further information about deciding criteria and the context of this authorisation, pointing out that the 'recipient' of the harvest doesn't appear to have had to justify the need for the cull as a farmer-landholder would under an ATCW, suggesting the harvest program is open to abuse. To date, I have had no response at all from the designated DJPR contact email for the plan (a lack of response which undermines the Plan p. 23) and the CEO of the GMA responded only with this: "The Game Management Authority does not issue licenses/permits/authorities to control Kangaroos on public or private land". Apart from failing as an expression of the Victorian Public Service Values, the GMA CEO's response seems to be in complete contradiction to the accountability structure set out in the Plan, p. 5: "With regard to giving authorisations to harvesters to support this plan, the Secretary has delegated the power to make decisions to senior officers of the Game Management Authority (GMA). The GMA is delivering this function as an agent of DJPR.... The GMA is accordingly responsible for giving authorisations to harvesters." This reluctance, in practice, to engage with community concern about the KHMP doesn't inspire confidence in the other aspects of the KHMP being appropriately managed (animal welfare outcomes and overharvesting?).

The Issues Paper notes (p. 17) that the Review Panel can consider the relationship between the Wildlife Act and other legislation. Consistent with what I noted earlier, I suggest that kangaroos should not be classed as game and should be protected under the Wildlife Act and that separate legislation be established to control and regulate activities involving non-native 'game'.

To conclude, I see the Victorian Wildlife Act as supporting our native species *before* these reach the critical stage of a listing under the Flora and Fauna Guarantee Act or the federal level Environment Protection and Biodiversity Conservation Act. The Victorian Wildlife Act is an essential foundation legislation and I hope this long awaited review will result in more robust and comprehensive protections for wildlife in Victoria.