

# Submission to the Independent Review of the Wildlife Act 1975



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Friends of the Earth would like to submit this submission into the Independent Review of the Wildlife Act 1975. I do not object to this submission being made public.

The Wildlife Act needs to be overhauled and welcome this opportunity to have our say.

I am a Land Use Researcher working for Friends of the Earth Melbourne. I am currently employed working on issues related to the Strzelecki/South Gippsland Koala. I also work on toxic issues such as pesticides and more recently PFAS chemicals.

I have been concerned in the past few years about several incidents concerning death and injuries to large numbers of wildlife. These events include: poisoned eagles at Tubbut and Violet Town and koalas near Portland in February 2020. I understand that the Portland incident, where hundreds of koalas were either killed, injured or translocated is still under investigation 16 months after the incident occurred. No-one has yet faced the legal consequences of these actions.

I would like to stress that wildlife needs to be protected across all land tenures, including private land.

The Portland February 2020 koala “*incident*”, raises some interesting issues in terms of wildlife management and private land tenure. Before the incident, the land had been a bluegum plantation that was then cleared prior to the sale to the new owner. Was the new owner of the property made aware of high koala numbers on the property prior to buying the property? What onus is on a seller of a property, to undertake wildlife assessments, prior to sale, so that new owners are aware of the wildlife issues that they could be buying into? What onus is on owners of land to assess and understand the extent of wildlife on their properties including possibly rare, iconic and endangered species, particularly in light of plans to clear remnant vegetation from that land?

I am also concerned about the ongoing chronic and acute impacts of toxic chemicals such as pesticides and PFAS on a range of wildlife and am wondering if impacts of such chemicals are being considered in the current review of the Wildlife Act.

The insecticides Fenthion (supposedly banned in 2014), Omethoate and Methomyl have been associated with bird deaths in Victoria in the past few years. Most recently Methomyl was found to have killed 100 Little Corella's at Robinvale in December 2020. Brodifacoum has also been linked to bird deaths in Melbourne over the past year.

Dichlorodiphenyldichloroethylene (DDE) was also apparently found to be associated with 5 sea eagle deaths near Bairnsdale in 2017. DDE, a metabolite of DDT has supposedly not been used in Australia since the 1980's!!!

In terms of reviewing the Wildlife Act it will be essential therefore to consult with Agriculture Victoria to bring existing pesticide use legislation (eg Agriculture and Veterinary Chemicals (Control of Use) Act 1992) into alignment with the Wildlife Act or even incorporate native wildlife issues into the "Agvet" act. Deliberately killing native birds under the Wildlife Act can carry fines of almost \$40,000 and 24 months imprisonment, yet fear of these maximum punishments obviously did not dissuade the bird poisonings from occurring. I also wonder how many unreported incidents are occurring regarding the illegal use of pesticides.

Legal incidents concerning pesticides are often shrouded in legal "secrecy" and take years to resolve. An incident reported by me in June 2020 regarding spray drift into a State Park is still incomplete with no information available on the incident.

[https://www.foe.org.au/thousands\\_of\\_trees\\_in\\_reserve\\_threatened\\_by\\_herbicide\\_spray\\_drift](https://www.foe.org.au/thousands_of_trees_in_reserve_threatened_by_herbicide_spray_drift)

PFAS (Per- and polyfluoroalkyl substances) have recently been detected in seals on the Victorian coast (including Phillip Island) and the EPA has detected PFAS in a number of locations in water fowl across Victoria. The extent of the PFAS contamination has led to warnings about eating water fowl at locations such as the Gippsland Lakes.

[https://www.parliament.vic.gov.au/images/stories/committees/paec/Inquiry\\_into\\_Auditor-Generals\\_report\\_No.\\_202\\_Meeting\\_Obligations\\_to\\_Protect\\_Ramsar\\_Wetlands\\_2016/Submissions/4\\_Ross\\_Scott\\_Redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/paec/Inquiry_into_Auditor-Generals_report_No._202_Meeting_Obligations_to_Protect_Ramsar_Wetlands_2016/Submissions/4_Ross_Scott_Redacted.pdf)

These warnings however do not extend to predators who may prey on these water fowl. How does the review of the Wildlife Act intend to deal with bio-accumulative toxins which may not kill animals outright, but may lead to illness (and increased risk of predation) and shortened life, as well as impacts to predators and offspring of the impacted animals? Will the review will also have to assess how such chemicals are regulated and the impact that these toxins are having on a variety of wildlife. How will the Wildlife Act accommodate regulatory updates concerning chemicals such as PFAS where the science of understanding the impacts on wildlife are still evolving? <https://www.epa.vic.gov.au/for-community/environmental-information/pfas/pfas-nemp-2-0>

If the premise of the PFAS argument is accepted then toxic issues should also extend to industrial pollutants. Kangaroos and koalas living near the Portland Aluminium Smelter for example have been shown to be impacted by fluorosis, caused by emissions into the air.

<https://www.sciencedirect.com/science/article/abs/pii/S0048969715302527>

Will heavy industry continue to be exempt from responsibilities of the Wildlife Act? Portland aluminium smelter has also had koala issues occurring at the smelter for years, with hundreds entering the facility since 2015. Has the company ever faced prosecution under the Wildlife Act even when animals that have entered the facility have been observed to be seriously

injured?

[https://www.foe.org.au/alcoa\\_portland\\_aluminium\\_smelter\\_response\\_to\\_foe\\_s\\_koala\\_concerns](https://www.foe.org.au/alcoa_portland_aluminium_smelter_response_to_foe_s_koala_concerns)

Another example, eg Burranan dolphins in the Gippsland Lakes, have also been shown to be impacted by mercury pollution. [https://www.foe.org.au/burrnan\\_dolphin\\_gippsland\\_lakes](https://www.foe.org.au/burrnan_dolphin_gippsland_lakes)  
How will the Wildlife Act attempt to deal with likely heavy metal pollution, in this case mercury which has also been shown to occur in fish species in the Lakes, a major food source for the dolphins. It is likely that a myriad of species are being impacted by industrial pollutants across Victoria. Why is the impact of this pollution acceptable and legal?

What impact is pollution of waterways across, with PFAS, pesticides, pharmaceuticals Victoria having on a myriad of species, including the iconic platypus? What protection will the platypus be offered under the reviewed act? <https://www.abc.net.au/news/science/2018-11-07/melbourne-waterways-pharmaceuticals-pollution-spiders-platypus/10466016>

I was alarmed to learn about the extent of pesticide pollution of waterways across Victoria several years ago. What impacts are these pesticides having on a multitude of species that rely on these waterways for their survival and well being? I will also attach a copy of a report I compiled about this issue to this submission.

[https://www.foe.org.au/confirmed\\_that\\_low\\_level\\_pesticide\\_contamination\\_of\\_victorian\\_water\\_supplies](https://www.foe.org.au/confirmed_that_low_level_pesticide_contamination_of_victorian_water_supplies)

The Wildlife Act appears to have been written in an era when legislators had a different understanding of wildlife matters. The existing act appears to have been driven to protect the interests of those advocating for game animals (such as deer) and not for the protection of native wildlife. The existing act also offers no direct protection for habitat and gives wide exemptions for interests promoting land clearing and logging. The Wildlife Act needs to be aligned with bioregional and state wide ecological and biological planning.

We agree with the Environmental Justice submission: for the purposes of management under the Act, wildlife should be recognised legally under several categories: protected, threatened, 'keystone' and culturally significant wildlife.

Feral animals such as deer, pigs and goats should not be protected under the act and instead should come under separate legislation. Game management and hunting should come under a separate act.

Enforcement needs to be vastly improved, including large increases in fines and penalties. Legal mechanisms for compliance and enforcement are too weak and there are likely to be many examples of non-compliance that are not monitored or enforced.

Prison sentences should also be increased as a means of deterrent. Maximum penalties should be increased to be more in line with newer legislation such as the EPBC Act and should be based on a scale that increases depending on the conservation status of the animal. A wildlife crimes unit with the Victorian police needs to be established. Civil penalties should also apply and a public listing of offences is highly recommended.

The Wildlife Act should align with the Flora and Fauna Guarantee Act and any laws pertaining to international law (eg Biodiversity Convention, RAMSAR convention)

An independent statutory entity, with third party standing to enforce the act needs to be established because the current situation where DELWP manage wildlife issues through the Office of the Conservation Regulator is untenable, because the OCR is not independent and lacks adequate resourcing.

The Act should also specify the importance of protecting both wildlife and wildlife habitat (including climate, toxic chemical and industrial pollutants refugia). There need to be provisions and deterrents relating to both direct impacts on wildlife and habitat.

Zoning options (Wildlife Management Plans) where protection of key habitat, particularly for endangered species need to be investigated and implemented under the act. These zoning options should also extend to waterways. This needs to include the logging industry, where current fauna surveys are not satisfactory or included under the Wildlife Act.

Net gains need to occur for wildlife similar to what occurs with the Victorian Wildlife Strategy.

Traditional owners expectations are not included under the existing Wildlife Act, despite the cultural and spiritual connection that wildlife and areas may have. Overlays should be included in the act, that specify key wildlife significant areas and habitats highlighting the significance of such animals in terms of Aboriginal cultural values. Perhaps there needs to be closer ties to the Aboriginal Heritage Act 2006

Migratory species are not included under the Act, including protection of key breeding, feeding and roosting areas. How will the Wildlife Act for instance deal with RAMSAR listed wetlands?

Another issue concerning Friends of the Earth is the extent of wildlife killed or injured by vehicles. Koalas for instance are heavily impacted by vehicles and also dog attacks in urban areas. Portland for example has been recording high numbers of koala deaths and injuries by vehicles and dog attacks for years. These problems are unlikely to be solved by a review of the Wildlife Act.

[https://www.melbournefoe.org.au/portland\\_south\\_west\\_vic\\_koala\\_concerns\\_a\\_chronic\\_and\\_unresolved\\_issue](https://www.melbournefoe.org.au/portland_south_west_vic_koala_concerns_a_chronic_and_unresolved_issue)

Wildlife Management Plans should also highlight areas inhabited by animals with greater genetic significance. (eg in terms of koala populations, the relic populations of the Strzelecki Ranges/South Gippsland). Both the Wildlife Act and the FFG Act fail to properly address genetic diversity within a population.

How does the Wildlife Act deal with issues such as restricted gene flow and genetic variation? Such restrictions can lead to inbreeding within a population. The genetic structure and distribution of koalas in Victoria (and South Australia) has been heavily influenced by humans (eg hunting, destruction of habitat and translocations), leading to extinction in some areas and over-abundance in others. Starvation has been observed. Culling at Cape Otway and sterilisation and translocations in other regions of Western Victoria have occurred to try and alleviate the problems associated with over abundance. Physical abnormalities have been observed in Kangaroo Island koala populations in South Australia, a population which was initially sourced from French Island.

The Flora and Fauna Guarantee is useless in terms of genetic differences within a population, perhaps the Wildlife Act can do play a role in protection of genetically diverse populations within a species.

See Appendix One.

Anthony Amis – Friends of the Earth Melbourne 30/6/21.

## **Appendix One**

### **Flora and Fauna Guarantee Act 1988**

#### **Scientific Advisory Committee**

#### **Letter to Susie Zent 17/2/14 (Secretary Friends of Gippsland Bush)**

*“Re: Consideration of the “Strzelecki Koala” as a species suitable for nomination as a threatened species under the Flora and Fauna Guarantee Act.*

*The Scientific Advisory Committee (SAC) has provided the following response to your query to and regarding Koalas.*

*I understand that you have had some discussions with ... .. regarding a proposal to nominate the population of the koala in South Gippsland as a threatened species under the Flora and Fauna Guarantee Act (1998). He advised the SAC of the proposal, which we then discussed. The Committee’s view is that the proposed nomination does not qualify for consideration under the FFG Act, and that you would be better advised to seek other avenues to assist in conserving the South Gippsland Koala population.*

*We are aware that the South Gippsland koala population appears to be more genetically diverse than koala populations in other parts of Victoria, based on microsatellite studies. As you may be aware most of those animals are descendants of koalas that were originally introduced to the islands of Western Port and translocated from there from the 1920s onwards; their gene pool is consequently less diverse. The South Gippsland population is therefore seen as especially worth conserving.*

*The reasoning behind regarding such a nomination as inappropriate is essentially this:*

*1] Under section 11 of the FFG Act, ‘a **taxon** or **community** of flora and fauna is eligible to be listed if it is in a demonstrable state of decline which is likely to result in extinction or if it is significantly prone to future threats which are likely to result in extinction.’*

*To be considered, then, what is nominated must be either a taxon or community.*

*2] Under the FFG Act, a taxon means ‘a **taxonomic group** of any rank into which organisms are categorised’ and includes subspecies, species, genera, families and may also include*

*variants, races or breeding populations which are identifiably distinct or otherwise significant.*

*While the end part of this statement looks pertinent, the key words here are 'taxonomic group'. To be considered for listing under the FFG act, the South Gippsland koala population would have to be a recognised component in a scheme of classification accepted by the general scientific community. That means that the South Gippsland koala population would have to have been adequately described and named in a peer-reviewed taxonomic journal, and then recognised by other members of the scientific community who work in the field. The South Gippsland koala has not been recognised in this way as a distinct taxonomic group.*

*3] The SAC is required to refer to Museum Victoria as the relevant authority when any question arises as to the validity of an animal taxon. Their advice on this situation is that the South Gippsland koala population is not a recognised taxonomic group, and that microsatellite variation is not likely to be sufficient to define such a group taxonomically. However they do believe its distinctiveness does provide a sound basis for its protection.*

*4] The overarching authority for zoological classification is the International Commission for Zoological Nomenclature (ICZN). The ICZN does not recognise as taxa any groupings below the subspecies level. This means that, if Gippsland koalas are not recognised as distinct subspecies, they would not be recognised as an animal taxon by that authority. Consequently the SAC cannot consider for listing the South Gippsland koala population as a threatened taxon under the FFG Act even if the Koalas in South Gippsland were shown to be endangered. You would be wise not to waste your time pursuing that route any further. There are other ways of ensuring long term conservation of these animals.*

*One such approach is to seek funding for on-ground habitat rehabilitation by local volunteers. Support for this can be sought from private individuals and NGOs rather than government agencies (though governments to offer such financial assistance from time to time). You probably know this already.*

*A second approach might be to investigate the listing under the Commonwealth EPBC Act on the basis that the EPBC Act uses the word 'species' rather than 'taxon'. For taxa at levels below the species, a decision on what constitutes a 'species' within the meaning of the Act rests on a decision by the Minister rather than on accepted science. We strongly suggest the direct funding approach rather than the bureaucratic one, which is likely to prove difficult and would necessarily result in effective field conservation measures for Gippsland koalas..."*