

Review of *Wildlife Act 1975* –

SUBMISSION ON BEHALF OF WADAWURRUNG TRADITIONAL OWNERS ABORIGINAL CORPORATION

Introduction

As Wadawurrung Traditional Owners we live by *Bundjil's* lore to care for Country and all things living as our ancestors have always done. Our *Tabayl* (Country), is more than a place. Our coastal cliffs, wetlands, grassy and volcanic plains, and people were all formed by *Bundjil* and our ancestor spirits who continue to live in the land, water and sky. *Kareet Bareet* (Black Hill near Gordon) is where *Bundjil* created Wadawurrung people. Lal Lal Falls near Ballarat is where *Bundjil* created the waterways and where he returned to before heading to his resting places in the stars continuing to watch over us.

Our *Tabayl* is interwoven with relationships no matter whether the shape of that relation is human, granite hills, Waa (crow) or *Larrap* (Manna gum). Country is filled with relations speaking language, sharing stories and following lore. These spirits they link us back through time in a continuing connection with our past, our cultural practices and our stories. These spirits connect us to our Country and each other which gives us ongoing respect for our obligation to care for our Country.

As Wadawurrung Traditional Owners today we have fought hard to survive the impacts of colonisation and dispossession and maintain this connection with *Tabayl*. Our Elders suffered deeply, and these impacts continue to be felt across the generations. With our Elders strength and resilience from knowing Country wasn't ceded, they ensured our cultural connections, knowledge and responsibilities for Country continued. Our Elders voices were silenced due to fear and protection for their children as assimilation policies threatened to break us up, but we survived, and their voice and spirit is strong again. It is through their leadership that the next generations of Wadawurrung are standing up proud, practicing and sharing culture and Caring for Country. Having learnt from our Elders the ability to adapt to the changing circumstances of colonisation, has helped us to be resilient and maintain our cultural identity and practices within contemporary society.

We are determined to ensure our cultural authority for making decisions on looking after our Country is recognised and respected. We want to see cultural knowledge as the basis for this management of Country knowing this will help heal our Country and people, for us and for the benefit of everyone living on, visiting and enjoying Wadawurrung Country.

Wadawurrung Traditional Owners Aboriginal Corporation (WTOAC) was registered in 1998 and appointed in May 2009 as a Registered Aboriginal Party with statutory rights and under the Victorian *Aboriginal Heritage Act 2006* (Vic). This means we are the legally recognised corporation for working with as custodians, decision makers and knowledge holders for looking after our cultural heritage and Country.

We have developed [Paleert Tjaara Dja \(Let's make Country good together\) 2020–2030](#) - Wadawurrung Country Plan which articulates how we want Country to be cared for. It includes walking together with government and

other key stakeholders to achieve self-determination. This plan describes our *Tabayl* and what we will do to make it healthy again. It also details the principles on working with us.

WTOAC represents over 300 Traditional Owners, responding to the needs of the Wadawurrung Community and to coordinate the activities, resources and partnerships necessary to protect and strengthen Culture, manage lands, waters, seas and Country and support Community health and wellbeing.

WTOAC enables Traditional Owners to strengthen their continued connection to Country and Culture.

WTOAC has grown significantly over the past 5 years with many achievements in looking after our culture and Country since its establishment. It has increased its ability to provide a wide range of professional services.

These include:

- Cultural heritage assessments, management plans, protection and management works
- Welcome to Country & smoking ceremonies
- Artworks and linkages to Wadawurrung artists
- Cultural education and awareness workshops
- Dance and cultural practices workshops
- Wadawurrung language and cultural interpretation advice
- Cultural advice into environmental, urban and water plans
- Reconciliation Action Plan development
- Caring for Country services - Cultural burning, water management and pest plant and animal management

The *Wildlife Act 1975* (Vic) is an important piece of legislation that seeks to protect wildlife, as such it affects *Tabayl*, including the protection of our totems and our rights in the use and management of wildlife. It is also an opportunity to combine contemporary science and management techniques with wisdom, knowledge and management that has evolved over millennia to manage *Tabayl*.

The review of the *Wildlife Act 1975* (Vic) represents an opportunity to support Reconciliation by recognising the custodial obligations of First Nations Peoples of Victoria that intersect with the purposes of the *Wildlife Act 1975* (Vic) which 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.

Recognising the role of First Nations Peoples in the Act and incorporating this role throughout the Act will help to implement the Australia's international obligations arising from the signing of the United Nations' *Declaration on the Rights of Indigenous Peoples* (2007) (specifically Articles 11, 12, 24 and 29) as well as implementing Victoria's *Charter of Human Rights and Responsibilities Act 2006*.

This submission by WTOAC, on behalf of Wadawurrung People, presents some of our observations and insights on the operation of the *Wildlife Act 1975* (Vic). It includes a series of recommendations to strengthen the Act moving forward – to better align with Traditional Owner rights and responsibilities over *Tabayl*, emerging international principles and best-practice approaches from other jurisdictions, and aspirations for greater recognition and involvement of First Nations People's in the planning, decision-making and management of wildlife across the state.

Discussion Points

1. Current Operation of the *Wildlife Act 1975* (Vic)

Wildlife (animals other than fish)

The current *Wildlife Act 1975* (Vic) does not recognise Wadawurrung People's ongoing spiritual connection to Country, Cultural practices and obligations as Custodians of our Traditional Lands. The Act does not grant us a free-standing right to use wildlife for cultural purposes and to maintain our traditions, nor does it specify our involvement in the management of wildlife. WTOAC respectfully submits that the review of the Act is an ideal opportunity to rectify these shortcomings within the existing legislative framework.

Traditional Owners can apply to the Department for an authority to take wildlife —for Aboriginal cultural purposes under s.28A(1)(e) of the *Wildlife Act 1975* (Vic). Conditions and limitations on this authorisation can be imposed by the Secretary or by regulations (s.28A(2)). There are some species of game (ducks and deer) that do not require permits in some national parks and other conservation reserves but the taking of wildlife from national parks is prohibited under the *National Parks Act 1975* (Vic).

A 2008 amendment to the *Wildlife Act 1975* (Vic) enables the Governor-in-Council, on the advice of the Minister, to authorise a class of persons to take wildlife for nominated purposes – including for Aboriginal cultural purposes (s.28G(2)(c)). Under this existing provision it would be possible for all Traditional Owners to be nominated as a class of persons authorised to take wildlife, so there would be no need for individual Traditional Owners to apply for an authority under s.28A as described above. WTOAC would be supportive of invoking this provision to enable Traditional Owners to take wildlife for cultural purposes.

Fish are not included in the *Wildlife Act 1975* as they are managed under the *Fisheries Act 1995* (Vic) despite fish being wildlife, and of great importance to Traditional Owners for cultural and subsistence purposes. WTOAC have been working with Barwon Water on practising cultural practices in freshwater places including weaving fish traps from reeds and capturing eels. Having cultural fishing rights would enable more of our People to conduct these cultural activities, at least in freshwater Country.

2. Values and expectations of Traditional Owners and First Nation's Victorians that need to be addressed in a new *Wildlife Act*

Bundjil is the creator. *Yoorn* (quoll) and *Kunnawarra* (black swan) are two of our totems. We are connected to all these animals. Wildlife cannot be owned - they are equal parts of *Tabayl* as we are. We respect all of *Bundjil's* creation and our ancestors have cared for *Tabayl* using *Bundjil's* lore for millennia to maintain healthy and resilient *Tabayl* that provides for all. We all have a duty to care for *Tabayl* and wildlife.

WTOAC strongly asserts that the *Wildlife Act 1975* (Vic) should recognise the cultural significance of Country and wildlife to Traditional Owners and Aboriginal Victorians generally. Our worldview and values in relation to Country and wildlife are vastly different to those of other non-Indigenous stakeholders. First Nations People's custodial rights and obligations, as well as our Traditional Ecological Knowledge (TEK), should be recognised and prioritised in considering how the Act should achieve its purposes in relation to the stewardship of Country and conservation of wildlife going forward.

When our totems and *Tabayl* are hurt or killed, we all suffer as an Wadawurrung People. The killing of Wedge-tailed Eagles has an extreme and lasting impact on us. They are not simply birds, but *Bundjil*, our creator. This needs to be taken into consideration in the penalties. A mechanism to enable Traditional

Owners be involved in decision-making and/or in the determination of penalties should be introduced. There are also opportunities to use penalties to rehabilitate both *Tabayl* and offenders through the use of community service orders rather than fines.

Despite many amendments, the *Wildlife Act 1975* (Vic) is based on the understanding and community expectations of the 1970s. Since then, Australia has become a signatory to the United Nations' *Declaration on the Rights of Indigenous Peoples* (2007) and Victoria has enacted the *Charter of Human Rights and Responsibilities 2006*. Both of documents provide recognition of Indigenous Peoples' cultural rights which are not reflected in the Act. Our cultural authority for making decisions about caring for *Tabayl* should be recognised and respected. Including recognition of Traditional Owners in a preamble or objects of the *Wildlife Act 1975* (Vic) would establish context for the whole Act.

The Preamble to the *Great Ocean Road and Environs Protection Act 2020* (Vic) which includes recognition of Traditional Owners intrinsic connection.

The Parliament recognises the intrinsic connection of the traditional owners to the land and sea Country that the Great Ocean Road traverses, and that the area has nourished and sustained the traditional owners physically and spiritually and continues to be important to the traditional owners today and into the future.

(Source: <https://content.legislation.vic.gov.au/sites/default/files/2020-06/20-019aa%20authorised.pdf>).

Traditional Owner involvement in the management of wildlife often results in more sustainable outcomes. An example of this is dugong management in northern Australia, where Traditional Owners drive planning and agreement-making. Community-based plans and management arrangements (including through statutorily recognised Traditional Use of Marine Resources Agreements or TUMRAs over the Great Barrier Reef Marine Park, as well as non-statutory mechanisms) have resulted in monitoring of dugongs and their habitat, voluntary hunting bans, seasonal and area-based restrictions and other contemporary and culturally appropriate limits on harvest. These could not have been implemented without Traditional Owner involvement and leadership. By supporting our cultural responsibilities associated with our cultural rights to use resources, including wildlife, it is possible to better align the operation of the Act with our traditional systems. Our involvement in management, along with enabling our rights to access wildlife, will reduce the risk of depletion of species. This is especially significant to our People given the impacts on our Culture and traditional knowledge should any native species become extinct.

Our involvement would also mean that there would be greater access to additional human and financial resources as we will be able to access funding from the Commonwealth Government and conservation non-government organisations (NGOs) and philanthropic foundations.

3. Emerging principles and best-practice approaches from other jurisdictions

The United Nations' *Declaration on the Rights of Indigenous Peoples* Articles 11, 12, 24 and 29 state (with our points highlighted in **bold**):

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. *This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*

Article 12

Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. (Source: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

Internationally, our rights as Indigenous Peoples are recognised in the *Convention on Biological Diversity* and the United Nations Sustainable Development Goals.

In Australia, the Objects of the *Environment Protection and Biodiversity Act 1999* in s1(f) and (g) recognises the role of Indigenous Peoples in the conservation and sustainable use of biodiversity and states that the use of Indigenous People’s knowledge of biodiversity should be promoted with the involvement and cooperation of knowledge holders.

(1) The objects of this Act are:

...

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia’s biodiversity; and

(g) to promote the use of indigenous peoples’ knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

(Source: <https://www.legislation.gov.au/Details/C2005C00338>).

This is identified in Australia’s *Strategy for Nature 2019 – 2030* through the objective “Respect and maintain traditional ecological knowledge and stewardship of nature”.

New Zealand’s *Resource Management Act 1999* (NZ) includes taking into account the principles of the Treaty of Waitangi and the Minister for the Environment needs to seek and consider comments from relevant iwi authorities when preparing a national policy statement. The purposes and principles of New Zealand’s *Resource Management Act 1991* (NZ) s.6(e) relating to Māori culture and traditions, that states:

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

(e)

the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

(Source: <https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM231907.html>)

The *Landscape South Australia Act 2019* (SA) contains principles within the objects of the Act which are more aligned with Indigenous worldviews of stewardship, as follows:

- (1) *The objects of this Act include to support and enhance ecologically sustainable development by establishing an integrated scheme to promote the use and management of the natural resources that make up or contribute to our State's landscape in an integrated manner that—*
- (a) *recognises and protects the intrinsic values of landscapes and recognises the interconnection between different elements of landscapes, including in relation to various aspects of the State's natural resources; and*
 - (b) *supports the State's primary production and other industries and a sustainable State economy, supports resilient communities and natural and built environments, and supports the interests of Aboriginal peoples; and*
 - (c) *provides for the protection, enhancement, restoration and sustainable management of—*
 - (i) *land, soil and water resources; and*
 - (ii) *native fauna and flora, especially so that they are resilient in the face of change; and*
 - (d) *promotes, protects and conserves biodiversity, and insofar as is reasonably practicable, supports and encourages the restoration or rehabilitation of ecological systems and processes that have been lost or degraded, and promotes the health of ecosystems so that they are resilient in the face of change; and*
 - (e) *recognises that climate change is a significant factor in our environment (including a recognition of the need for mitigation and adaptation); and*
 - (f) *provides for the prevention or control of impacts caused by pest species of animals and plants that may have an adverse effect on the environment, primary production or the community; and*
 - (g) *promotes the collaborative management of native animals that adversely affect the natural or built environments, people or primary production or other industries; and*
 - (h) *provides educational initiatives and provides support mechanisms to strengthen the skills, knowledge and capacity of people to sustainably manage natural resources; and*
 - (i) *supports initiatives or action to facilitate the increased capacity of people to engage in processes under this Act, including through the provision of information relevant to the protection, enhancement or management of landscapes.*

(Source:

<https://www.legislation.sa.gov.au/LZ/C/A/LANDSCAPE%20SOUTH%20AUSTRALIA%20ACT%202019/CURRENT/2019.33.AUTH.PDF>)

The Northern Territory has comprehensive statutory recognition of Traditional Owner free standing rights to access land and sea for cultural and customary practices. In New South Wales there is general exemption (by regulation) from NSW *National Parks and Wildlife Act 1974* (NSW) provisions that prohibit taking of native flora and fauna which applies to “Aboriginal people and their dependents – whether or not they are Aboriginal”.

4. Suggested elements and guiding principles for the new Act

The concept of *Tabayl* and the role of Traditional Owners as custodians of *Tabayl* need to be incorporated into the *Wildlife Act 1975*. *Tabayl* is more than a place, it's interwoven with relationships between spirits, people, animals, plants, sky, water, fire, hills, grasslands, stories, songs and more. It is all interconnected and so wildlife cannot be healthy if all the parts of *Tabayl* are not healthy. This interconnectedness must be recognised. To be effective Traditional Owners need to be involved in decision-making for the management of wildlife and *Tabayl*.

In order to maintain our culture, we need to be able to use wildlife for cultural and customary purposes. The Act does not recognise our rights appropriately as we are expected to apply for permits to practice our culture. The reforms to the *Wildlife Act 1975* (Vic) should provide a statutory right for Traditional Owners to take wildlife for their personal, domestic or non-commercial communal needs. This should include:

- reasonable and relevant conditions to ensure that the right is exercised for the purposes specified.
- take of wildlife unless take is limited to certain purposes to ensure sustainability (research, environmental protection, public health or public safety purposes).
- collaboration with Traditional Owner groups and organisations to put in place practical arrangements so that only members of the Traditional Owner group for that area (and those they have an agreement with according to traditional law) use the right. The collaborative arrangements will be consistent with existing convention – descent, self-identification, community acceptance (compare identification of an Aboriginal place under the *Aboriginal Heritage Act 2006* (Vic)).

The ability to take wildlife for cultural purposes should apply Traditional lore where Traditional Owners can access a statutory right to access land and water to conduct traditional hunting and gathering in areas where they have traditional connections and/or where they have permission to do so from Traditional Owners. Therefore, the role of Registered Aboriginal Parties (RAPs) under the *Aboriginal Heritage Act 2006* (Vic) could easily be expanded/amended to include the legal capacity to provide advice on the operation of the *Wildlife Act 1975* (Vic) in relation to taking wildlife for cultural purposes in the same way that the RAP has the legal capacity to comment on matters pending under the *Planning & Environment Act 1987* (see *Aboriginal Heritage Act 2006* (Vic) cl. 148 (fd)).

5. How a new Act could work with other relevant legislation?

As Wadawurrung Traditional Owners, we have enduring cultural rights and responsibilities over *Tabayl*. Our rights are protected under the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Specifically, section 19 of the Act pertains to cultural rights, and states that:

- 1) *All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.*
- 2) *Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—*
 - a) *to enjoy their identity and culture; and*
 - b) *to maintain and use their language; and*
 - c) *to maintain their kinship ties; and*
 - d) ***to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.***

We should be recognised as Traditional Owners and custodians of our traditional estates and our cultural heritage – regardless of tenure or recognition through the native title system.

The WTOAC that represents all Wadawurrung People is a Registered Aboriginal Party (RAP) under the *Aboriginal Heritage Act 2006* (Vic). The role of RAPs could be expanded to include providing advice about wildlife management and operation of the Act as it affects Traditional Owner interests due to the intersection between natural and cultural heritage.

The negotiation of Treaty in Victoria also provides an important opportunity to address wrongs and redefine relationships between the State, Aboriginal Victorians and non-Aboriginal Victorians. In this context, any

changes to the *Wildlife Act* should be cognisant of and complementary with other Treaty related initiatives and legislative amendments affecting the rights and interests of Aboriginal Victorians, such as the potential for a state-wide Traditional Owner representative body for decision-making.

Fish are not included in the *Wildlife Act 1975* (Vic) as they are managed under the *Fisheries Act 1995* (Vic). Fish and other aquatic animals are also wildlife as far as Traditional Owners are concerned. Accordingly, some provision for Aboriginal cultural fishing rights should be included in the amendments to the *Wildlife Act 1975* (Vic).

It would be preferable to create a free-standing statutory right for Traditional Owners to take natural resources for their personal, domestic non-commercial communal needs and to incorporate this into the *Wildlife Act 1975* (Vic).

There are numerous pieces of legislation that affect wildlife and so a standard set of definitions for common terms would make them easier to understand. At the least some consistency between key terms in the *Planning and Environment Act 1987* (Vic), the *Great Ocean Road and Environs Protection Act 2020* (Vic) and the *Flora and Fauna Guarantee Act 1988* (Vic) would be helpful.

6. How a new Act could recognise the important role of wildlife in maintaining cultural practices and Indigenous knowledge systems?

Traditional Ecological Knowledge is key in understanding *Tabayl*. Traditional Ecological Knowledge is to be recorded, managed and protected by relevant Traditional Owner groups themselves as it is our own Intellectual Property. Each of us are assigned to a moiety or totem to protect, which guides our personal obligations in caring for Country. Some of our totems have been lost from *Tabayl* due to loss of habitat, land degradation and the impacts of predation from feral animals. Our people have been removed from *Tabayl* so *Tabayl* has not been managed to maintain our totems in the landscape. These culturally significant species are also important species within the ecosystem that are required to keep *Tabayl* healthy. *Bundjil* (wedge-tail eagle), our creator, is declining in numbers. *Yoorn* (spotted-tailed quoll) is rare across our *Tabayl*. The dingo which was once found across our *Tabayl* and played an important role as an apex predator is now missing. Bringing these species back into *Tabayl* will help to bring the whole landscape, and all the people who are connected to that landscape, back to good health (see Appendix for case study).

The ability to return culturally significant species to *Tabayl* should be enabled through the Act as these are critical for the health of Country, including people.

We can combine our Traditional Ecological Knowledge with contemporary techniques to work together to bring *Tabayl* back to health. Traditional burning was an essential land management tool used by our Wadawurrung Ancestors. We are working with Parks Victoria and other land managers to bring fire spirit to *Tabayl* so wildlife, including our totems, have the conditions to thrive.

The *Wildlife Act 1975* (Vic) should explicitly recognise the importance of Traditional Ecological Knowledge for the stewardship of Country and conservation of wildlife by requiring the involvement of Traditional Owners in the management of wildlife. This could be done through a management committee or advisory body set up to advise on the management of wildlife species. There are also numerous other planning and advisory committees under various legislation including the *Planning and Environment Act 1987* (Vic), the *Great Ocean Road and Environs Protection Act 2020* (Vic) and *National Parks Act 1975* (Vic) and joint management boards and Regional Forest Agreements (RFAs) which all have some management responsibilities for *Tabayl* and wildlife which could provide avenues for Traditional Owner involvement in management. The cultural obligations of Traditional Owners means that we should have roles in mandatory referral process under the

Planning and Environment Act 1987 (Vic). There will also be valuable information about the opportunities to do this which were submitted to the Inquiry into Ecosystem Decline in Victoria.

Wildlife management plans are identified in the Act but there is no guidance on the standard they should meet or what needs to be included. Guidelines should take into consideration the cultural significance of species and Traditional Owner requirements.

There are currently no schedules in the *Wildlife Act 1975* (Vic) which list the status of species of wildlife in Victoria (see Schedules in the *Environment Protection and Biodiversity Act 1999* (Cth)). This information is useful for managing species and could also include culturally significant species. What gets included and how would need to be agreed with all Traditional Owner groups in Victoria. This could include providing greater protection for culturally significant species.

7. How a new Act can recognise and protect the cultural and commercial rights and interests of Traditional Owners and Aboriginal Victorians around wildlife

- 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?

Wadawurrung people are not afforded any special provisions to use wildlife and this creates a barrier for us to practice and maintain our culture and meet our cultural obligations. WTOAC is a Registered Aboriginal Party (RAP) but exemptions under the *Wildlife Act 1975* (Vic) only apply to Native Title holders and Traditional Owners who have entered into a Recognition and Settlement Agreement under the *Traditional Owner Settlement Act 2010* (Vic). Including a free-standing statutory right for Traditional Owner groups to use wildlife for cultural and customary purposes would provide certainty for Wadawurrung People. It would support recognition and respect by acknowledging our unique and distinct rights. Management would improve as this can be included to ensure sustainability.

All the other states and the Northern Territory (NT) provide for the non-commercial use of natural resources by Traditional Owners so Victoria is lagging behind. Northern Territory and New South Wales provide an existing free-standing right and have reported few difficulties with the exercise of such a right.

Wadawurrung people would like to see the Wildlife Act amended to include some special commercial rights to use wildlife under certain circumstances – for instance, to make artefacts for sale. In Tasmania, the *Living Marine Resources Management Act 1995* (Tas) enables Palawa People to engage in ‘Aboriginal activities’ in relation to the sea and its resources for non-commercial purposes without the requirement for a licence. The Act does, however, allow for the taking of prescribed fish by Aborigines for the manufacture, by Aborigines, of artefacts for sale.

WTOAC would encourage the expert review panel to consider the implications of the recognition of commercial rights over sea country in the Torres Strait Regional Sea Claim determination, and scope for negotiation of agreements, including for commercial utilisation of resources under native title legislation, in the context of the review of the operation of the *Wildlife Act 1975* (Vic) - to potentially allow for some commercial use of wildlife by First Nations People where other objectives of the Act can still be satisfied.

8. How a new Act could recognise and empower Traditional Owners in terms of their role in decision-making

The *Wildlife Act 1975* (Vic) needs to enable greater access to and use of wildlife for cultural purposes, and to recognise and support Aboriginal involvement in management of wildlife. This should also be accompanied by appropriate planning and engagement mechanisms led by Traditional Owners.

There are numerous government agencies that have some responsibility for the management of *Tabayl* including wildlife and their habitat. Some of them have Traditional Owner representation on decision-making and advisory committees. Wadawurrung have representation on some planning committees such as the Great Ocean Road Coast Committee. This involvement is focused on the land use planning sphere, contributing to planning scheme amendment drafting, the preparation and co-authorship of Cultural Values Assessments (CVAs), and voicing concerns about planning permit applications and planning scheme amendments. There have been positive outcomes for both Wadawurrung People and the broader community as a result of that involvement, such as the protection of cultural sites.

Government agencies are recognising Traditional Owners as decision makers in Country planning. Wadawurrung People and their WTOAC work with many organisations that include Catchment Management Authorities (e.g. CCMA), Parks Victoria (PV), Councils (e.g. Moorabool, Greater Geelong, Surf Coast, Wyndham, Ballarat, Golden Plains) and other government / non-government agencies (e.g. Trust for Nature, Swan Bay Environmental Group, etc.) to better understand health of *Tabayl* and implement actions holistically for better management regimes. Traditional Owners groups have appointed positions for engagement and management of certain aspects of *Tabayl* – including, but not restricted to, water and land management.

The current operation of the *Wildlife Act 1975* (Vic) does not empower Traditional Owners or support self-determination in the management of wildlife. Canada has introduced “Range Plans” to protect culturally significant species. The *Bathurst Caribou Range Plan* (2019) is an example of this where the herd of caribou are managed by a wildlife co-management board across the whole range of that herd. It includes a Guardianship Program of First Nations Peoples and focuses on using Indigenous knowledge and cultural practices and managing disturbance to support caribou wellbeing rather than having rules for harvesting (Source: <https://www.enr.gov.nt.ca/en/services/caribou-de-la-toundra/bathurst-caribou-range-plan>). A similar approach could be included in the Act for the management of culturally significant species in Victoria.

If an advisory body for the Act was to be established it should have Traditional Owner representation. It would be necessary to have the right people to speak for the area or species and so there may need to be different people involved depending on what the committee is working on. This could be organised through the “Right People for Country” initiative.

The Department of Environment, Land, Water and Planning’s *Traditional Owner and Aboriginal Community Engagement Framework* (2019) should be applied to updating the *Wildlife Act 1975* (Vic), particularly the seven of its eight principles:

1. *Self-determination*
2. *Traditional Owners as partners*
3. *Place-based or whole-of-Country approach*
4. *Respect for decision-making processes*
5. *Aboriginal people set their own priorities*
6. *Free, prior and informed consent*
7. *Acknowledge past injustices and structural inequality*

Going Forward

In light of the foregoing analysis, the key innovations the WTOAC would seek to recommend for the purposes of this Review are:

- Recognise Traditional Owners, and their custodial relationships to 'wildlife' in the Preamble or Objects of the revised *Wildlife Act 1975* (Vic);
- Include a Free-Standing Right for Wadawurrung Traditional Owner use and access to nominated species to enable them to continue their Traditional responsibilities and activities, whether that includes an over-arching permit and or Agreement arrangement enabled within the revised *Wildlife Act 1975* (Vic);
- The establishment of a Schedule that lists key animals that possess significant cultural relationships to First Nation People's in Victoria;
- The establishment of a mandatory referral authority mechanism to Registered Aboriginal Parties (RAPs) (as set out under the *Aboriginal Heritage Act 2006*), equivalent to that in the *Planning & Environment Act 1987* (Vic) and analogous to what occurs under the *Environment Protection & Biodiversity Conservation Act 1999* (Cth) referral system. Under this mechanism, any changes to state/DELWP policies, permits under consideration, development or similar applications, and or land use management plans and planning scheme provisions that implicate one or more species included in that Schedule linked to 'wildlife'-pertinent to the respective RAP's Country should be referred to the RAP;
- Changes to the revised *Wildlife Act 1975* (Vic) that enable Plain English translation of the legislation; and
- Clear identification of provisions and clauses, or their drafting into a clear Section, that are Traditional Owner relevant and applicable.

“Kal”, means dingo, in my traditional Wadawurrung language. Dingo to my people and other Aboriginal clan groups is a respected, sacred, spiritual animal who has walked alongside Aboriginal people since the dreaming. I want to take this opportunity to present the Aboriginal connection with Kal (dingo) from the beginning of time to present day, illuminating his role and contribution to ecology as well as archaeological record. Throughout this case study narrative archaeological, ethnographic, anthropological and traditional ecological knowledge proves that the dingo and Aboriginal people had an unique symbiotic relationship. It is imperative that this information be highly considered and taken into account as it pertains to the review of the *Wildlife Act 1975* (Vic).

The Australian dingo, (*Canis dingo*) is said to have arrived on our continent with people around 5,000 years ago BP, in the mid to late Holocene period (Balme & O’Connor 2016, 775). However, the timeline has been disputed due to recent molecular dating suggesting 4,600 BC as the entrance date (Koungoulos & Fillios 2020, 1). Although, there has been recent scientific data indicating that the dingo has been evident in the archaeological record for about 15,000 years, to us Aboriginal people, the dingo has been here in this country, this place, since time began, just as we have.

There is ongoing debate as to the ‘taxonomic identity of the dingo’. Researchers have argued that dingoes are uniquely separate species from domestic dogs (Koungoulos 2020, 263). Dingoes were once referred to as *Canis familiaris dingo* or *Canis lupus dingo* (suggestive of being part of the domesticated dog taxon, *Canis lupus familiaris*), but because they are morphologically distinct from the domestic dog, a return to *Canis dingo* has been applied to differentiate the two species (Balme & O’Connor 2016, 775).

Others argue that there are only small differences between dogs and dingoes suggesting they should be classified as the one species. There is evidence in the archaeological record that the dingo was never ‘domesticated’ like dogs but more so ‘tamed’ wild animals (Koungoulos 2020, 263).

Dingoes are Australia’s longest surviving carnivorous species. Prior to the dingoes arrival, the mainland tiger (Thylacine, *Thylacinus cynocephalus*) was the only canid predator in Australia. Due to the extinction of the Thylacine around 3,200 years ago this has made Kal “Australia’s terrestrial apex predator and as such has become integrated into local ecosystems” (Koungoulos 2020, 263).

Since the time European settlers arrived on our shores, it has been noted that dingoes were co-habiting with Aboriginal people as well as living in the bush (Koungoulos 2020, 263). This observation amongst researchers has prompted further enquiry into hunting practices. Whether or not dingoes were used in serious hunts or only assisted in the capture of smaller prey has been examined through historical evidence. It was found that dingoes were used to hunt various large prey such as kangaroo, emu and wallaby as well as smaller prey species. The role of the dingo included detecting prey, as well as executing the capture of prey (Koungoulos & Fillios 2020, 1).

The larger taxon species were hunted and many people from the clan worked together alongside the dingo to ensure that the entire community would benefit from the hunt. We get a better understanding of diet and social systems by looking at the reciprocal relationship between dingoes and humans during the mid to late Holocene period (Koungoulos & Fillios 2020, 1).

Research suggests that dingoes bred with European dogs which created a hybrid dingo-dog making it difficult to distinguish pure dingoes from dingo-dog hybrids as there are no description or original specimens that can be used for assessment (Fillios *et al.*, 2014, 192). Dingoes have been viewed as being ‘tamed wild dogs’ and were never domesticated (Balme & O’Connor 2016, 777). Dingo pups were taken from the wild and brought back to the camp and were reared amongst the people (Koungoulos & Fillios 2020, 1).

This leads into the discussion surrounding the hybridisation debate. According to Cairns *et al.* (2021), the authors argue that dingoes are NOT extinct and that feral wild dogs are not common. They propose a shift in the naming of dingos from wild dog to dingo as this may positively shift perspectives toward conservation and management of dingoes within Australia. For example, the dingo is listed as a “Threatened (Vulnerable) species” in protected areas under Victorian legislation. However, both dingoes and dingo-dog hybrids are

declared pest species and/or controlled in all mainland jurisdictions. but wild dogs are listed as a pest (Australia 2021).

Cairns *et al.* (2021) narrate that DNA testing was based on 23 microsatellite marker sets to estimate dingo ancestry. This method was developed in 1999. The samples from these data sets were collected between 1996-2014. Prior to this study dingo ancestry was based on skull morphology examination. They conclude that wild canids in Australia are dingo given their DNA evidence arguing that the nomenclature of “wild dog” should be changed to “dingo” in order to identify the species appropriately.

I ask why should there be an issue of how much percentage of pure dingo is in a dingo? If that’s the case, why not ask the next Aboriginal person you know how much percent Aboriginal are they? While you’re at it you may as well ask them “if they are really Aboriginal”? This, I am sure, would not only be offensive, but it shows the lack of understanding and awareness. There should be no argument for ignorance here as it is well known that placing an Indigenous person’s gene percentage in a category challenges the intent of the United Nations *Declaration on the Rights of Indigenous People* (2007) and in particular Articles 8 and 11.

This is the same argument I take as it relates to our dingoes. Science and Traditional Ecological Knowledge (TEK) needs to work in collaboration to abolish such classifications amongst dingoes.

Reinforcing this argument is extensive research by Cairns *et al.* (2021) who argue that dingo habitat has been and continues to under threat by humans modifying their natural environment due to urbanisation and climate change. Dingoes are an integral part of our continent’s ecosystem by their role in controlling introduced predators including foxes and feral cats. The dingo is distinct from domestic dogs and wolves, as they have been in Australia for at least 5,000 ka.

The introduction of domesticated dogs has affected the role that the dingo has in relation to our ecology. Hybridisation now makes it difficult to identify a pure breed dingo in the field and in the laboratory. Hybridisation can affect accurate counts of dingo population therefore making them vulnerable to changing protective legislation consequently leading to lethal management and control of ‘wild dogs’ in order to protect livestock (Cairns *et al.*, 2021, 78, 80). “A dingo is of conservation value only if it has no dog ancestry” (Cairns *et al.*, 2021, 78).

Cairns *et al.* (2021, 87) concludes that their research identified a need to conserve and protect identified dingo populations in the regions of study. Based on the “high genetic integrity” of the results in this study, it is highly recommended that “special consideration” be being taken into account when developing management plans.

People have a misconception that dingoes are a major threat to livestock. This is evidenced in Brook and Kutt (2011, 79) who conclude that due to the perceived endangerment to stock, the dingo has been reduced in numbers. The article states that the negative impacts that other predatory mammals such as feral cats have on the smaller native animal population is increasing.

The research indicates that dingo diet is determined on prey availability, habitat, season/environmental changes and pack relationship. The authors argue for the evidence of dingoes suppressing feral cat population by restricting feral cat space, therefore providing benefits to native wildlife (Brook & Kutt 2011, 79).

Brook and Kutt (2011, 80) argue that by understanding the diet and predation preferences of the dingo, as it relates to native and introduced species, can assist with development of conservation and management of native fauna. From an Indigenous perspective, I agree with these authors.

The same argument is presented in the research by Klare *et al.*, (2011, 295). They conclude that in order to assess a particular species’ role in ecology, it is fundamental to understand the diet of the carnivore and how they impact on prey population. Information derived from diet analysis not only assists with furthering our understanding of unique ecosystems but can also be imperative to aid in the development of carnivore management plans especially as it relates to conservation of an endangered species.

Many researchers have discussed the effect dingoes have had on ecosystems. Fillios *et al.*, (2010, 987) conclude that dingoes assist in balancing ecosystems by reducing large kangaroo populations hence eliminating the competition for vegetation that allows smaller mammal species to benefit. Their role in hunting

smaller predators, such as the non-native red fox, positively impacts smaller native mammals. Recent research has noted the more positive role within the environment and its ecology where dingoes were present. For example, dingoes clearly benefit threatened species by suppressing invasive red foxes (Fillios *et al.*, 2014, 193).

The intricate relationship between dingoes and Aboriginal people extends much further beyond dingoes being simply a camp dog and hunting companion. There is much evidence that dingoes were highly valued and significant to Aboriginal people and culture. It has been suggested that dingoes were reared to protect Aboriginal people from spirits and to warn of approaching visitors (Balme & O'Connor 2016, 777). The dingo in some communities was recognised as a 'go between' connecting the living and the spirit world, warning Aboriginal people of evil spirits (Smith & Litchfield 2015, 124). These authors record that in the deserts that women were known to carry their dingoes around their waist like babies and sometimes suckled their pups (Smith & Litchfield 2015, 123). This observation has also been witnessed in western and southern New South Wales (Balme & O'Connor 2016, 777). Dingoes and Aboriginal people maintained a close connection and Kal was considered family, even to the point that dingoes were given skin names just as Aboriginal children were within the clan group (Balme & O'Connor 2016, 777). Anthropological evidence points to intricate and strong bonded relationships between Aboriginal people and their dingoes to the point that they were intimately close to their animals prompting Aboriginal people to move away from a significant place within their Country in order to protect their dingoes from being shot. Research talks about the spiritual significance of Kal to Aboriginal culture by way of their incorporation through songs, dances, art and Dreamtime stories. All Country's in Australia possess creation Dreamtime stories about the dingo. These tell us that dingoes were significant in their role throughout Aboriginal culture around the continent (Shipman 2020, 21). These stories continue to be taught and acknowledged as part of Aboriginal living culture. This suggests that dingo was central to the social structure and cultural practices of Aboriginal people over time.

Several historical accounts also note that upon death dingoes would receive from Aboriginal's a proper burial ceremony and that they were buried with the same care and consideration of that as a human; thus, the same burial customs were applied, including leaving the place of burial to set up camp elsewhere. Ethnographic records in Victoria confirm that the dingo was not only valued spiritually but also was valued for its many purposes, including hunting, eating, protection, companionship, and kinship connection. In south-eastern Australia, the use of dingoes for hunting and also as a delicacy food source was noted in historical narratives. However, it was made clear by Aboriginal people that dingoes in the bush were okay to be eaten but not those who were valued for hunting (Cahir & Clark 2015, 186, 193-195).

Anthropological studies have suggested that although there was uniformity in the human-dingo relationship across Australia there were some variances between northern and southern Aboriginal Australia in respect to how dingoes were used by both Aboriginal people and early settlers. Colonial pastoralists viewed dingo as a threat as well as Aboriginal People and thus colonialists killed dingoes out of spite in hopes that Aboriginal People would move off their Country lands (Cahir & Clark, 185, 2015).

One of the common experiences that solidified my People's connection with Kal was that early settlers would hunt Aboriginal People as well as their dingoes for sport on my Wadawurrung Country. In the Djilang/Geelong area, between the 1860's-1880's, many young non-Aboriginal men were known to shoot "anything that moved" (Cahir & Clark 2015, 190). Targets were dingoes, foxes, kangaroos and Aboriginal people alike; there was no discrimination between animal and human lives, all were considered fair game. While there was a clear colonial imperative to shift Aboriginal People off from their lands, then the killing of their dingo companions was applied in order to "control the movement of Aborigines". These actions suggested that colonialists comprehended the bond and intricate relationship between Aboriginal People and their dingoes and used this information to subsequently control Aboriginal People and move them from their Country (Cahir & Clark 2015, 192).

Archaeological evidence, such as bones found at campsites, document what dingoes and Aboriginal people ate, including smaller mammals such as goannas and bandicoots. Ethnographic records also suggest that dingoes were more often associated with women's foraging practices resulting in higher contribution of meat to the diet as a result of women hunting (Balme & O'Connor 2015, 778, 780). Koungoulos and Fillios narrate that dingoes assisted in hunting smaller mammals by flushing them out of burrows or dense bush areas making

it easier for women hunters to acquire smaller game as opposed to non-meat sources. Dingoes were used to capture larger animals like wombats and were useful in strategic hunting, driving 'fleet' type animals such as emus and kangaroos into ambushes or traps which conserved energy output (Kongoulos & Fillios 2020, 11).

This leads me to argue that the practice of ceremony and ritualistic burial of the dingo satisfies the criteria that the dingo is considered in Aboriginal society as a culturally significant key species possessing a living tangible culture heritage and thus any future *Wildlife Act 1975* (Vic) should be in partnership with the *Aboriginal Heritage Act 2006* (Vic) and the *Aboriginal Heritage Regulations 2018* (Vic) to align with the cultural heritage significance and values that Aboriginal People associate with the dingo.

Dingoes possess intangible heritage associations as well. We know this because Kal is intertwined in creation stories, teachings and the dreamtime. Spiritually, dingoes throughout Australia have been viewed by Aboriginals differently. In northern Australia, dreamtime stories or teachings depict the dingo as a 'lethal spirit being' that delivers payback to the wrong doers. In southeastern Australia, dingo is viewed as being Bundjil's, the creator spirit, protector and assistant (Cahir & Clark 2015, 195).

Conclusionary Points:

Kal is clever, loyal, and extraordinary today as he was before the beginning of time. Through prior studies and extensive research, we see from the mid to late Holocene to present time, the dingo has contributed significantly not only to Aboriginal culture but also as a vehicle to balance this continent's ecology.

In summary, the invaluable role of the Australian dingo throughout time has provided rich archaeological, anthropological and ethnographic data which gives us a better appreciation and understanding of many questions as they relate to human/dingo relationship and interaction including the uses of the dingo by Aboriginal people (Shipman 2020, 21).

Most importantly, yet sadly, we see the use of the dingo to move Aboriginal People off their traditional Country's. Noting the long-standing kinship connection and bond that Aboriginal people had with their dingoes this was used against them, in the ultimate goal to displace Aboriginal people from their traditional lands, not through negotiation, but through the slaughter of dingoes as well as their human companions, the Aboriginal People (Cahir & Clark 2015, 190).

We note the extraordinary ability of the Australian dingo to evolve and adapt to the harsh, unpredictable Australian climate, "founder effect and genetic drift," making it one of the most iconic and resilient animals to have walked this country (Shipman 2020, 20).

Kal (dingo), today, and since the beginning of time, always has and always will be part of our country, culture and story, confirming that "Aboriginal people and dingoes have the oldest surviving canine-human relationship in the world" (Bethke & Burt 2020, 1).

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