

Independent Review of the Wildlife Act 1975

Issues Paper

By Tom De Graaff BSc (Zoology & Genetics)

I have been involved with animals all my life through conservation, nature craft, hobbies, pets, education, relatives on farms and particularly aviculture.

*Having all the while kept and bred various animals (including insects, tropical & freshwater fish, reptiles, amphibians, small mammals and primarily birds, I studies Biology at every opportunity at school. This lead to graduate studies in **Zoology and Genetics**, skills and knowledge I use every day in both my chosen profession and my pastimes.*

I have included animals in classes and special projects in secondary education during general science lessons, curriculum development and senior (VCE) Biology units.

AVICULTURE *is the keeping and breeding of birds in near to natural conditions. It is an activity practised for conservation, therapeutic and educational reasons over centuries. Aviculture is also the reliable source of birds for public collections that cannot maintain breeding stocks of such a diverse animal group. Since it is motivated by passion and care, aviculture is quite different to professional animal production en masse. It excludes the commercial production of emus, ostriches and domesticated commercial production breeds of poultry.*

Aviculture is primarily represented in Victoria by the Victorian Avicultural Council (VAC). I am a past secretary of that organisation. This submission is based on my principle knowledge, interests and experiences in this space over 50 (or more) years. Thank you for this opportunity.

Tom De Graaff

Part 1: WHAT SHOULD THE ACT DO?

1.1 Community Values

1.1.1 In what ways does the Act succeed or fail in representing contemporary expectations for, and values relating to, wildlife in Victoria? Please provide examples from your own experience.

- The community has grown to include invertebrates and marine creatures in the definition of wildlife. Through education and exposure, people develop concern for all animals from native bees to migratory whales.
- The community also sees wildlife as a fundamental part of the environment and its various ecosystems.
- In these times of Climate Change and multiple threats to biodiversity, the community harbours more concern than ever for the future of wildlife.
- I do not see that the purposes of the Wildlife Act 1975 have changed but perhaps their purview has expanded.

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

- Aviculture is self-sustaining in its endeavours. It presents wildlife to the public through visitors, friends and relatives who may otherwise never have first-hand experiences of many species.
- Because of our love and curiosity of birds, our interests also run contrary to those who would harm them or their habitats.

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

- Whilst it will later be suggested that some birds may qualify for introduction into aviculture, by and large, aviculture as a skills- and knowledge-based pursuit, is employed in research, therapy and education. Most captive populations should be legislatively differentiated from wild birds ie removed from the Act or simply taken off licence requirements. Then the Act can concentrate on the conservation of wild birds.
- Game species and all reference to hunting should be removed from the Act and covered by its own legislation.

1.2 Intent of the Act

I respectfully dispute this sentence in part: “*The Act’s stated purposes – ‘protection’, ‘conservation’ and ‘sustainable use’ – sit uneasily together and, in fact, are often in direct conflict.*”

Sustainable use can produce highly effective conservation outcomes. This has been proven worldwide. Feathers from captive macaws have been donated to South American tribes for celebrations and headdresses. Crocodiles in Australia’s north are farmed for leather and tourism. Kangaroo meat is both nutritious and low in cholesterol. The budgerigar is arguably the most popular pet bird in the world and an engaging ambassador for Australia and its wildlife.

1.2.1 Are the current purposes of the Act satisfactory? What should the outcomes, objectives or purposes of the Act be? How should the objectives and purposes of the Act relate to the desired outcomes? How would they ensure desired outcomes are achieved?

- The “prevention of extinction” is a very clear purpose; results can be quantified in absolute terms.

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

- These should never be in conflict if the Act or its subordinate legislation is worded correctly.

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

- South Australia has quite versatile legislation which encourages the use of wildlife by private individuals for education, preservation and research.
- Western Australia has draconian restrictions that create barriers for community use of wildlife for the above purposes. It is also an extremely expensive burden on lovers of birds.

1.3 Aboriginal Victorians

I believe it to be discriminatory to allow some citizens of Victoria to conduct possibly harmful (to wildlife) activities but to deny others such rights.

1.4 A General Duty

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

- A general Duty of Care is well catered for in the Animal Welfare Review with respect to captive birds but other activities such as incorrect logging, running too many cattle in the high country, pollution damage etc may very well involve reparation to the environment as part of the consequences for breaking a “duty of care”. This is worth consideration.

1.5 Key Definitions

1.5.1 *Are there any definitions that are unclear or confusing or that cause problems for achieving the outcomes and objectives of the Act?*

- “Wildlife” should only include species indigenous to Victoria. It should not apply to feathers.
- “Protection” then, would only apply to indigenous Victorian species.
- Definitions of other words should be sourced from the Macquarie Dictionary or similar, agreed English text when legal action is contemplated. Don’t re-invent the wheel.

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

Non-indigenous species should be excluded from the definition of wildlife.

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

“Game” species, licensing and management should not be included in a Wildlife Act. Wildlife species should not be included as “game” species.

Part 2: INTERRACTION WITH OTHER LEGISLATION

2.1 Gaps and Overlaps

2.1.1 Do you have any comments on the interactions between the Wildlife Act and other legislation?

No

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

- The Wildlife Act 1975 covers wildlife. Expanding its purview would increase the complexity of issues exponentially.
- Broader issues such as ecosystems and the environment in general should be (or already are) covered by separate legislation.

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

Yes, it should. Shooters and other hunters have very little in common with other wildlife devotees. They are “consumers” of wildlife.

2.2 Managing Populations across Jurisdictional Borders

2.2.1 How do regulatory differences between states help or hinder wildlife management? Please provide examples from your own experiences.

- Victoria seems to me to be sensible in its import/export system. It does not financially impede the movement of birds across state borders but monitors and has regulatory paperwork to help with this.
- Trade and/or Import/Export: self-sufficient animals only.
- Animals that are not self-sufficient should only be moved under special permits/Ministerial discretion.

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

No comment.

2.3 Preserving and Conserving Habitat

No comment.

2.4 Treatment of Wildlife as Property

2.4.1 Do property rights related to wildlife need clarifying? If so, how?

It would be far simpler for all concerned to have captive birds of all species declared the property of the “owner”. Years ago, native parrots (including budgies) were imported BACK into Australia. These were the progeny of birds legally sent overseas (before Australia was even a country. Such progeny are now back here but their status as being “of the Crown” is dubious. Does the “Crown” claim ownership over every budgerigar and zebra finch across the globe?

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

No. The wildlife may be transient, it may migrate in or out of a property because it is part of the environment. Owners should be able to control wildlife under permit, even take it from the wild or sell or consume it but only under permit.

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

No. *Animal sentience* is a controversial term. Some studies (and my zoological experiences of 45 years) show that most of our birds get scared, remember things and/or learn things. Their pain thresholds are largely unknown yet assumed through observation to have a basis in reality. Since we can't talk to the animals, and anthropomorphism is not a scientific principle, the meaning of the word and its application should be avoided. Animal responses should be assessed based on observation, not "feelings". Therefore, it is suggested that – depending on the definition of "animal" – phrases such as "some species display apparent pain, fear etc" be used.

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

No one should have any special rights. To do so would be discriminatory. All cultures have traditions but when they harm wildlife or damage the environment, they become superseded by modern cultural respect for wildlife.

Part 3: MECHANISMS THE ACT NEEDS

3.1 Act lacks principles in managing wildlife.

3.1.1 Should the Act include statements of principle and criteria to guide regulators, duty holders and the public? Why are such principles important? If you do support including principles, what do you think they should be and why?

Without wildlife there is no ecosystem. Managing wildlife should always be done with the good of the environment/ habitat paramount. This may mean culling/removing some wildlife for the good of an ecosystem (eg kangaroos) or taking measures with short-term harm or damage for the long-term good eg periodic burns).

Principles such as this are more department policy than legislative.

3.2 Equitable and Participatory Approach (to conservation)

3.2.1 Should the Act include provisions for consultation with the community on certain issues? What issues should undergo community consultation?

Consultation should be part of every legislative instrument. The community can only support things it knows about and to which it can claim some relationship. Aviculture has participated in consultations with DELWP for many years. It has been represented from the start on the Ministerial Wildlife Possession & Trade Advisory Committee (WPTAC). These lines of communication should continue.

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

- Communication should be ongoing and regular, especially with stakeholders. Consistency of participants is also advised.
- Community involvement has to be informed involvement. Open for a can be counterproductive.
- Specialists in breeding birds are found in aviculture. Captive breeding programmes can be greatly enhanced by the participation of aviculture and aviculturists in such projects. Australian aviculturists currently breed many species including analogue species for the black-eared miner, helmeted honeyeater, orange-bellied parrot, plains wanderer and more.

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

- Private aviculturists with experience and knowledge (some over decades) have a lot to offer in captive management of bird species. There are private individuals who are keen to participate with knowledge, aviary space, time or expertise. They are currently going to waste because there is no permit pathway to recruiting them into projects.
- Captive breeding has been one of the pillars of international conservation since the 1970s and aviculture has over 120 years of documented bird breeding history to complement official programmes.
- The issuing of permits is currently a very convoluted process. It needs streamlining while still maintaining oversight.

3.3 Wildlife Management Plans

3.3.1 Should the Act enable wildlife management plans? What provisions should be included for such plans?

- Such plans should authorise aviculturists to take from the wild or retain rescue birds in captivity for study, breeding and preservation of gene pools. Birds should be retained in aviculture after cessation of the project so that none succumb to negligent release practices or to deliberate euthanasia.
- I could find no definition for ATCW in the Issues Paper.

3.4 Permissions Framework

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

- The regulatory burden of private wildlife licences on both licensee and the DELWP is of concern. The keeping of records and the storage of same could be alleviated by removal of species from the need for licences.
- Aviculture is a low risk activity in this context. Birds are not a common take from the wild into aviculture because wild birds carry greater risks of injury and/or death unless carefully nurtured. It is not the risk it was twenty years ago. Wild bird take should remain illegal except under special permit.
- Quote from the Issues Paper:

“The Act does not provide clear, consistent decision frameworks for refusing, cancelling or suspending different permissions. (For example, the Secretary (DELWP) must prove a person is not ‘fit and proper’ to hold a wildlife licence, rather than the applicant having to prove their fitness.)”

I believe that this is how common law is supposed to work! “Innocent until proven guilty.” In this context, however, it means that when revoking something (say, a licence) once given, it should be incumbent on the authority concerned to justify the action, not the accused proving their innocence.

3.5 Recovering Costs

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

No comment.

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

- When it comes to funding prosecutions, costs of this should (continue to) be borne by the Crown or the guilty party, NOT licensees.
- Fees should not be based on “projected estimates of costs to be recovered.” Data on the subject should be used to transparently justify the decision.

3.6 Codes, Standards or Guidelines

3.6.1 Should the Act contain provisions that allow for issuing mandatory codes of practice, standards or guidelines?

Aviculture is largely covered by the animal welfare code but, in any instance, amendments to any code should involve consultation.

3.6.2 What activities could most benefit from the development of mandatory codes or standards?

No comment

Part 4: TRANSPARENCY AND ACCOUNTABILITY

4.1 Expanded Reporting

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

- The current annual return for private wildlife licensees is adequate. No need for changes to private wildlife licences.
- Notifications of importing wildlife (from interstate) are not needed in most cases. The activity shows up in the Wildlife Record Book. Notification of species more “at risk” may be considered.
- The OWLS initiative is innovative. Some other state jurisdictions are considering this internet portal. Annual returns should be collated and the tabulated results placed on such a portal for licensees to inspect and use. This would be a great service to the licensees.
- If it is intended to take all record-keeping to online sites, then the tabulated totals should be available live on the site as they are entered.

4.2 Independent Expert Advice

4.2.1 Should the Act include provisions that require and enable establishment of a scientific advisory committee or advisory panels to provide expert guidance to key decision makers such as the Minister, the Secretary or the regulator on specific matters relating to wildlife? Why or why not? What other approaches are available?

- Specialist input is invaluable to decision making.
- Knowledge and experience are both important ingredients to an advisory committee.
- Appropriate and relevant knowledge and skills keep such advice on task.
- The Wildlife Possession & Trade Advisory Committee has been quite serviceable over the years and draws talent from the main stakeholders in that space.

Part 5: ENFORCEMENT AND COMPLIANCE

MECHANISMS

5.1 Offences

5.1.1 Should the Act include other offences?

- Hybrid birds are a scourge in aviculture. It is most prominent in NSW where laws are more lenient.
- Victoria declares the deliberate breeding of interspecies hybrids involving indigenous birds illegal.
- If our captive native birds are to continue to be covered by the Act, please keep this rule for all wildlife, licensed or not. It helps to preserve the genetic integrity of the birds.
- The offense should attract a penalty of about 100 points per offspring, no imprisonment.
 - Clerical issues (record books): a fine. No fuss, no convictions recorded etc.

5.1.2 Should any offences be repealed?

No comment.

5.2 Maximum Penalties

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

No comment.

5.3 Continuing Offences

5.3.1 Should the Act contain general provisions creating continuing offences and allowing for additional penalties?

- These kinds of penalties should be the core response to repeat/continuing offenders. It is also a concrete action directly used as a consequence for endangering wildlife.
- Additional penalties reflecting the severity of the offense (as the SA example) also reflect the core purpose of the Act.

5.4 Sentencing and Informing Judges

5.4.1 Should the Act contain provisions to permit community impact statements relating to the harm caused to wildlife?

Individual Impact Statements are used to inform the judge of the personal cost of a crime against a person.

Who would be qualified to speak for the Great Australian Bight or the Great Barrier Reef or Brisbane Ranges? There are scientists, adventurers, interested members of the public who could offer data but those data should be in the evidence establishing the seriousness of the matter. No “second go” should be allowed. Otherwise, we have a cavalcade of sentiment.

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

No. If a case is so bad as to go to court, evidence must be provided. The police MUST be acting in tandem with DELWP officers in such cases. Also, the prosecution has the onus of making its case. It should inform the judge of the reasons such offenses are considered serious and a decent judge should seek clarification when unsure.

5.5 Sanctions and Remedies

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

Civil penalties are subject to individual circumstances in the courtroom. It is fairer to have a set fine for a set offense.

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

- Infringement notices can help alleviate pressure on court time; appeal process should be available.
- Contesting infringement notices should not incur a cost unless the contest is lost. This avoids flippant fines for people who do not have the resources to contest.

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

Yes. Reparation for wrongdoing is a fair consequence.

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

No comment

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

This makes the offender pay rather than the licensees.

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

Clarification requested, please.

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

Only specialised items pertaining to the offence should be confiscated unless it is determined such items were bought or procured as a consequence of the offense.

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

Education courses sometimes help; especially in instances where ignorance of consequences is involved

5.6 Authorised Officers' Powers.

5.6.1 Does the Act contain the necessary powers and provisions to enable authorised officers to enforce the Act? What powers and provisions should be available to authorised officers?

Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

- If Game is given its own Act, then there is no need for officers to exercise any military-style powers (of search, seizure, firearms etc) when dealing with private wildlife licensees.
- Officers should NOT be exempt from the Act unless there is clear and transparent evidence that the law MUST be broken by them in the specific circumstances.
- Rights of entry should be with a warrant or with police who can demonstrate a suspicion of wrongdoing.
- So-called “proactive monitoring” which allows unauthorised entry to property and enclosures as acceptable is NOT acceptable. Aviculturists welcome inspections when conducted civilly.

5.7 Appeals and Reviews

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

A person should have the right to appeal and/or have a decision reviewed as a basic right.

5.8 Third Party Enforcement.

5.8.1 Should the Act provide for third-party civil enforcement under the Act? How might this make a difference in achieving the intended outcomes of the Act?

- Aren't there still laws providing for a “citizen's arrest”?
- Can't people lodge a complaint about an activity already?
- Nothing more is needed
- “Deputising” a person or persons, encouraging the public to seek out possible “law-breakers” is open to abuse. Such a legislative provision would set a dangerous precedent.

In Summary, I believe that:

- The wildlife Act 1975 largely fulfils its purpose to promote and facilitate both the prevention of extinction and the sustainable use of wildlife. There are certainly areas in need of modification but the main focus should be on the wildlife itself.
- Captive wildlife should be declared as property of the owner as distinct from wild creatures being “of the Crown”.
- Aviculture and the skills of its devotees should be encouraged to fully engage with recovery plans and captive breeding projects.
- Rescue wildlife should NOT be euthanised but employed wherever possible in breeding, research and education programmes.
- Issues pertaining to “game” hunting should be removed from the Act and covered by their own legislation.
- General issues relating to habitats, ecosystems and the environment would best be covered by separate legislation.
- I am very willing to discuss any of the above or be involved in any other capacity at your convenience.

Respectfully submitted by

Tom De Graaff
BSc (Zoology and Genetics, University of Melbourne)
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