

## **Submission to the review of the Wildlife Act, 30/6/2021.**

### *1.1.1 In what ways does the Act succeed or fail in representing contemporary expectations for, and values relating to, wildlife in Victoria?*

It provides limited protection to wildlife in most locations as there are plenty of detrimental activities (e.g. harassment of birds at flocking and breeding sites by dogs and people) that are dealt with by local councils or other agencies with no powers under the WA. Even then, in a large proportion of cases, these other agencies lack the ability to enforce even their own land use zoning because of few or nil authorised officers. Obviously this is an extended and entrenched problem with other legislation than the WA but covering incidents which would logically be covered by legislation entitled "Wildlife Act".

Where enforcement could occur under the WA, there is a difficulty of "burden of proof" of harassment of wildlife. Authorised officers would have to present at exactly the time and place to pick up even a tiny proportion of offences and be able to document such incidents. Unfortunately, there has been a trend in recent times for members of the public to be urged to collect information about offences; realistically, they would need a mobile phone, camera with telephoto lens and binoculars (and note book) to be able to see and record useful information to pass on to relevant authorities. This will lead to more assaults and possibly altercations. It is also a burden to be carrying such equipment and taking time out from private activities to be doing the job of rangers and enforcement officers.

That being said, the concept of "harassment" is useful to have in the legislation even if a dog chasing seagulls is technically an offence. Many people are probably not aware of this but are more likely to be aware that killing or injuring wildlife is wrong.

As a summary, the other legislation that overlaps problematically with the Wildlife Act in the above situations would be the Crown Land (Reserves) Act, Planning & Environment Act and Domestic Animals Act, and possibly the Marine & Coastal Act. I'm not sure if the Flora & Fauna Guarantee Act has any practical relevance here.

The issue of booming deer populations does not appear to be dealt with adequately by the WA. There are many "time bomb" effects of greater understorey/groundcover grazing of native vegetation and death of less common shrubs (particularly those with restricted niches such as in rainforests) through antler rubbing causing ringbarking and herbivory of young trees. Deer should be regarded as vermin. More effort should be made to prosecute those people who release deer into the wild.

I honestly do not know how the WA, Flora & Fauna Guarantee Act and federal EPBC Act interact to protect wildlife like the Hooded Plover. There seems to be little connection with management on ground. I get the impression that in a great deal of the legislative world, structures are set up (i.e. laws, regulations, some education)

but the next steps of determining where responsibilities lie, ensuring that mechanisms are put in place and resourcing adequately don't occur.

From Hooded Plover wardening activities and other observations, I can confirm that there is a growing focus on individual freedoms that is making compliance extremely rare and barely improved with recent greater education and apparent enforcement efforts. I do not exaggerate in writing "extremely rare" above.

*1.1.2 Are there conflicts between the interests or expectations of different stakeholders or community members regarding wildlife in Victoria?*

Many dog owners allow their pet to actively chase wildlife (in a variety of areas where dogs are banned through to allowed under control). The concept of harassing wildlife (which I understand to be prohibited under the WA) is either not known or disregarded by these people. There are a myriad of reasons stated by dog wakers for this including that their dog is harmless, their dog under control, such a law being irrelevant to them (not expressed in so many words), and perhaps that hassling wildlife simply not being a problem (I can only guess that this is some peoples' motivation). I appreciate that many aspects of this problem are also relevant to legislation other than the WA that may not be addressed under the current review: as long as the panel recognise this overlap of legislation and failure of this legislation and regulations in protecting wildlife, that will be useful for a start.

Deer are regarded as a favourite group for hunting but their booming populations mean that they should be controlled to prevent widespread environmental damage and increased road accidents and damage to rural and even urban properties.

*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?*

It can publicise what the Act covers in its existing form, at the same time emphasising what penalties apply for breaches of its provisions. People must realise that there are consequences for wilful and negligent breaches. I am told that when enforcement blitzes occur (under acts other than the WA), that word gets around and there is at least a temporary impact. What is required is better use of social media by the relevant government agencies to spread the message.

Useful legislative changes would be to co-ordinate enforcement responsibility and resource more enforcement officers. The current situation of around 3 DELWP officers being responsible for enforcement of Wildlife Act regulations in western Victoria (i.e. west of Melbourne and including the Geelong and Bellarine Peninsula) is laughable. However, I do wonder how it can be possible to protect dozens of Hooded Plover nests at the same time, over several months, with a great seasonal influx of human population, up to 15+ hours per day over the peak summer period. I would say that without having multiple people stationed at each nest (over around

9+weeks of a full breeding cycle), compliance will not occur. The job of these DELWP officers is not made much easier by having most on ground local council and coastal management staff not authorised to enforce dog (and even horse-riding/training regulations). There are further authorities with responsibility for ports and sewage facilities in key sections of coast that have no core interest in land and wildlife management and apparently show no interest in this. To summarise, coastal management and enforcement responsibility is a shambles and has been for decades (no exaggeration) with there being no interest within management levels of any of these authorities to sort out the mess: this definitely fits into the too hard basket and probably would not enhance the career prospects of any coastal management or local government employee to be agitating for legislative reform (obviously overlapping with the WA in part). As a guide as to what works, Parks Victoria at the Mornington Peninsula National Park is an excellent example of what works the best so far, by having a single management authority with numerous enforcement- authorised staff who are relatively frequently on site.

*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?*

Unfortunately, I am writing this response very late in the consultation period so cannot adequately deal with this. To systematically go through the outcomes, objectives or purposes of the WA is a huge job.

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

That's a very big question that I think is beyond the scope of this consultation. I could write pages on this.

*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?*

Don't know.

*1.3.1 Is the Act a barrier to self-determination for Traditional Owners or Aboriginal Victorians? If so, what specific elements give rise to barriers and how might these barriers be reduced or eliminated?*

Don't know.

*1.3.2 Should the Act recognise the cultural significance of Country and wildlife to Traditional Owners and Aboriginal Victorians? Should the Act explicitly recognise the value of Indigenous Ecological Knowledge for the stewardship of Country and the conservation of wildlife?*

It seems out of place for a single source of knowledge and experience to be highlighted. In some cases, Traditional Owners have been so displaced from their land and are so reduced in number that the pool of knowledge for a particular area is unfortunately greatly diminished. It would be a risk to put too much emphasis on one group's expertise under these circumstances.

Without thinking a lot more on this, I can't really see how this proposal fits with management of wildlife collections and specific animal groups such as marine mammals. It would fit with reserve management (which is spread across several Acts anyway) but would be better integrated into legislation that deals with fire management and other reserves that aren't covered by the WA.

*1.3.3 Should the Act prescribe a role for Traditional Owners and Aboriginal Victorians as key partners in decision making about conserving wildlife? What could that role look like?*

Don't know.

*1.3.4 Should the Act afford additional protection and the ability to return species to country because of their cultural significance?*

This is very open ended and could end up with reintroduction of animals out of balance with the environment.

*1.3.5 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?*

This is an interesting idea that could be pursued but the devil will be in the detail.

*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?*

It should include a general duty of care to these outcomes. The reasons for conservation seem to be eluding people these days. There is also a widespread attitude that people can opt out of laws or regulations that they don't agree with, so explaining the good reasons for so many of these laws and regulations would be useful, and to somehow point out that by flouting them, they are infringing the rights and expectation of other people. It will not be easy to change people's attitudes.

*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?*

The status of deer is a problem to effective management of an increasing problem feral group of species.

*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?*

Protection for deer should be removed.

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

They should be retained but defined better to reflect their non-hunted/protected status for most of the time (outside of open seasons).

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

Plenty as covered throughout this submission.

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

Not sure what this means.

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

Native wildlife such as ducks and quail are not game animals except in a prescribed season so they should be covered primarily for their overall protected status in the same environment as a much larger number of other protected species. So, no to a separate Act for game management.

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

No comment.

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

With a focus on wildlife (and not just threatened species on public land, as addressed by the FFG Act), the WA should be able to address these differences by specifically mentioning the types of agencies for which this is relevant (e.g. local councils, coastal management authorities, CMAs (?) and public utilities (water supply, sewerage etc); who is responsible for wildlife management and how this management is to occur. At present, there appear to be no mechanisms allowing

employees of organisations with management authority to enforce wildlife regulations especially where there are overlaps with other Acts such as to do with domestic animals. Where there are authorised officers in existence, they are generally too few and widespread: having more authorised officers from a variety of organisations (not just restricted to the one main management authority), especially those who are more likely to be working in the general geographical area, would help alleviate this problem.

*2.3.1 In what ways does the Act succeed or fail in protecting and conserving wildlife habitat? Please provide examples from your own experience.*

My main examples are to do with Hooded Plover and general waterbird habitats in the Geelong region. I am aware of similar issues in many other places in Victoria.

Failures:

- Too few enforcement staff spread over a very wide area
- Incidents needing to be witnessed live and properly documented to be acted upon (obviously not possible in 99.999.... % of occurrences due to above problem amongst others)
- Reporting and documentation of incidents being left to private citizens with associated risk of confrontation with perpetrators (private citizens not being kitted out with tactical gear as enforcement officers and some rangers are)
- Ageing and/or deficient signage
- Citizen alerts of the presence of enforcement staff being in an area via social media (good for discouraging people for a very brief period but then it's back to behaviour as normal for perpetrators)
- Lack of community knowledge and understanding of the importance of particular sites for wildlife, how their actions (and those of animals under their ownership) affect animals (possibly an overlap with animal cruelty legislation), the fact that many interactions are effectively harassment of wildlife.

*2.3.2 How should the Act provide for the protection and conservation of wildlife habitat?*

Coordinate legislation and management as there are too many organisations with differing focus that have responsibility for habitat but no desire or mechanisms to deal with wildlife, habitat and enforcement.

I am not clear about which reserves can be declared under the WA but having other Acts dealing with reservation for land and water management may be making it difficult to plan for, resource and undertake management.

*2.3.3 Should the Act prescribe duties for landowners about protecting and conserving wildlife and wildlife habitat on their land? What could those duties look like?*

Yes for prescribed duties for government departments, agencies and authorities, but problematic for private land. Duties should include an audit of the natural values on land under their control. This could be done most superficially with GIS and desktop analysis (modelling would probably not be good enough) and ensuring that habitats covering non-native vegetation or disturbed areas are included. All available wildlife databases and local knowledge (e.g. through local experts) should be used to inform this. I understand that agencies and consultants working for them do not canvass the full range of information that is available, sometimes producing a downright inadequate response.

Prescribed duties would have to require auditing which would have to be expensive and bureaucratic. Similar processes such as monitoring wildlife and habitat for native vegetation offsets through the planning system have been very variable and sometimes have been failures.

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

Not sure.

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

Not sure but probably no.

*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?*

Not sure. There would have to be plenty of studies of stress in wildlife (ranging from behavioural to biochemical) that could realistically be extrapolated to a wide range of wildlife. Anecdotally, it is pretty easy to see that shorebirds feeding, roosting and nesting become stressed by repeated disturbance from people and domestic animals such as dogs and horses. There is a lack of appreciation amongst a number of dog owners that the presence and poorly controlled activities of dogs can be extremely stressful for wildlife (in certain circumstances arguably constituting harassment).

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

No comment.

*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?*

Yes to statements but as to what and why, don't know (tough question!).

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

Qualified yes.

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

No comment.

*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?*

What does this mean? Some examples would be useful.

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

Yes to plans but this sounds like Action Statements under the FFG which appear to be toothless, even when in their restricted application to public land.

*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?*

Not sure of the probable intention here but simplification and clarification of enforcement authority over actions relating to wildlife and habitat (with multiple overlaps with other legislation) is urgently needed. Backing up with resources has to go hand in and with this: there are too many examples of zoning and regulation being declared then no backup. It's like one set of managers' KPIs have been fulfilled and they aren't required to go the extra step and ensure that the measures implemented actually work: this would probably be described as "window-dressing" an issue.

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

Don't know.

*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?*

No comment except that fines need to be issued for non-compliance and this should fund extra staff to an extent.

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

Very vague question but a qualified yes.

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

As above.

*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?*

Accountability seems to be missing in varying degrees in DELWP through to public agencies (and probably private land holders) managing habitat. There is also a problem with private individuals appearing to think that if they don't like or agree with some law or regulation, then they can ignore it despite this acting against other people's sensibilities or rights, and even wasting the time of paid and volunteer workers and resources e.g. Hooded Plover conservation efforts. With the latter, one selfish act of dog walking can destroy hundreds of person hours of work in a split second.

*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?*

Seems like a good idea.

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

I don't know penalty structure well enough to comment.

Re poisoning of birds of prey and "collateral" species, the penalties for recent incidents were hopeless and should have been levied per individual killed or injured, not per incident or cluster of multiple incidents at a locality over time.

Also, penalties should apply at multiple levels of responsibility. For example, with the East Gippsland eagle poisonings, the on-ground poisoner should have been significantly fined, the farm manager should have been penalised more (restricted from managing similar enterprises?) and if a company involved that demonstrably supported (resourced or had knowledge of) poisoning should also be penalised.

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

Yes, very strongly so. It's quite likely that people or organisations will absorb a one-off penalty but carry on with business as usual (or less obviously so) once enforcement officers have moved on.

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

Not sure exactly what this means but possibly a qualified yes.

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

Yes.

*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?*

Not sure what distinguishes civil penalty provisions from other penalties.

*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?*

What are minor offences? Depending on the circumstances, it would be useful to advertise that any penalties are being applied. Signs saying that something is prohibited and that penalties apply mean nothing to people if there's no evidence of enforcement presence or penalties being applied.

*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?*

I don't understand this.

*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?*

Don't know.

*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?*

Don't know.

*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?*

Yes but I don't know the detail of current penalties.

*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?*

Yes to the former.

*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?*

I don't know what is meant by "regulatory tools, sanctions and remedies".

*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?*

There needs to be equivalence in what enforcement officers with assorted management authorities can address i.e. DELWP staff authorised under the Wildlife Act being able to act re overlapping or coincident breaches of regulations which should be handled by land managers (e.g. councils, utilities, coastal management boards, committees of management [?]), and any officers of land managers being able to act on breaches of the WA. Logically, the shemozzle of responsibility for enforcement with local councils, management authorities and utilities needs to be sorted out.

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

Don't know.

*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?*

I am not exactly sure what this means: does it mean officers of councils, management authorities and utilities but not private citizens? I have already

mentioned above how this could work for the former group and also noted the problems with the latter being officially involved.

By utilising the former, a greater number of enforcement capable officers would become available and should be in the vicinity of potential incidents several orders of magnitude more frequently just by working in a restricted geographical area. This would also assist in covering the seasonality of wildlife crime, a major factor with nesting Hooded Plovers in summer holiday periods, and also address the need to cover important sites year round, not just specific sites in breeding seasons and other major life-cycle events.