

Wildlife Act Review

Issues Paper questions – Response 33:

Contributor: Individual

Primary interests:

- Protection and conservation of wildlife and habitat
- Rehabilitation of sick, injured and orphaned wildlife
- Research relating to wildlife

Question responses

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.

It succeeds on a minor scale in that it exists in and of itself: to avoid harm to wildlife. However, it fails in that it is not representative of the current climate, literally and figuratively speaking. For example, it has an entire section on the protection of whales (which was relevant at the time in the 70s) however a glaring omission is a dedicated section for the protection of koalas. Taking into consideration the growing interest in protecting all of our native wildlife, particularly after Black Summer, there is no scope for independent submission and/or feedback in decision-making and the delivery of any action plans. Another example of the Act being out of step is the subject of kangaroo “harvesting”. I personally think it should be banned and that we should not destroy NATIVE wildlife and no written authorisation / authority to control NATIVE wildlife should be issued to cull. Which brings me to a major weakness in the Act: there needs to be a clear distinction between wildlife and NATIVE wildlife, to address the urgent loss of extinction of our native wildlife. Culling should only be allowed for introduced (and feral) species of wildlife.

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.

Yes, kangaroos and culling. Commercial interests vs public interest and the protection of kangaroos and concerns with animal abuse. One ongoing and very recent example is the distress experienced by the community and the impact on its wellbeing when the Kinley Kangas community group protested against the owner of the private golf course, Heritage Golf and Country Club in Chirnside Park, culling the nearby kangaroos for pet food. No other option was considered initially by the owner until the Kinley Kangas group stepped in in protest. The owner has now, by stealth, allowed his savage dogs to inhumanely kill the kangaroos, including young joeys. Secondly, the Department of Jobs, Precincts and Regions and the Minister for Agriculture, and the relationship between these departments and protection and conservation of wildlife. I believe objectivity is lost in having these departments involved in the sphere of wildlife (decision-making, licences etc) as their interests lie elsewhere and are often in conflict with the objectives of the Wildlife Act ie protection of wildlife. For example, the massacre of the koalas at Cape Bridgewater where the commercial interests of the landowner excluded the wellbeing of the koalas and laws were breached resulting in animal abuse and deaths. Because of the imbalance of commercial gain over koala protection, the option to rescue and translocate the koalas was not explored by the landowner.

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?

We currently have an inadequate Wildlife Act. Unfortunately, as it stands, the balance between interests of humans and wildlife has become far too skewed in favour of human progress and development, to the detriment of our native wildlife who are suffering at the hands of the consequences of our actions and the resultant climate change. To address the competing interests, I would suggest to remove jurisdiction from DELWP and the OCR and place it under Department of Justice and Community Safety and the Attorney-General, who are better equipped to handle penalties of any breaches and enforcement of law.

1.2.1 Are the current purposes of the Act satisfactory? If not, what should the desired 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?

No, as it is not outcome-based. The objective and purpose should be protection, conservation and enforcement . It needs to be a more proactive approach rather than just reactionary; conducting training in wildlife management techniques that are not lethal that inform a landowner thereby increasing opportunities for compliance before administering any fines for non-compliance to a landowner. This would encompass having a plan, almost like a flowchart where the objectives and purposes at different levels feed into the desired outcomes, like a target in a way or a benchmark. The desired outcome could also be drilled down to a specific goal. For example, only 1000 greater gliders left in the state of Victoria so we need to increase this number by 50%, therefore provisions in the Act need to be geared toward this goal of conservation.

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

Through an independent arbitration committee.

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?

The Flora and Fauna Guarantee Act 1988.

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?

Yes as it appears that at no stage was there any consultation with the Traditional Owners when the Act was drawn up and executed. We need to ensure Traditional Owners are now always consulted and included in the conversation.

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?

Yes! Given our First Nations people have lived on Country for millennia, this affords them a deep understanding of the flora and fauna. They deserve the recognition of their skills and knowledge, and the application of that knowledge. This can only be of benefit, and is congruent with the Act.

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?

Once again, yes! As noted, Traditional Owners have an obligation to protect and conserve wildlife and Country, with individuals of each nation having responsibility for protecting their totem and its affiliated species. For this reason, I believe it is crucial we involve our First Nations people, effectively helping in wildlife protection and conservation. In addition to acting as stewards, this could be in the form of a committee of Elders that is called upon for their input, which reflects both their own knowledge and experiences and techniques of conservation and restoration, along with that of their peoples.

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

Yes, definitely (!), given Traditional Owners have an obligation to protect wildlife (and Country) and that some species have high cultural importance, as well as the fact that the Act, as it stands, does not require consideration of the impacts on Traditional Owners when these totem animals are hunted or killed on Country. Including the practice of culling of kangaroos which is an example of an exemption in the Act that contravenes the natural law of First Nations peoples in their belief that totemic species are not to be eaten normally. This is having an impact on the mental wellbeing of some First Nations people as well; I know of one example of an Elder recently who was so distressed that she was suicidal after seeing the unsuccessful shooting of a kangaroo during a commercial cull whose mouth had been blown off and become infected after being carelessly shot. The kangaroo survived days in agony with the gaping wound before being found and was suffering from malnutrition as it could not chew due to the horrific injury it has sustained, resulting in it needing to be euthanised.

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?

No, I don't support the commercial use of wildlife for anyone. And find it hypocritical that kangaroos are currently used for commercial purposes by white Australians and not First Nations people. It is my understanding that Aboriginal Victorians do not support the commercial use of wildlife.

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?

Yes, as having a clear duty of care can only assist in fulfilling obligations to avoid or undertake acts that could reasonably be foreseen to cause or avoid injury or harm. It could also be used in the context of reparation and restoration of land, whether this applies to either a government body or an individual in managing land. As noted, it would fill gaps in existing legislation where no specific duties are imposed. If duty of care is underpinned by guidelines, this will give a wholistic approach; in setting standards and expectations, and responsibilities that are required to be met. I have a preference for defining the duty as one owed to individuals as this means it focuses on the financial penalties of breaching the duty rather than encouraging individuals to consider their impacts on the environment because let's face it, Australians in general are not very good at doing this.

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?

Yes, the words "habitat", "destroy", "disturb". I note they are excluded from the Definitions in Part 1 (preliminary) of the Act, which is alarming. The omission of these words leaves a large gap in the understanding and interpretation of the Act, and, I believe, could be a huge hindrance to any enforcement of non-compliance of the Act by an individual. I have a very good understanding of human behaviour having worked in the field of compliance, litigation and customer service for many years and I can categorically say that if something is omitted or not explicitly stated and/or emphasised, it will be used as ammunition in defence of said individual not undertaking an obligation or responsibility.

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?

No. The Act provides for the Governor in Council to proclaim any wild animal to be wildlife for the purposes of the Act, including non-indigenous animals such as deer and some game bird species (game). The ability to protect non-indigenous animals highlights the competing purposes of the Act, and is considered counter-intuitive by some stakeholders. For example, deer proclaimed to be wildlife under the Act can destroy the habitat of indigenous wildlife and therefore undermine the Act's goals to preserve and conserve indigenous species. As I noted previously, a clear and distinct definition needs to be made between wildlife and native wildlife for these reasons exactly. Perhaps exclude introduced species only if they reach feral proportions. And the impacts of introduced species needs to be monitored and if found to have an impact on our native wildlife, then the interests of our native wildlife need to override that of the introduced species, i.e. the brumbies in the Alpine country. In addition, native wildlife must NEVER be unprotected by a Governor in council under any circumstances. Even if it is a brushtail possum in a residential building. In doing so, this could lead to a culture that it's "ok" to kill even endangered species (like koalas, for example) if one is found in one's backyard.

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

Yes, do include game. The problem is if we exclude game from the Act, meaning they are not protected, this allows an opportunity for the public to enter native and national parks to shoot game therefore causing destruction of habitats for small mammals as a result of the trampling and impacts from vehicular traffic on the flora.

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

No issue with overlaps; a problem exists only if provisions in the different legislation oppose or contradict each other. Overlaps confirm or replicate legislation in the context of that other legislation.

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

I believe so. This could lead to a more streamlined one.

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

No - it needs to sit in context with other wildlife to demonstrate how it affects the ecology, especially in reference to our native wildlife.

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?

By information sharing; having harmonisation on critical issues is needed. Especially at this time where species have become and are becoming extinct.

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.

Penalties are not strict enough. Case in point, the Cape Bridgewater incident. The landowner is yet to be prosecuted one-and-a-half years after the event. And the monetary penalties are not high enough, therefore I believe are insufficient as a deterrent. Secondly, as I mentioned in Section 1.5.1, along with adding the words "habitat", "destroy", "disturb", add the definition of "wildlife habitat" to the Definitions in Part 1 (preliminary) of the Act. It is imperative to be more specific about direct and indirect damage to wildlife habitat in the Act, acknowledging the impacts of habitat destruction on wildlife, and the inclusion of wildlife habitat outside of state wildlife and nature reserves.

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

Increasing penalties to serve as a deterrent because currently, it appears landowners who break the law would rather pay the minimal fines and destroy habitats rather than conserve them. We also need more park rangers to capture people breaching the law/Act. A longer statute of limitations. In addition, the Act does not specify the obligations of landholders relating to habitat on their land. Private land occupies around two-thirds of Victoria's total land area. As such, landowners play an important role in conserving and managing Victoria's wildlife. It should be mandatory, and not voluntary, for landowners be subject to any mandatory or minimum obligations towards wildlife conservation.

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! - no direct killing of wildlife - no indirect killing of wildlife: allowing them to starve - taking reasonable steps to ensure wildlife has adequate access to food i.e. not felling trees for koalas and ensuring enough food trees are left on the land. This should include ensuring there is an UNBROKEN corridor of trees to allow free movement of koalas. This would also have the dual benefit of the koala not having to be in danger of being killed and trampled by livestock while traversing on the ground. - new developments: it should be a requirement for every Planning Scheme to carefully consider and provide for conservation of wildlife habitat and corridors, to ensure new developments do not negatively impact wildlife.

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

Yes. It needs to be very clear that landowners do not own wildlife. Even if that wildlife resides on their land or uses their land temporarily. And that wildlife and flora are a separate legal entity. This needs to be communicated perhaps via training as landowners most likely do not think to investigate legislation in relation to wildlife and its conservation nor take a proactive approach to do this. Perhaps when the land is purchased would be an opportune time.

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

No. Never.

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?

Yes! For their emotional wellbeing, including avoidance of pain and distress. It extends to the animal's ability to assess danger and make choices, assess environments. Stress has a massive impact in most animals. One example is koalas. Due to their poor immune systems, any stress they encounter can trigger illness and/or infection, leading ultimately to death. Recognising animal sentience in wildlife should not and does not impact humans in any way, especially negatively (it would only impact humans in domestic animals, for example, financially, in providing extra facilities to house an animal to ensure comfort). It may give added responsibilities for humans to ensure their wellbeing is protected, perhaps in ensuring their habitat is not destroyed, allowing them to feed and survive and avoid any feelings of distress.

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

As mentioned earlier, they should have priority in protecting and conserving wildlife. Traditional Owners have an understanding that they are the custodians of 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?

Yes! Because it gives a framework to the licence /authorisation holder in which to operate. And more specifically, a road map. Having worked in the field of Compliance and for an Ombudsman, I witnessed instances where incumbents simply had no clue as to how to approach running of their business in an ethical and lawful manner. In order to protect wildlife and its habitats: - a ban on recreational shooting of wildlife - protecting wildlife from domestic pets harming them - banning poisons, such as 1080, that harm other wildlife directly or indirectly (owls eating mice and therefore ingesting the poison indirectly), as is happening with the current mice plague - utilising wildlife-friendly fencing (no barbed wire) and enforcing this - utilising alternative fencing methods such as virtual fencing. This is where technology is used to emit a signal which prevents wildlife from colliding with vehicles on roads

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

Yes, most definitely. Especially in relation to the issue of management of wildlife. Including instances of overabundance (if applicable), sterilisation (which I believe should not happen in this current climate), contraception as an alternative but only if necessary, and culling. As noted, consultation would also allow collection of informal data about the impacts of wildlife on communities and the impacts of people and activities on wildlife to supplement official reporting.

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

Making it more widespread e.g. using social media whether to advertise or inform. Also, community town halls.

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?

Yes - no transparency in the decision-making process and secondly, private land ownership - Cape Bridgewater (CB) is a good example. Wildlife do not belong to a landowner and are not their chattel to do with as they please. It appears landowners are not aware they do not own the wildlife contained within their land. This mentality and subsequent behaviour hinders the objectives of the Act in protecting wildlife. Because of the CB incident, the owner was not "caught in the act" and therefore it appears it is difficult for DELWP to prove it was allegedly the landowner that was responsible for the massacre of the koalas. The company that was hired to perform the logging of the trees on that landowner's property categorically state it followed correct procedure and left enough trees for the koalas to live in. I believe the biggest barrier is the fact that an agency cannot go into the landowner's property without any authorisation. This leaves a window of opportunity for a landowner to remove any evidence of wrongdoing. I believe in order to remove or minimise any other barriers, there needs to be education and information prior to a landowner purchasing property, enabling a proactive approach rather than persecuting after the fact when often, it is too late, as was the case in the CB incident. This might be in the form of the Wildlife Act being included as an appendix in the contract when purchasing the land. Including advising of the presence of existing native wildlife and said obligations and responsibilities on that landowner for the management, conservation and protection of that wildlife.

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

Yes, any wildlife management plan must be consistent with the objectives of the Act and must include what those objectives are, as well as guidelines for the criteria used to issue licences and permits. Further, the plan should identify critical components of the ecosystem relevant to the plan and current or potential threats and any existing or proposed preventative measures. Including: (a) specifying performance indicators, targets and monitoring methods; (b) as far as relevant and practicable, identify the biological, ecological, social and economic factors relevant to its management including— (i) its current status, human uses and economic value; ii) measures to minimise its impact on target species and the environment; (iii) research needs and priorities; (iv) the resources required to implement the plan

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?

Yes, but only clarifying the provisions, in order to ease the burden for government of administering a licence; I do not believe the criteria used in applying for licences should be lessened to make it easier however, as I believe exemptions should be rare, if used at all. Are there considerations as to what impact will granting an exemption have on the population, quality of life of the wildlife, inclusive of conservation? I am unsure if this occurs at any stage of the process. And as noted, currently, some licences may be perceived as a public right to possess wildlife, rather than a privilege. Also noted, exemptions limit the regulator's ability to track an activity (e.g. to be sure possession and trade of a species is occurring from a legal captive source and not illegally taken from the wild). Because of these reasons, I believe it is imperative that burden of proof should rest on the applicant to meet their fitness to hold a licence.

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

No it is not, and should be specified.

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?

Yes! Full costs should be recovered. In a user-pays model. No subsidies - I cannot imagine a scenario where this would be required or needed.

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

Yes of course. Otherwise they are not enforceable; this is a huge disadvantage in the protection of our Wildlife and this needs to be urgently addressed at this point in time, with several species being in decline and becoming extinct, with several already extinct.

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

As I stated earlier, the care and conservation of habitat on landowner's property, encompassing: - restricted logging - monitoring of water that is accessible for wildlife for safety and disease (think lakes and koalas drinking to alleviate thirst in hot weather) - development and prioritising wildlife over development The care of wildlife, encompassing: - fencing (see earlier) - handling and the correct procedure in picking up a live animal to avoid any injury - protection - no poisoning, no other predatory animals within certain area of the wildlife, no shooting - euthanasia: ensuring this option is taken as the very last possible action, rather than being considered as one of the alternative options available. Due to lack of funding, I am aware of euthanasia taken as an option rather than conducting a medical procedure or operation to rectify a condition or illness in an animal - reporting of the impact of any activity that will affect wildlife and its habitat, be it land clearing or anything else. How many of that species are left in terms of numbers?

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?

No, not nearly enough. We need a vast amount of detail. Reporting is critical for applying scrutiny and evaluating impacts on species and their numbers. Their habitats. ANYONE who has any interaction with an animal needs to be accountable. We need reporting on: - the number of licences/permits issued contrasting those declined - the reason for declined applications - proof of why a landholder wants an exemption - the number and type of animals actually taken, killed, destroyed, disturbed, marked or controlled, the methods actually applied and the possible impacts on the animals and declining numbers - the number and type of animals 'taken' from the wild for rehabilitation and the number and type of rehabilitated animals released, and post-release outcomes for those animals

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?

Yes! we need independent expert advice. In fact it is crucial. Why? Because presently, there is bias and conflict of interest in having DELWP involved in administering the Wildlife Act. My opinion is

that an external and independent committee needs to be made up of scientists, ecologists etc. People who have thorough understanding of ecological impacts, and the ability and means to conduct such research. I cannot stress enough that any data gathered needs to be thorough, hence my recommendation of a scientific body.

5.1.1 Should the Act include other offences?

Yes. Please include: - not leashing dogs when in a known wildlife area, national parks, public land etc. - trespass to wildlife - feeding animals in the wild - taking native wildlife from critical habitats - disturbing dangerous native animals - as noted, and currently omitted, interfering with or destroying wildlife habitat

5.1.2 Should any offences be repealed?

No!

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

Absolutely not adequate enough to deter. The penalties here in Victoria need to be in line with New South Wales' as you've noted: according to the Environment Protection and Biodiversity Conservation Act 1999 (Cth) and the Biodiversity Conservation Act 2016 (NSW) . Corporation : \$1,650,000 and an additional daily penalty of \$66,000 for each day as well as an additional penalty of \$66,000 for each plant or animal to which the offence relates. For an individual, the maximum penalties are \$330,000 with an additional daily penalty of \$33,000 and a penalty of \$33,000 for each animal.

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

Yes, again similar to what South Australia has. And I would also include the graduated levels to reflect the status: endangered, vulnerable etc, but increase it from SA's: National Parks and Wildlife Act 1972 (SA) I would suggest imposing additional penalties of \$2,500 per animal if it is an endangered species, \$1,000 for a vulnerable species, \$700 for a rare species.

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

Yes, definitely. Judges may not usually be aware of the gravity and the context in which an offence has occurred. As I noted, earlier, the impact that seeing a maimed kangaroo had on a Traditional Owner is evidence and information that should be submitted in a court of law.

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

Yes. Including the impact on the environment and ecology. This is crucial to allow the judge to see in context how the offence will cause damage to not only the animal but the long-term effects elsewhere and the ensuing chain reaction in the ecology.

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?

Yes. Infringements I believe is the only way and a most effective tool. Once again, human nature demonstrates that penalties are usually a good deterrent. One just needs to look at the road laws and police - the successful campaign decades ago when seatbelts were made mandatory to wear by passengers and drivers when being a car that is in motion. And if fortunate to do so, on-the-spot fines if an offender is found at the time of the incident and or/while ranger on patrol. Perhaps the infringements could be part of a system where if the offender has had three infringement notices issued (monetary penalties as noted earlier in 5.2 and 5.3), then a final lump sum penalty is given as a sanction.

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?

While issuing infringements for minor offences may not be a deterrent (of future action), it will certainly assist in building a legal case and following due process. i.e. that may lead to jail time or perhaps a stop-work order if it's a corporation. Infringements may also instead temporarily assist with preventing further distress and/or injury to an animal. I refer to Clause 11.31 (1) of the NSW Biodiversity Act. This is a pathway should further breaches occur.

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. It can also act as an alternative or supplement to monetary penalties. Examples: I note the NSW Biodiversity Act allows authorised officer to enter a property to ensure works are actioned in accordance with an order requiring owners to rectify breaches of the Act. (see Clause 11.18 and 11.26). Also Clause 11.8 Interim Protection Orders . 11.9 (2) reasons why a protection order would be made. I also refer you to 11.14 (definition of damage) through to 11.16 inclusive which covers and gives examples of Remediation work. In addition, Victoria's own Flora and Fauna Guarantee Act 1988 gives powers to authorised officers to enter lands not occupied as places of residence, without consent or a warrant, to find out if provisions of the act are being complied with(see Division 2 - Enforcement and powers of authorised officers, Clause 57 Entry without consent or warrant (1) and (2) (a) and its sub-clauses). amongst other tools at their disposal. Clause 57A (1) warrant is only required if place is a residence. In contrast, the Wildlife Act is vague: refer Part VIII Clause 59 Powers of Authorised Officer Clause (1), does not make it clear by stating whether it is necessary with or without consent or a warrant. Another provision would be an HCO (habitat conservation order) in the Flora and Fauna Act: HCOs may be made by the Minister to conserve, protect or manage critical habitat. HCOs can prohibit damage to critical habitat or require remediation of previous damage. It is an offence to contravene an HCO, punishable by up to two years imprisonment. Lastly, we must instigate follow-up measures in the form of inspections to ensure remediation works have been conducted and carried out by the landowner and/or their agencies. It is simply not good enough to leave it to the landowner in the hope they will "do the right thing" (when in cases where they've clearly demonstrated by their actions in breaching regulations of the Act, especially when done willfully, they cannot be trusted to do so). The Act must be amended to allow provision for 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?

Yes. The costs would be exorbitant: keeping confiscated wildlife, the maintenance and care of said wildlife. The list goes on. I would imagine it's all taxpayer funded. Passing those costs onto the

offender would be a very effective means of deterrence. The closest example would be legal fees payable in court cases by a defendant who has lost and is ordered to pay fees.

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?

Yes. Once again, I imagine it's taxpayer funded. All costs should be borne by the offender. This would act as an additional layer of deterrence. Again, legal costs incurred payable, as noted above.

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, once again this could be a deterrent. Using the example of the offender engaging in illegal wildlife trade, if they had made enough profit in the transaction, any penalty imposed currently may not be adequate to deter any future action from occurring once again by the same offender. Introducing a monetary penalty order may cause the offender to pause before committing the offence, weighing up reward vs risk.

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, seizure of property used in act of the offence should be confiscated. Otherwise equipment may be used to conduct another offence in future. However, it will be more difficult if there are roadblocks in the way of a potential offender conducting another offence, particularly if it is a financial expenditure that needs to be made to enact a further offence.

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?

Not quite- further sanctions need to be added. I believe the specific example of what equipment used in the offence will be confiscated will be a very effective sanction (as per the Singapore Wild Animals and Birds (Amendment) Bill 2020).

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?

As I noted earlier, the NSW Biodiversity Act allows authorised officer to enter a property to ensure works are actioned in accordance with an order requiring owners to rectify breaches of the Act. (see Clause 11.18 and 11.26). Illegal activities need to be stopped and if the officers cannot enforce that because our Wildlife Act is not enforceable, there is no point in having a Wildlife Act. I am of the opinion that jurisdiction for enforcement should be shifted to the Department of Justice and Community Safety and the Attorney-General, who are better equipped to handle penalties of any breaches and enforcement of law.

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

Yes, I believe it does and that it is prudent to allow VCAT to review decision made by different government bodies.

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?

Yes, as I noted above, shift the responsibility of enforcement to the jurisdiction of the Attorney General's department. Hume City Council noted the difficulty faced by local governments in holding public authorities to account. I believe there definitely is a place for third-party civil enforcement when public authorities fail to act. Here is what I propose: In particular, DELWP (and its successors) should be subject to clear monitoring and reporting requirements. Such as public reporting on benefits and impacts of its public land management activities on biodiversity. There does not appear to be any ramifications for the failure of DEWLP to act . Once again, I point to the koala massacre at Cape Bridgewater. It is unacceptable that there has not been any prosecutions in that case to date. If our authorities do not send a clear message - by actions and not just words - to the public that wildlife abuse will not be tolerated, we will certainly face a grim future where koalas will become extinct, more and more species will become extinct, and this will all affect humans and our quality of life - drinking water contamination, more and more zoonotic diseases, food availability and the list goes on.

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