



30 June 2021

Independent Expert Advisory Panel

By email to: wildlifeact.review@dewlp.vic.gov.au

Dear Panel,

Re: The Independent Review of Victoria's Wildlife Act 1975

The Federation of Victorian Traditional Owner Corporations (the **Federation**) is the Victorian state-wide body that convenes and advocates for the rights and interests of Traditional Owners while progressing wider social, economic, environmental, and cultural objectives. We support the progress of agreement-making and participation in decision-making to enhance the authority of Traditional Owner Corporations on behalf of their communities.

We welcome the opportunity to contribute to the independent review of Victoria's *Wildlife Act 1975* (**Wildlife Act**). On this basis we make the following comments. Our comments are not comprehensive in scope. Our comments do not address all issues relevant to Traditional Owner groups, nor do they answer all questions posed by the review. Rather, our comments focus on the particular areas of interest. Furthermore, the Federation wishes to stay engaged with the Independent Panel throughout their reporting process, to comment on issues raised in this submission in more detail in the future.

We note that Advisory Panel Member, Dr Jack Pascoe, has engaged with Traditional Owner groups to seek their views on whether the Wildlife Act appropriately recognises and protects their rights and interests around access to Victorian wildlife, and their future aspirations. We expect that the Independent Panel will implement the recommendations and feedback received during that engagement in line with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).



United Nations Declaration on the Rights of Indigenous Peoples

Before we address the more technical aspects of the review, we note that the Wildlife Act is a piece of legislation that impacts Indigenous people and communities. Therefore, it is vital that the review seeks to introduce amendments that advance the rights of Traditional Owners and Aboriginal Victorians.

As acknowledged by the Panel in the Issues Paper, Australia is a signatory to the UNDRIP. As a signatory, Australia recognises the right of Aboriginal and Torres Strait Islanders to exercise self-determination. The Victorian government also recognises this right.

The Federation acknowledge that the Panel intends to consider the rights and interests of Traditional Owners and Aboriginal Victorians in the review. The Federation endorse this approach; however, reform of the Wildlife Act should go further than just enshrining the right to self-determination. It is no longer acceptable for the State to determine which particular rights to grant to Traditional Owners. Traditional Owners inherent rights should be recognised in total.

The UNDRIP contains 46 articles recording the rights of Indigenous peoples and communities. Collectively, these rights constitute the minimum standards for the survival, dignity, and well-being of Indigenous peoples. Viewed as a minimum the proposed reform to the Wildlife Act ought to exceed the standards contained in the UNDRIP and should not fall short of them.

The Panel should use the UNDRIP as well as State policies such as the Self-Determination Reform Framework 2019, the Victorian Aboriginal Affairs Framework 2018-2023, and *Pupangarli Marnmarnepu* - DEWLP's Aboriginal Self-Determination Reform Strategy 2020-2025, when determining consistency with rights frameworks which empower Traditional Owners' self-determination.



Traditional Owners' management of Natural Resources

The Federation recommend that existing structures and mechanisms that enable Traditional Owner participation in the management of natural resources be improved and enhanced to ensure that the standards contained in the UNDRIP are adopted, and that genuine and equitable partnerships between Traditional Owners and the State are furthered by adopting the Cultural Landscapes approach. While participation in joint management is a positive first step, the mechanisms described below must enable transition towards direct and sole Traditional Owner management which prioritises Indigenous cultural safety and ecological knowledge.

For example, existing structures that should be improved and enhanced include, but are not limited to:

Natural Resource Agreement

Traditional Owners who hold rights under a Natural Resource Agreement (**NRA**) of the *Traditional Owner Settlement Act 2010 (Vic)* (**Settlement Act**) have rights to take, use and manage natural resources, including in relation to wildlife. Traditional Owners are also provided a contractual right to further develop appropriate strategies to enable greater participation in the management of natural resources. The Partnership Forum, established under an NRA, is an example of a strategy that enables such participation.

Joint Management

Traditional Owners who enter into a Traditional Owner Land Management Agreement under the Settlement Act can establish a Traditional Owner Land Management Board (**TOLMB**) that enables the joint management of appointed lands.



Aboriginal Rangers

The Act provides for the enforcement of wildlife offences and the powers of Authorised officers, which are currently DEWLP and other agency employees.

Another method of ensuring that Traditional Owners are key partners in wildlife management is the establishment and sustainable funding of Aboriginal Ranger programs for women and men, which see Traditional Owners acting as culturally and State authorised conservation officers with enforcement powers on their Country. There are several models of Indigenous Rangers taken from jurisdictions throughout Australia.

1. Indigenous Protected Areas Ranger groups are Commonwealth funded to undertake Natural Resource Management (**NRM**) and other duties including biosecurity and rescue programs. A Victorian example are the Budj Bim Rangers.
2. Ranger groups that are co-badged with state agencies via Settlement Act or RAP determinations, such as the Parks Victoria - Dja Dja Wurrung Rangers.
3. Rangers can be independent of the State (and independently resourced) working on Country as NRM units, often in alignment with the State's programs on contract bases.

We note for reference to legislative reform the 2019 amendments to the Northern Territory's *Territory Parks and Wildlife and Conservation Act* (1976), which provided for the elevation of Traditional Owner Rangers from On Country NRM units employed by Aboriginal Corporations to State-sanctioned Conservation Officers with enforcement and compliance powers.

Wildlife Act operating within Cultural Landscapes

Traditional Owner participation in NRM must also be undertaken through a Cultural Landscapes lens. A Cultural Landscapes approach empowers Traditional Owners to activate their rights and interests in guiding and partnering with Government in the implementation of the Wildlife Act, and would practically acknowledge not only the significance of Indigenous Ecological Knowledge in the stewardship of Country but activate the rights of Traditional Owners to practice their cultural



responsibilities. The Victorian Traditional Owner Cultural Landscapes Strategy talks to the enabling conditions required on a State-wide scale to pursue each Traditional Owner Group's self-determined pathway. The Cultural Landscapes Strategy was developed by Traditional Owners and the Federation of Victorian Traditional Owners with the support of DELWP and Parks Victoria and will be released in mid-2021.

Technical aspects of the Review

The three recommendations mentioned above are intended to provide a framework for approaching the review.

We note that the Issues Paper and Engagement Poster for Traditional Owners and Aboriginal Victorians set out a number of questions for consideration and feedback. We have endeavoured to discuss these issues with Traditional Owner groups however, given their limited resources we recommend that the Panel provide sufficient time and resources to Traditional Owner groups to enable them to engage directly with the review.

With that in mind, we provide the following preliminary comments on some more technical aspects of the review, noting that this is by no means a comprehensive or conclusive statement on the views of Traditional Owner groups. We strongly recommend the Panel properly resource and consult with Traditional Owner groups as they are directly affected by the Review and are highly skilled to provide feedback, having considerable experience in the management of natural resources and knowledge of biocultural diversity, including wildlife.

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?

Traditional Owners are right holders, not stakeholders, and should be treated as such.



As previously noted, and acknowledged in the Issues Paper, Australia is a signatory to the UNDRIP, however the Wildlife Act does not explicitly meet its standards nor, broadly speaking, provide for Traditional Owners and their self-determination.

A key element of genuine self-determination for Traditional Owners as articulated in UNDRIP is participating in political and legislative processes which affect their rights.

Further examination and development are required. The process of examination and development should be inclusive of Traditional Owners.

The Federation welcomes Dr Jack Pascoe's proposed dedicated, culturally safe engagement process with Traditional Owners to examine their objectives, rights and interests regarding reform of the Wildlife Act.

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?

Traditional Owners are holistic and active custodians of their Country and the wildlife which resides on it. Explicitly recognising the rights and responsibilities of Traditional Owners to manage Country in the Wildlife Act will enable Traditional Owners to activate their knowledge for the stewardship of Country from a Cultural Landscapes perspective.

In terms of land and environmental management, Traditional Owner groups envision and articulate the future of healing Country and conserving wildlife in nation-scale Country Plans. Country Plans are strategic and practical documents developed by Traditional Owners, drawing on both Indigenous knowledge as well as modern scientific practices.



The renewed Wildlife Act should recognise Traditional Owners' Indigenous Ecological Knowledge by including powers to recognise and issue strategies and management plans, including but not limited to Country Plans, to ensure a strategic and consistent approach to wildlife management.

This proposal is consistent with DELWP's 'Realising the value of Victoria's public land – Renewing Victoria's public land legislation' to not be inconsistent with any strategy or management plan applying to the land.

We note here that the First Principles Review Committee, a Traditional Owner-led body working with government to review and reform the *Traditional Owner Settlement Act* (Vic 2010) and related legislation affecting Traditional Owners' interests, has recommended that the reformed Public Land Act (**PLA**) "formally recognise strategies and management plans, including but not limited to Country Plans". It is welcome that the Minister for Energy, Environment and Climate Change Lily D'Ambrosio and DEWLP appear to have supported this recommendation full, as reflected in the recent PLA Reform Discussion Paper of April 2021.

Furthermore, we note Minister D'Ambrosio's support for the Federation to develop a Traditional Owner Biocultural Diversity Strategy, which will align with the State's Biodiversity 2037 policy and be supported by a revised Wildlife Act. This Strategy, in conjunction with the Cultural Landscapes Strategy, will highlight the importance of rejuvenating, protecting and applying Traditional Owner knowledge and practices to the management of Country and meeting cultural objectives that include social, ecological and economic co-benefits.

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?

As noted above, the Federation recommend that existing structures and mechanisms that enable Traditional Owners to direct and inform management of natural resources be improved and enhanced to ensure that the standards contained in the UNDRIP are adopted and to create a genuine and equitable partnership between Traditional Owners and the State.



Additional powers should include but not be limited to:

- Aboriginal Rangers provided with enforcement powers.
- Involvement in management decisions on wildlife use and control, including reviewing licences and licensing process, such as but not limited to Authority to Control Wildlife Permits (**ATCW**), which permit landowners to cull species.

To recognise Traditional Owners as key management and decision-making partners, the Wildlife Act should ensure that Traditional Owner representation occurs in all formal settings that consider and apply decisions to the management of all terrestrial and marine ecosystems including those comprising surface and subterranean waters. Traditional Owners' participation in partnership structures with the state must be consistent with their cultural values and respect their Indigenous knowledge.

1.3.4 - Should the Act afford additional protection and the ability to return species to Country because of their cultural significance.

Under the Wildlife Act, it is an offence to kill, take, control or harm wildlife without a permit issued by the State. This presents barriers to Traditional Owners managing fundamentally important cultural species on their own Country, including both controlling and enacting programs to restore populations.

As the Issues Paper notes, all Traditional Owners have native species of totemic and broader cultural importance, however these are not recognised as significant in the Wildlife Act or any other Victorian statute. Exploration of the role of the Wildlife Act in recognising, maintaining and protection of intangible cultural heritage and the restoration of cultural landscapes should be explored in consultation with Traditional Owners.

Reform of the Wildlife Act should include provisions for Traditional Owners to register the species culturally significant to them, based on their rights and responsibilities, and their authority to speak for Country and its wildlife. Accordingly, once identified and registered via a system of Culturally



Significant Species Management Plans, Traditional Owners should have pathways for resourcing and management rights to restore and protect significant species.

One avenue for the reintroduction of native species to protected areas is through the construction of Feral or Predator-Proof Fenced Wildlife sanctuaries. The Wildlife Act currently provides for the creation, management and enforcement of protected areas and sanctuaries, which should be expanded to include On Country sanctuaries as being spaces managed solely by Traditional Owners.

Granting and managing permits to research and use Victorian wildlife, including for tourism licences and commercial media purposes is also provided for in the Wildlife Act. Traditional Owners must be involved in this permit process and can guide research on, tourism licences concerning, or commercial media's use of culturally important species, with particular consideration given to Indigenous Cultural and Intellectual Property. While leading and participating in research on culturally important species is a key practical means for Traditional Owners to restore and repatriate ecological and biocultural knowledge, reforms to permits and licences must consider the capacities of Traditional Owner Groups to respond to research or filming requests and the potential for overloading or fatiguing their organisational and community resources. Traditional Owners' objectives to lead and approve of research and commercial media activities on wildlife should be explored in Wildlife Act reform engagements.

Using Feral or Predator-Proof Wildlife Sanctuaries as an example, all three areas of research permits, tourism licencing and commercial media production could be undertaken and led by Traditional Owners in partnership with scientific and commercial operators studying and promoting the return of significant species to Country. These issues should be explored in the Wildlife Act engagement process, and government should work towards building capacity and sustainable funding opportunities for Traditional Owners to develop and conduct their own research, media and tourism programs, to increase their cultural and scientific knowledge while developing economic empowerment opportunities.



The Wildlife Act also provides for the protection of Victoria's whales, dolphins and seals. Reform of the Act should recognise the importance these species hold for Sea Country Traditional Owners and engagement with Traditional Owners should investigate their objectives for management and regulation in this area.

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

As identified in the Issues Paper, the Settlement Act recognises Traditional Owners and their rights over Crown land within an agreed area.

The Settlement Act settlement package includes, amongst other things, a Natural Resource Agreement (**NRA**), which recognises Traditional Owners' rights to take and use specific natural resources and provide input into the management of land and natural resources.

The NRA can authorise Traditional Owners to take native wildlife and game resources without the need to obtain an authorisation or licence. Currently, this right is restricted to non-commercial purposes, which is a significant restriction on Traditional Owner rights and interests.

Traditional Owners, through the First Principles Review Committee, have negotiated with the State for this restriction to be removed. A Joint Recommendation requesting that the Settlement Act should be amended to allow for Traditional Owners to use fauna (excluding fish) for commercial purposes' will be included in the First Principles Review Report for consideration and approval by the Attorney General. The Wildlife Act should adopt the First Principles Review Committee recommendation and allow Traditional Owners to use wildlife for commercial purposes.

Consultation with Traditional Owners on the Wildlife Act reform should consider licencing arrangements for use of wildlife, including licencing fees and royalties.



Not all Traditional Owners have been recognised under the Settlement Act, and therefore have not had their rights and interests recognised. The Federation recommend that all Traditional Owners have rights to access and take resources, for any purpose.

A key example of this reform's importance is the use of possum skins for cultural and ceremonial purposes, or the use of possum fur for commercial applications. Only a fraction of Traditional Owners have NRAs or Native Title determinations, as described above, which exempt them from the Wildlife Act. Thus, the majority of Traditional Owners are unable to hunt and harvest possums for use for purposes such as making possum-skin cloaks – a very important traditional and ceremonial item. To craft cloaks or other items for cultural practices, Traditional Owners must currently import possum skins from Aotearoa/New Zealand where they are a declared pest species since 1946. To exercise their cultural rights, Traditional Owners must be granted exemptions from the Wildlife Act's licencing provision and prosecution when harvesting animals for cultural and ceremonial purposes.

2.1 – There are overlaps and gaps in the broader legislative framework

The Federation do not trust that the legislative framework and the regulatory system that underpins it is providing adequate protection to wildlife, nor does it embed a holistic, cultural landscapes approach to wildlife which promotes biocultural diversity and abundance of species and habitat.

As noted in the Issues Paper, currently, there is a complex array of legislation regulating wildlife which includes the Act, as well as other Victorian and Federal legislation. The Federation agree that these complex arrangements create several issues.

The new Public Land Act, and the National Parks Act, should exclusively regulate the framework for managing public land. The Federation support the proposal in DELWP's 'Realising the value of



Victoria's public land – Renewing Victoria's public land legislation' to consolidate Victoria's public land and ensure a streamlined and centralised processes for granting tenures and other approvals.

The *Flora and Fauna Guarantee Act 1988* and the *Game Management Authority Act 2014* also contribute to a confusing interrelationship between legislative regimes. The wildlife protection framework needs urgent modernisation, and the amalgamation of the different Acts should be considered by the Panel.

While the Act intends to provide for conservation and biodiversity protection objectives, as noted above, reform should adopt a Cultural Landscapes approach. This approach is adopted by the International Union for the Conservation of Nature in 2008 and is reflected in the Traditional Owner Cultural Landscapes Strategy. Achieving outcomes for conservation, biodiversity protection and biocultural wellbeing include conservation and biodiversity protection along with cultural practices and knowledge, which requires planning and operating at the landscape level.

Further examination and development are required. The process of examination and development should be inclusive of Traditional Owners.

2.2 – Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act

Cumulative impacts on wildlife are not well managed under the Act. This is particularly apparent with ATCWs.

As mentioned earlier, adopting a Cultural Landscapes lens to wildlife management and biocultural diversity enables holistic management of species and habitat across jurisdictions and land tenures.

The Act should provide decision makers with sufficient guidance, consistent tools to measure cumulative impacts and past and future key threats, including but not limited to climate change and cross border threats such as habitat destruction.



2.3 – The Current legislative framework doesn't preserve and conserve habitat

The Act addresses conservation by regulating direct threats to wildlife, such as taking wildlife without an authorisation or licence. However, the Act does not take into account indirect threats such as the destruction of wildlife habitat.

To achieve outcomes in wildlife protection, comprehensive planning is required which adopts a Cultural Landscapes Approach that moves beyond the notions of protection and conservation of species, placing an emphasis on abundance.

2.4 – The treatment of wildlife as property

Wildlife should not be characterised as property of the State.

Traditional Owners have custodial rights and responsibilities to land and natural resources, including wildlife, within irreversible frameworks of cultural and social existence.

The custodial rights and responsibilities of Traditional Owners to wildlife could be replicated and adapted by the State. A duty of care, or a trust, relationship could be a suitable framework.

Further examination and development is required. The process of examination and development should be inclusive of Traditional Owners.

Traditional Owners should have practical, not just symbolic, rights and responsibilities regarding wildlife and species management on their Country. As such, Traditional Owners must be involved directly and substantially at every stage of the Wildlife legislative, regulatory and management process.



The Review Panel is investigating “the most appropriate and effective ways to encourage compliance with the Act and punish wildlife crime”. One avenue to fulfil Traditional Owners’ rights to manage wildlife and ensure compliance to the Act is by establishing and empowering a Traditional Owner Ranger program in Victoria. Models for Ranger programs were described earlier in this submission.

Generally, rights and responsibilities of Traditional Owners on wildlife management should reflect their roles as holistic custodians of Country and animals. Engagement activities must partner with Traditional Owners to embed their views and objectives, rights and responsibilities to management of Country and species. These activities should be conducted through a Cultural Landscapes lens and decision-making authority divested to Traditional Owners as appropriate to each Traditional Owner Groups’ pathway.

3.1 – The Act lacks principles about how to manage wildlife

The Act does not facilitate an equitable and participatory approach to wildlife management and conservation.

As identified, the Act lacks principles related to participation, consultation and involvement in decision making, including that a decision, policy, program or process account for the rights and interests of Traditional Owners in relation to wildlife.

Further examination and development is required. The process of examination and development should be inclusive of Traditional Owners.

4.2 – Should independent expert advice play a greater role in decision making under the Act

The Act lacks provisions to establish expert advisory bodies to advise key decision makers on strategic matters relating to wildlife management. Expert consideration and advice is necessary to support evidence based decision making.



The Act heavily prioritises the views of western science, with Indigenous knowledge and views diminished in the formal provisions of advice to decision-makers. The Act should more actively facilitate Traditional Owners and inclusion of their specialised knowledge in decision-making processes.

Further examination and development is required. The process of examination and development should be inclusive of Traditional Owners. However, greater Traditional Owner involvement could be achieved by:

- Specific regulatory requirements or standards expected in decision-making processes or binding standards for consultation with Traditional Owners.
- Requirements for participation of Traditional Owners in planning activities.
- Greater investment in integration of Traditional Ecological Knowledge in research and planning measures.

5 – Are current enforcement and compliance mechanisms adequate

The Federation do not believe that the current enforcement and compliance mechanisms are adequate. The Wildlife Act needs to address and resolve the problems identified in the Issues Paper related to enforcement and compliance. This includes but is not limited to ensuring that penalties and sentences adequately deter offenders, this could involve expanding the number of indicatable offences.

Yours sincerely



PAUL PATON

CHIEF EXECUTIVE OFFICER