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By email: wildlifeact.review@delwp.vic.gov.au

Dear Review Panel

Wildlife Act Review

Thank you for the opportunity to comment on the Independent Review to Victoria's Wildlife Act 1975 (the Act).

Trust for Nature (the Trust) is Victoria's dedicated private land conservation agency, established under statute, and responsible for ensuring the long-term protection of biodiversity on private land in Victoria. Trust for Nature occupies a unique role within Victoria's natural resource management sector for the following reasons:

- It operates statewide and is Victoria's primary authority regarding biodiversity and natural resource management conservation on private land.
- It has helped protect more than 100,000 hectares of important habitat on private land, principally by entering into voluntary legal agreements on title with more than 1400 committed landowners, including in Green Wedge zones and strategic agricultural landscapes.
- It has an ongoing land stewardship program on its covenants and reserves based on management plans prepared for each protected site, and regular repeat visits and reviews.
- It has prepared a Statewide Conservation Plan for all private land in Victoria which underpins its conservation work and provides an integrated framework for planning and operations across Victoria.
- Whilst our statutory conservation objectives and functions relate only to private land, the realities of land tenure and conservation planning in Victoria requires that strategic approach to conservation in Victoria encompasses both land tenures. The Trust's expertise on conservation issues across the State thus assists with input into all statewide conservation issues.

It is in this context that we make our submission.

We make the following comments and observations on the matters raised in the issues paper prepared by the Independent Review Panel. It is our view that reforms to the Wildlife Act should:

- articulate clear overarching objectives to the legislation that are underpinned by conservation science and biodiversity targets;
- introduce new definitions of 'wildlife' that distinguish between native wildlife (intended to be conserved and protected) and introduced wildlife (intended to be managed for game or pest control);
- regarding a range of provisions under the Act (e.g. the Authority to Take Wildlife) ensure accountability, transparency and alignment with contemporary community expectations around wildlife management; and
- recognise the interrelationship between wildlife and habitat, and include habitat protection measures that support wildlife management.

The above points are expanded upon below. In addition, the Trust supports:

- better governance of the Act via an independent regulator, noting that while the establishment of the Office of the Conservation Regulator is a positive step, that body lacks legislative basis and statutory independence;
- good governance via transparent data collection, auditing and assessment, monitoring and compliance, and effective enforcement;
- penalties commensurate with harm imposed, and in line with community expectations; and
- appropriate enforcement options to allow regulators to take a strategic approach to compliance and intervention.

First principles

Act objectives and outcomes

The Wildlife Act does not contain objectives or stated outcomes, which contributes to confusion around the policy basis for the legislation. The Trust supports the introduction of objectives that are underpinned by conservation science and biodiversity targets, commensurate with the scale of the situation affecting our native fauna. Conservation objectives should take priority over other activities sanctioned by the Act, such as protections offered to introduced species.

Further, where protection efforts lead to the recovery of native fauna populations, the objectives should ensure that these species are still captured by the scope of the legislation. The *Flora and Fauna Guarantee Act* (FFG Act) includes a biodiversity objective that could be drawn upon to achieve this:

'To prevent taxa and communities of flora and fauna from becoming threatened and to recover threatened taxa and communities so that their conservation status improves.'

A preventative approach to harm

A statutory duty of care relating to environmental protection, as canvassed in the Issues Paper at 1.4 (and more broadly at 3.1) would be a preventative approach to harm and as such is likely to be more effective than the now dated approach of administering sanctions after harm has occurred. The reformed *Environment Protection Act 2017* offers a helpful template for this approach.

Wildlife

Defining wildlife

Wildlife law needs to be guided by a clear conservation policy that takes into account the present rates of loss, extinction, and threats to wildlife. Currently 'wildlife' is defined both as indigenous fauna, including threatened species listed under the FFG Act; and introduced species such as deer and quail. This definition is at odds with contemporary expectations of 'wildlife protection and conservation', per the purpose of the Act. A distinction needs to be made between native Australian wildlife which the Act is seeking to protect, and introduced species declared as 'game' by the Governor in Council.

As such, 'game' animals should not be defined as wildlife under the Act. These animals should be excluded from the Act, unless for the explicit purpose of managing feral animals for biodiversity outcomes. Hunting-related provisions could potentially be transposed to the *Game Management Act 2014*.

As part of the modernisation of this legislation it does not seem relevant/appropriate to list native duck species as 'game' and they should be recognised as native wildlife with commensurate protection.

Finally, we note that 'wildlife', while traditionally thought of as native fauna, is increasingly used to mean all life forms, including flora, which grow or live wild in an area. Consideration could be given to the scope of meaning given to 'wildlife' under the Wildlife Act.

Managing game and feral species

Deer numbers and distribution on private land have expanded rapidly in the last decade and their impacts on native vegetation and ecosystems are severe. Sambar Deer impacts on native vegetation are listed as a Potentially Threatening Process under the FFG Act. On this basis classifying feral species like deer as 'protected' under the Wildlife Act would seem to run counter to community expectations and policy objectives.

Nevertheless, we note that existing regulations allow for the efficient, effective and humane management of deer, and that un-listing deer as a protected game species without appropriate re-classification may have unintended consequences. Effective management of deer is critical but as noted above it is not appropriate that 'game' animals be defined as wildlife under the Act.

Extending animal cruelty protections to wildlife

Wildlife, including native animals under the Wildlife Act, is not protected under Victoria's animal cruelty legislation, the Prevention of Cruelty to Animals Act 1986. We note that the Victorian government is currently reviewing this Act and this issue should be addressed and rectified as part of that review.

Authority to control wildlife

There are well understood concerns (2018 review) around Authority to Control Wildlife (ATCW). This review could address these concerns to deliver:

- criteria to guide decision making in relation to ATCWs;
- a clear evidence base to support the issuing of authorisations;
- a better resourced monitoring and compliance regime, and/or independent auditing and review; and
- greater transparency around decision making and actual wildlife 'take'.

We note that the Office of the Conservation Regulator has assumed responsibility for the ATCW system which is a step in the right direction, but more is needed to bring these provisions into line with community expectations.

Unprotected wildlife

The power under section 7A of the Wildlife Act to deem wildlife – notably native wildlife – to be ‘unprotected’ does not currently contain any criteria for the making orders nor does it include time limits. Any amendments to the Act should ensure:

- a decision to unprotect wildlife is informed by scientific evidence;
- the decision making process by the Governor in Council is transparent and rigorous; and
- there is a ‘sunset clause’ or equivalent mechanism on all unprotection orders to ensure they do not continue in place indefinitely.

Responsibility for wildlife

The Act should also articulate who or what has ultimate responsibility for wildlife.

Protecting habitat

Defining habitat

The Act needs to define what it means by ‘habitat’. This could be a common sense definition, for example “the natural environment in which a plant or animal usually lives”, indicating native or indigenous habitat that supports native or indigenous flora and fauna (Cambridge Dictionary). This is complex and so ultimately experts need to achieve an appropriate definition in line with biodiversity objectives.

Making the link between habitat and wildlife

Habitat is essential to the protection of wildlife. As it is the Wildlife Act does not adequately recognise this interrelationship. There would be strong benefits in the legislative regime being more holistic and integrated so that it brings together fauna and flora protection, with At a minimum we need to ensure that wildlife protection extends to the protection of the habitats on which that wildlife depends. Under the FFG Act, DELWP can make a critical habitat determination where an area contributes significantly to the conservation of a listed (or recommended to be listed) threatened species or community. The determination of a critical habitat then prompts the use of habitat conservation orders, which allow the Minister to order the conservation, protection or management of flora, fauna, land or water within a critical habitat, as well as to order the prohibition of any activity, land use or development within the critical habitat. The order can also provide for prohibitions outside the critical habitat if the activity is likely to adversely affect it.

A similar provision could be made under the Wildlife Act to allow habitats on which wildlife (properly defined, per above) depends, to be protected and managed as required. This would expand the scope of habitat protection to those habitats which support species that are not listed threatened species under the FFG Act, and would better reflect community expectations around wildlife management and protection.

Ideally this capacity should extend to private land and be linked to a biodiversity stewardship program. Such as program could also provide incentive payments to landholders to manage their biodiversity in line with conservation objectives. This approach would support Priority 11 of the Victorian

Government's *Protecting Victoria's Environment – Biodiversity 2037 Plan*, which seeks to 'increase incentives and explore market opportunities for private landholders to conserve biodiversity'. One tool (among others) to achieve this would be via a conservation covenant, entered into voluntarily by the landholder and Trust for Nature.

Purpose and use of protected habitat

The purpose and use of protected habitat should also be made clear: where the Wildlife Act currently provides for the protection of habitat for native fauna via State wildlife reserves or nature reserves, the purpose of that habitat – i.e. appropriate activities that can be undertaken there, is unclear. There is clear benefit in land uses that offer genuine protection to native fauna and allows hunting only of pest and other introduced animals as determined by the Game Management Authority.

Thank you for considering our response. We would be very happy to provide further detail on any of the points raised in this this submission.

Kind regards,

A handwritten signature in cursive script, appearing to read 'Cecilia Riebl', written in black ink.

Cecilia Riebl
Policy Advisor, Trust for Nature