

Wildlife Act Review

Issues Paper questions – Response 36:

Contributor: Organisation - Polperro

Primary interests:

- Protection and conservation of wildlife and habitat
- Management and control of wildlife causing problems or damage
- Wildlife welfare
- Eco-tourism involving wildlife
- Protections for marine mammals
- Research relating to wildlife
- Offences and penalties relating to wildlife
- Licenses and authorisations
- Compliance and enforcement
- Traditional owner cultural values and use of wildlife
- Private and/or commercial keeping, breeding, trading, displaying and/or processing of wildlife or wildlife products
- Rehabilitation of sick, injured and orphaned wildlife
- Hunting of 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.

The Act does not reflect contemporary attitudes towards wildlife. The state government initiative to put people in nature is working. Victorians are seeking out the wild. The heavy utilisation of protected areas by Victorians through the COVID restrictions on travel demonstrates that Victorians value the outdoors. The public shock and disgust at the deaths of 134 wedge-tailed eagles through a deliberate act of poisoning and the lenient penalties imposed on the perpetrators speaks volumes. Polperro has been providing nature-based tours for well over three decades and engaged with tens of thousands of people over the journey. A common reaction to the obvious failings pertaining to wildlife protection when it is apparent is 'they would not let this happen.' There is a belief that there are the provisions, resources and intent by government to protect and conserve Victoria's wildlife. The review mentions Biodiversity 2037 and how the plan is the overarching Biodiversity Plan for Victoria. Polperro attended a Parks Victoria (PV) workshop in 2016 where the plan was presented to Licensed Tour Operators (LTOs) on public lands. It is worth noting that at that time, questions were asked of the Department of Environment, Land Water and Planning (DELWP) about the seeming lack of inclusion in the plan of marine species and how the plan fitted in with their other initiative at the time of a million fishers. It was acknowledged that the marine environment was not particularly well detailed in the plan. The Act's definition of 'wildlife' is lacking. It should refer to a much wider selection of indigenous animals including aquatic species. The all-encompassing term 'biodiversity' has come into use since the Act was proclaimed. Given that biodiversity conservation is inextricably linked to viable habitat, the community would expect that an Act that purports to protect the State's wildlife would include provisions to protect habitat.

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.

Is the Act merely an extension of the Game Act dressed differently? A significant majority of Victorians when polled are opposed to duck hunting, yet that voice is not listened to. The spider crab migration that occurs in the shallow nearshore waters of Port Phillip Bay is another example of the disconnect between community expectation and interest and government response. While we realize that the majority of marine species are not included in the Act, this example highlights the Government's reluctance to provide protection for wildlife and favour utilisation despite concerns regarding sustainability and in the face of overwhelming public support for a ban on harvesting. Intensive targeting of the moulting aggregation by fishers and concerns that the fishing will destroy the natural phenomenon and economic value for future generations has caused a groundswell in local opposition. A petition calling for greater protection for the crabs through the introduction of a 'No-Take season of Giant Spider Crab during their critical aggregation and moulting period of April-July each year in order to offer an adequate measure of protection to this unique tourist drawcard species with high community value at the peak of their vulnerability' has almost 40,000 signatures. Many Bayside businesses< NGOs and concerned individuals have provided submissions to the government and the Victorian Fisheries Authority in support of this initiative. The Mornington Peninsula Shire Council has responded to the community by calling on the State Government to protect thousands of spider crabs during their annual moulting event in southern Port Phillip Bay. The Government response was to listen to the voice of peak fishing bodies while ignoring the community voice and merely reduce catch limits from 30 crabs per person to 15. The Issues Paper uses an example of a split in respondents regarding the control of 'over abundant' wildlife using lethal means. It is interesting that despite the equal divide, management initiatives do employ lethal means regardless of significant opposition to the practice. The term 'over abundant' is also loaded. It creates a picture of swarming or plague like scenarios. We believe that if the question was posed using an actual example of lethal control like: 'should a local kangaroo population be shot and killed because they are being forced onto a golf course by habitat destruction?' then the split might not be so even.

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?

Most Victorians assume that the Act is in place to protect native wildlife. The Act cannot be everything to everyone, but it should be fit for purpose and that should be the protection and conservation of wildlife and not restricted to only not doing direct harm. Australia is in the midst of a biodiversity crisis. A holistic approach to addressing the decline in our native species is needed rather than the current ad hoc method. Expectations should be managed through clear purposes and in cases where there is any doubt, management should adhere to the precautionary principle and the interests of the wildlife be considered a priority. A greater degree of transparency is also vital. The lack of detail regarding the Authority to Control Wildlife permit system needs to be addressed. The community has the right to be clearly informed about control orders. If lethal means are employed to manage native wildlife, then the community should be informed and consulted. This would address the 'they would not let this happen' issue that we encounter so frequently. The introduction of expert and community advisory panels along with clear species management plans

should be included in the Act and precede the issue of control orders. The conservation status of the species not just across its' whole range, but at local population levels should also be considered.

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?

The current purposes of the Act are not clear and some are at odds with each other. The Act should be more about protection, conservation and prevention of extinction than it is about utilization. The Issues Paper identifies a shift in community appreciation for the natural world with increased compassion and care for wild animals and reduced emphasis on using wildlife for human interests.

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

As stated in the Issues Paper, the protection offered to some introduced animal species and 'take' or 'unprotection' of indigenous wildlife, do not appear to be consistent with conservation of wildlife or prevention of extinction. The Act should place the highest priority on protection, conservation and the prevention of extinction.

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?

Botswana is widely acknowledged as doing the most to protect its' wildlife. It has the highest conservation land ratios in Africa and more than 25 percent of its' land area is reserved for parks and other reserves. Namibia ranks second on the list. The country is so serious about wildlife conservation it's the first nation in Africa to include laws that work towards protecting the environment in its constitution and Tanzania is dedicated to protecting their animals in the wild so much so that a third of this vast nation is protected. Meanwhile, we have an Act that does not deal with habitat protection. Unless we can preserve habitat, we cannot protect and conserve indigenous 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?

Given that the Victorian Government acknowledges Victorian Aboriginal communities as Australia's First Nations, and that as the world's oldest continuing culture they have an intrinsic and lasting connection to Victoria's land, waters and animals, the Act should ensure that the views of Victoria's First Nations communities are included in management decisions relating to indigenous wildlife.

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, the Act should recognise the cultural significance of Country and wildlife to Traditional Owners and recognise the value of Indigenous Ecological Knowledge for the stewardship of Country and the conservation of wildlife.

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 stated previously, expert and community advisory panels along with clear species management plans should be included in the Act. The inclusion of advisory panels would allow for a First Nations voice on decisions regarding indigenous wildlife.

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

Polperro believes that the Act is deficient in not including all indigenous species of wildlife and through its inability to protect habitat. The example provided in the Issues Paper about the cultural significance of eels and their exclusion from the Act highlights these deficiencies.

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?

The Act's primary purpose should be the protection and conservation of indigenous wildlife and any commercial use should be strictly regulated and be governed by the precautionary principle where there is insufficient rigorous and current research.

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

A duty of care would be useful. It has been included in the new EPA powers where the 'General Environmental Duty (GED)' entails that it is now beholden on everyone; from individuals, to businesses to branches of government, to responsibly manage risks to the environment that their activities create. A duty of care is not something new. It is already embedded in our approach to OH&S. It could also strengthen environmental aspects of planning and reinforce the position of local government in imposing existing overlays and regulations. The Federal Court has just upheld it with respect to climate change and children. It applies to private land managers under the Catchment and Land Protection Act. The duty should protect wildlife and go beyond merely doing no harm. At present, 'protect and conserve' tends to be interpreted as not doing active harm, whereas a duty of care requires more proactive approaches. During the panel discussion regarding the Act, an outreach commitment and education were listed among the top four suggestions about what is currently missing in the Act and the potential for opportunities. It is not reasonable to assume that people will automatically know how to behave in natural habitats. Education and instruction about caring for habitat and wildlife are essential. Certainly, it would be incumbent on the government to inform the community that a duty of care exists. That the GED is now an EPA expectation, it would seem an ideal opportunity to introduce a similar provision to the Act. In detailing the new EPA powers, Chief Executive Lee Miezi said 'nothing beats people on the ground.'

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 term wildlife should encompass all indigenous species, including fish and crustaceans. That some indigenous species may become 'unprotected' in a non-transparent manner is also problematic. As stated previously, any control orders should be open to scrutiny and should only be enacted after review from an expert advisory panel. Declaring some indigenous species 'unprotected' may also lead to the confusion and misinformation in the wider community and the species might be targeted outside those particular areas and circumstances where the order is in place. In our experience working on Port Phillip Bay, we have witnessed the outcomes of cruel acts inflicted on Australian fur seals due to some interests deeming them to be pests. As referenced in

the Issues Paper, terms such as 'habitat', 'destroy' and 'disturb' should be defined. Any grey areas or ambiguity which might hinder enforcement of parts relating to protecting wildlife habitat should be rectified.

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?

All indigenous species should be included in the definition of wildlife. Polperro contributed to the process of 'Remaking the Victorian Wildlife (Marine Mammals) Act 2019.' The discussions paper stated that wildlife should be 'protected for its own intrinsic value and for future generations.' Indigenous species are reliant for their health on other indigenous species that are part of the ecosystem that sustains them. The cornerstone of Polperro's interpretive message on our tours is to expound the idea of conserving the whole to protect the parts. We impress on our guests that the dolphins are reliant on an intricate tapestry of interwoven relationships and processes that combine to make their home liveable.

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

Game animals should be excluded from the Act. The Act should be concerned solely with endemic species.

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

All taxa of indigenous animals should be covered by the Act. Excluding fish, molluscs and crustaceans helps sustain the assumption that these animals are not wildlife, but merely a resource to be harvested in an inhumane fashion. The spider crab and giant Australian cuttlefish aggregations are among the greatest wildlife spectacles on the planet. The eel migration that occurs periodically in Port Phillip Bay is also particularly significant to the Bay's resident Burrunan dolphins as well as having special cultural significance to some Traditional Owners and Aboriginal Victorians and should be included in the Act. The Act needs to address the protection of endemic wildlife in a holistic fashion if it is to succeed in effectively conserving the State's natural heritage.

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

The Issues Paper comments on the array of legislation regulating wildlife including the Act, as well as other Victorian and Federal legislation. While we concur with the view that conservation and biodiversity protection must involve planning and operating at the ecosystem level and that a more holistic and consistent approach may be useful in achieving protection, previous Government initiatives that claim to address duplication, over-regulation and cutting red tape almost invariably translate to removing layers of protection and weakening regulation. The Panel should consider the relationship between the Act and other relevant legislation. A broader statute that encompasses all aspects of biodiversity would be far more effective in achieving meaningful conservation outcomes. We try to impress on those that experience one of our tours that the health of Port Phillip Bay's Burrunan dolphin population is inextricably linked to the health of the Bay. If they are to remain viable, then so too must the Bay's benthic community which play an essential role in managing the nutrients that enter the Bay, which if left unchecked would cause ecosystem collapse. The Issues Paper refers to the Biodiversity Conservation Act 2016 (NSW) that regulates both fauna and flora, as well as land management and development. It is interesting that despite the scope of the Act, the

desperate plight of the Koala and rate of land clearing in NSW suggests that this has not meaningfully translated to species conservation.

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

We believe that invasive species should be addressed in management plans as they impact on endemic populations, but the Act should be solely focused on the protection, conservation and prevention of extinction of indigenous wildlife. Managing game species through their own Act would help address some of the conflict in the Act's purposes.

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

Australian wildlife species do not recognise lines drawn on a map that delineate jurisdictional differences in management and regulation. Wildlife management should account for impacts on the whole population and wider ecosystem. While this is desirable, the recent Federal Government reaction the EPBC Act review of wanting to hand more power back to the States and Territories indicates that, in this current political climate anyway, a more holistic approach is highly unlikely. Authorisations under the Act to control or manage wildlife that cause damage must consider the impact on a species within its natural range. As stated previously, control orders should only be granted in a transparent fashion and after being examined by an independent expert panel that has access to species management plans and rigorous current research that ensures management initiatives are not detrimental to the conservation of the targeted species and other species that might be impacted. The Australian Veterinary Association recommends that 'control programs must have a firm scientific basis and take account of animal welfare. Methods should be rigorously evaluated and subjected to community consultation before being implemented and should be specific for the target species.'

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

The regulator should be informed by expert advice, sound research and the precautionary principle as well as taking into account the cumulative impacts of multiple control authorisations on the species' population as a whole as well as on a local level. The Act should provide decision makers with sufficient guidance, consistent tools to measure impacts or a set of principles. Victorian penalties for wildlife crime should be equally as stringent or even more severe as other jurisdictions. The public outrage at the penalties imposed for the deliberate killing of the wedge-tailed eagles and lack of action over the death and starvation of koalas illustrates that the community expects more from the Act in terms of imposing consequences for wildlife crime. Polperro visits the seal haul-out colonies in Port Phillip Bay on a daily basis during the operating season. Seals are often blamed for declines in fish populations. They are convenient scape-goat. It is widely known that fishers often kill or inflict violence on seals. We often see hauled out seals with injuries inflicted by people. In 2006, a prominent member of Victoria's fishing community avoided jail time for shooting at seals as they came out of the water while drinking beer, laughing and cheering. He was fined \$5,000 and received a six-month intensive corrections order. The penalty was made more severe because he also pleaded guilty to reckless conduct endangering serious injury as there were university students on the island at the time. Serious offences within the Act should be indictable. Evidence crossing borders should be available to the regulator and there should be uniform arrangements for interstate cooperation.

**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.**

The Act cannot fulfill its' stated purposes of conserving wildlife without being able to preserve habitat. The destruction of habitat we are witnessing on the Mornington Peninsula entails the enactment of control orders which are seeing the Act employed to allow the killing of native wildlife. The latest Victorian State of Environment Report identifies the clearing, fragmentation and declining quality of habitat as one of six major threats to biodiversity, with native vegetation being lost in Victoria at a rate of 4,000 habitat hectares per year. The Act must do more than regulating direct threats to wildlife, such as taking wildlife without an authorisation or license.

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

If the Act has the capacity to create State wildlife and nature reserves, then this should be being done as a matter of urgency. As Victoria's population grows and the associated development to create housing and infrastructure increases our footprint on the landscape, areas that protect habitat are essential. Wildlife corridors need to be set aside. Migration from the urban centres to the regions has increased by 66% in the last 12 months. The impacts of habitat destruction on wildlife need to be considered not only within State wildlife and nature reserves.

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?

It was interesting to read in the Issues Paper that 'in practice, a permit is required to remove native vegetation under clause 52.17 of the Victoria Planning Provisions which applies statewide. The clause aims to ensure there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.' The whole-scale clearing of vegetation on the Mornington Peninsula we are currently witnessing certainly doesn't reflect this. It seems that allowances made for clearing since the Victorian bushfires have seen unprecedented clearing of vegetation. The Act should prescribe duties for landowners about protecting and conserving wildlife and wildlife habitat on their land. A duty of care being incorporated into the Act could facilitate this and an extension of the Land for Wildlife initiative where private land with important habitat is preserved by making this prescribed rather than voluntary. The CSIRO's 'Custodianship of wildlife on private land to support conservation – an Australian model', states that 'A large proportion of the world's extinctions have occurred in Australia, and threatened species lists continue to grow, notwithstanding government and philanthropic efforts. Most losses have been on private land, so relying on national parks and reserves is not enough to reverse trends and meet Australia's responsibilities. This paper proposes a model that could increase abundance and distribution of Australia's biodiversity, while providing financial incentives to private landholders to do so.' Landowners should be subject to mandatory or minimum obligations towards wildlife conservation as well as being offered incentives for going beyond these.

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

The Act should specify the obligations of landholders relating to habitat on their land.

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

Private landowners should have greater responsibilities for the wildlife on their properties.

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?

Research corroborates the fact that most animals are sentient and have the capacity to subjectively perceive or feel things such as happiness and suffering. Community perception has come a long way from the assumption that animals are mere automatons, although we do still see this reflected in many people's attitudes towards marine species – especially fish. Legislation criminalises human cruelty towards some animals because of the capacity such action has to cause animal pain and suffering. There is growing public concern in Australia, however, that such legislation does not adequately protect animals from pain and suffering. The ACT has passed amendments to their Animal Welfare Act 1992 which makes it the first Australian jurisdiction to explicitly recognise animal sentience. The ACT amendments follow international precedent. The ACT amendments recognise the 'intrinsic value' of animals and that animals 'deserve to be treated with compassion and have a quality of life that reflects their intrinsic value. As mentioned previously, Polperro contributed to the 10-year review of the Wildlife Act (marine Mammals) 2019 and the Discussion Paper issued by the State Government included that the regulations were important in order to 'ensure that wildlife is protected for its own intrinsic value and for future generations.' In light of the evidence that most animals are sentient, current laws do not adequately ensure animal wellbeing. Indeed, the prevalent approach - and one that is reflected in the Act's employment of control orders for native wildlife - is one where wildlife is treated in a manner that suits our own interests.

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

The Act should reflect Aboriginal Victorians' intrinsic connection to endemic 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?

The Issues Paper states that the Act does not contain principles that provide clear direction for managing Victoria's wildlife. That the Act should ensure that Victoria's wildlife is protected for its own intrinsic value and for future generations would seem like an important legislated objective and principles should be developed that align with this objective and provide a practical and rigorous framework for decision making. The example given of the recent amendments to the Environment Protection Act all seem sensible, especially the inclusion of the precautionary principle, although often it would appear that when the triple bottom line of the environmental, social and economic considerations inform decision making, the environmental considerations are deemed to be less significant.

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

The Act should include provisions for consultation with the community and expert advisory panels as a matter of course and particularly in relation to the issue of control orders.

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

There is value in incorporating provisions requiring or enabling consultation and engagement with experts, stakeholders and community members as long as this does not translate to the private sector being able to weaken protective measures in the pursuit of profits.

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

The Act must enable wildlife management plans and create a framework for establishing plans that manage, conserve or preserve wildlife. As stated in the Issues Paper, management plans are critical to effective protection, conservation and sustainable use of wild animals and their habitats. They integrate and coordinate activities that involve wildlife, as well as the impacts of decisions and authorisations by various government agencies. They also recognise movement of many species across jurisdictions and land ownership types, and the integral links between animal and land management. Such plans should have clear objectives and principles, and indicate how the plan interacts with other Acts, policies, codes and guidelines. The plans must be consistent with the objectives of the Act and the overarching objective that indigenous wildlife is protected for its own intrinsic value and for future generations and must include management objectives, and guidelines for the criteria used to issue licences and permits.

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?

We believe that efforts to reduce regulatory burden generally translate to Government taking less responsibility in ensuring compliance with the conditions that are in place to protect wildlife and therefore undermine the Act's purposes of conservation and protection and sustainable use. The Act should consistently provide for a negative licensing system that would exempt certain classes of people from needing to hold a licence and provide clear, consistent decision frameworks for refusing, cancelling or suspending different permissions as well as ensuring that both the community and license holders are in no doubt that any special access to indigenous wildlife is not a right, but a privilege that necessarily involves a level of responsibility and penalties for not meeting the license conditions.

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?

As the holder of a PV license and a DELWP permit, we have decided to stay as a relatively small ecotourism operation out of respect for the fragile environment in which we operate and to assist us in enacting our 'conservation through education and interpretation' conviction and meet our environmental care standards. Full cost recovery might actually encourage license holders to compromise environmental care standards by prioritising the bottom line. In cases where subsidies are offered, there should be a requirement for license holders to demonstrate community and environmental benefits. At the Sector Forum for the Act Review, the top concerns listed were the challenges with regulation enforcement or measures to pursue breaches and the lack of oversight to ensure compliance particularly in relation to the general public. Funds collected should be reinvested in administering the Act or funding wildlife-related activities and not directed to central revenue.

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

The Act should contain provisions that allow for issuing mandatory codes of practice, standards or guidelines. It is important that the regulator be able to prescribe mandatory standards that can be amended and updated easily as scientific knowledge grows.

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?

Transparency and accountability are vital, especially in relation to control orders. The Act should have provisions to enable publicly available evidence-based justifications for some government decisions about wildlife management.

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?

Expert advisory panels alongside management plans should definitely play a key role in management to ensure evidence-based decision making. The precautionary principle should still be employed though when current and rigorous research is lacking.

5.1.1 Should the Act include other offences?

Expert advisory panels should be convened to determine where there are deficiencies in the protective framework.

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

Maximum penalties are clearly not sufficient as evidenced by examples of penalties incurred community expectations regarding appropriate punishment for wildlife crime. Penalties should at the very least match those of other jurisdictions.

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

Yes.

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

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?

The Act should mirror the Environment Protection (Amendment) Act 2018 (Part 11.5) and contain numerous civil offences for breaching permits or licences.

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?

Yes, the Act should allow for infringement notices for minor offences. This would aid in establishing a duty of care. Education is important, but penalties for offences are an important too in shaping behaviour. This was a key recommendation for changes to the Wildlife Act (Marine Mammals) 2019.

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.

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.

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.

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.

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.

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?

No. The Act should be fit for the purpose of protecting, conserving and preventing extinction of indigenous wildlife and the regulatory tools, sanctions and remedies to punish and deter wildlife crime should be commensurate with fulfilling these purposes effectively.

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?

The Act should grant authorised officers with powers to require a person to stop an activity and remedy a harm. It also should clarify that authorised officers are themselves exempt from offences under the Act while carrying out their duties.

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

Yes.

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