



SUBMISSION: WILDLIFE ACT 1975 REVIEW



15 JUNE, 2021
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Introduction

Friends of Bats & Bushcare Inc is a volunteer community group with a broad interest in the conservation of flying foxes and microbats in Victoria, and a specific focus on managing the nationally important Grey-headed Flying fox camp at Yarra Bend Park in Melbourne.

The Wildlife Act 1975 has shown itself to be inadequate for the protection of wildlife and their habitat. A new Act is required that unambiguously and effectively protects wildlife and habitat.

Sentience should be recognised in the Wildlife Act

The new act should align with the direction of the new Animal Welfare Act (current review of the Protection of Cruelty to Animals Act 1986) in the recognition of animal sentience. Recognition of animal sentience ensures that the welfare of individual animals is recognised as important, because all animals can experience pain and distress as well as positive emotions.

Human activities can negatively impact wildlife, from activities where wildlife is “collateral damage” (for example, “controlled” burning, habitat clearing, residential development) to activities where direct harm is deliberate (for example, “recreational” hunting) or by failure to act (for example, poor husbandry of captive animals or failing to seek assistance for animals hit by a vehicle).

Recognising animal sentience raises the expectation that people should be responsible for minimising harm caused by action or inaction. Along with this comes a recognition of the inherent interests and rights of animals rather than being viewed as “property” or merely for use purposes for the benefit of humans.

Recommendation: The new Wildlife Act should include an acknowledgement of the sentience of animals (including fish), and their inherent rights and interests.

All (and only) native wildlife, including fish, should be protected

All indigenous, native wildlife species should be included and protected under the act. Native ducks should be comprehensively protected, and not permitted to be hunted on private or public land.

Indigenous fish should be included as wildlife and protected under the act as they meet the criteria for sentience.¹

Feral animals, such as deer, should not be classed as wildlife under the Act. The protection of feral animals such as deer, for the benefit of hunters, is inconsistent with the purpose of the Act, and is detrimental to indigenous wildlife and their habitats. Feral deer are seriously damaging native species’ habitat and are a pest animal that requires serious control measures.

Recommendation: The new Wildlife Act should protect all (and only) native wildlife, including fish.

Recommendation: Hunting should not be included in an Act whose purpose is to protect wildlife, and no native species should be classed as “game”, including native waterbirds.

¹ Sneddon et al. Ample evidence for fish sentience and pain. *Animal Sentience* 2018.162

The concept of “sustainable use and access” is outdated

The issues paper (p.10) observes an *“...increased compassion and care for wild animals and reduced emphasis on using wildlife for human interests. Accordingly, the Act may no longer be consistent with broadly held community values, expectations and aspirations for wildlife in Victoria.”*

In particular, the purpose of “sustainable use and access” is inconsistent with the other purposes of the Act and does not serve to protect wildlife. Rather, the widespread killing of wildlife is facilitated under the current Act via hunting, the Authority to Control Wildlife system and Governor in Council Orders unprotecting wildlife.

Wildlife is under intense pressure from human activities, from urban sprawl to burning and land clearing, hunting and fishing, and agriculture. There is precious little that remains, and serious legislation should be enacted to protect the remnant wildlife of Victoria. The future survival of individuals and species is made even more tenuous due to the anticipated effects of climate change. It is time to modernise legislation to protect remaining wildlife more seriously. Deliberate killing should be permitted only in exceptional circumstances.

Sustainable use and access to wildlife should be restricted to Indigenous peoples.

Recommendation: The purpose of “sustainable use and access” should be removed from the act as inconsistent with the purpose of protecting wildlife and should be allowable for Indigenous people only.

ATCW system lacks transparency, validity and quality control

A review of the problematic ATCW system was conducted in 2018, however, the final report – due in late 2019 - was not delivered. The ATCW system allows easy access to permits to kill wildlife, with no evidence of quality control including conflicts of interest or the valid need for permits. No data is published that reports the number of lethal ATCWs issued, or the actual number of animals killed. The system ignores the competing interests of neighbours, eco-based businesses and wildlife shelters and the negative and often traumatic impacts of killing under permit, on neighbours and rural communities.

Personal stories of trauma, fears for personal safety and impacts on business due to killing of wildlife are common in regional Victoria, and this reduces the attractiveness of rural life for many people.

Recommendation: The ATCW system should be redesigned, with lethal ATCW permits requiring an on-site visit to establish valid need, and reports (with validation) of number of animals killed.

Recommendation: The ACTCW system should be overseen by an independent committee to handle complaints and audits.

GiC Orders unprotecting wildlife should have a mandatory sunset/review date

GiC Orders that unprotect wildlife are hard to locate, and are often open-ended, lacking a review or sunset date. This situation needs to change as these instruments have contributed to an unknown level of killing of wildlife in Victoria that is contrary to community expectations and are unresponsive to changing conservation status or research.

Example 1: The GiC Order of 1984 unprotecting wombats in large areas of Victoria was finally reviewed and revoked in 2020 following community pressure. Until news coverage of a “dude ranch” offering wombat hunting, the broader Victorian community was unaware of this GiC Order. The extent of the widespread, uncontrolled killing of wombats by landowners, permitted by this Order will never be known. The failure to monitor killing of wombats under the GiC Order, and the lack of a sunset or review provision likely contributed to an ongoing culture of cruelty to wombats that is evident among some farming communities. Evidence of this dysfunctional relationship with wildlife can also be seen in the widespread killing of even protected species such as wedge-tailed eagles in some rural communities.

Example 2: A GiC Order unprotecting Galahs, Long-billed Corellas and Sulphur-crested Cockatoos was published in Government Gazette No. G40 on 6 October 1994 “...when they are causing serious damage to trees, vineyards, orchards, recreational reserves or commercial crops. In these situations, they may be shot by landowners, their employees and members of their families on the property where the damage is occurring. Committees of Management members are also permitted to shoot these species on recreational reserves where they are causing severe damage.”

This GiC Order has never been reviewed. However, much has changed in the intervening 27 years. Community attitudes are more inclined to protect wild birds, as can be seen from responses to golf courses that resort to killing these birds, as they are still permitted to do under this outdated GiC Order. A wide range of new non-lethal deterrents are now available, and this GiC Order serves only to encourage a culture of cruelty and lack of respect for indigenous native wildlife.

Recommendation: That GiC Orders sunset after 3 to 5 years so that changes in community attitudes and new research must be considered before a GiC Order can be renewed for a further period.

All licence types should require periodic renewal and review

The “Wildlife Farmer” category of licence should be ceased. Australian native wildlife should not be permitted to be farmed as the breeding of native wildlife to be killed for their body parts is inconsistent with protection.

Licences currently cannot be suspended or cancelled except in circumstances that the licence holder is found guilty of an offence or has breached a licence condition (Part III, S22(1); 25B, 25D). This can result in “taking” of wildlife, under a Controller Licence, over decades and long after community sentiment and standards have shifted. An example is that some legacy licences allow native birds, such as Sulphur-crested Cockatoos, Galahs or Long-billed Corellas to be taken from the wild for the captive bird trade.

Recommendation: That the category of licence “Wildlife Farmer” cease.

Recommendation: That all licences issued under the act, including Controller Licences, require renewal every 3-5 years, with licence types able to be cancelled in response to changing community expectations, and in the interests of animal welfare and biodiversity.

Reconsider mandatory euthanasia for wildlife that cannot be released

Shelters are currently required to euthanise wildlife that cannot be released. Some states (ACT, NSW, NT, QLD) have a pathway for “unreleasables” to be kept in captivity, with a permit.² The review should explore the conditions under which a rehabilitated animal that cannot be released might have a high-quality of life in captivity.

To protect wildlife, their habitat also needs to be protected

Protecting wildlife is moot if the habitat required for survival is continually degraded and destroyed. Emergency conservation efforts are required to reverse the trajectory of biodiversity loss, particularly caused by land clearing, “controlled burning”, and native forestry activities.

Of particular concern are colony-dwelling animals, such as flying-foxes and roosting seabirds. Strong protections need to be in place to reduce or eliminate human disturbances in these situations, such as occurred with Little Penguin colonies. Protection for ground-nesting species, such as the hooded plover, should take priority over human recreational and commercial interests, such as race horse trainers using public beaches.

Recommendation: That the new Act protect the roosts and foraging resources of colony-dwelling species.

Recommendation: That the new Act provide robust protection for habitat including exclusion of human activities in sensitive areas during breeding season.

Offences and penalties

Penalties need to be both high enough to reflect seriousness of offending, but also need to be applied by the courts, who continue to be reluctant to apply the upper range of penalties even for the most serious offending. Only one custodial sentence has ever been applied for offending under the Wildlife Act 1975. Taking of wildlife for the exotic pet trade is particularly attractive to organised criminals, as the rewards are high, but the risks and penalties are considerably lower than some other criminal activities.

The review of the Wildlife Act 1975 should take a consistent direction as the review of the POCTA, with a range of remedies, penalties and enforced undertakings commensurate with the seriousness of offending.

More attention also is needed for common offences that are currently not generally detected or prosecuted, in particular for domestic animals that attack wildlife. These events are common but are rarely detected, or if detected are never prosecuted despite the provision in the Act (Part VII,

² Englefield, B. et al (2019). A review of Australian animal welfare legislation, regulation, codes of practice, and policy, and their influence on stakeholders caring for wildlife and the animals for whom they care. *Animals*, 9, 335 doi:10.3390/ai9060335

48). Wildlife attack by domestic animals is a common cause of injury and death to wildlife, but there is little community understanding that this is an offence.

On the spot fines would be appropriate in these circumstances but would require a larger pool of authorised officers to include Parks Victoria rangers and Council officers.

A common cause of “accidental” wildlife trapping occurs through the use of dangerous garden netting (from 1st September 2021 regulated under POCTA Regulations 2019), and barbed wire. Consideration should be given to regulating the use of barbed wire because more effective alternatives are increasingly available. In particular hazard mitigation should be required, such as controlling wildlife-attracting vegetation close to barbed wire, increasing visibility of barbed wire, and removing defunct/non-functional barbed wire on private property.

Recommendation: A range of remedies, penalties and enforced undertakings commensurate with the level of offending should be introduced (similar to the direction proposed for the new Animal Welfare Act).

Recommendation: Authorised officers should be expanded to include Parks Victoria rangers, and Council animal officers.

Recommendation: The use of barbed wire should be regulated to reduce trapping of wildlife