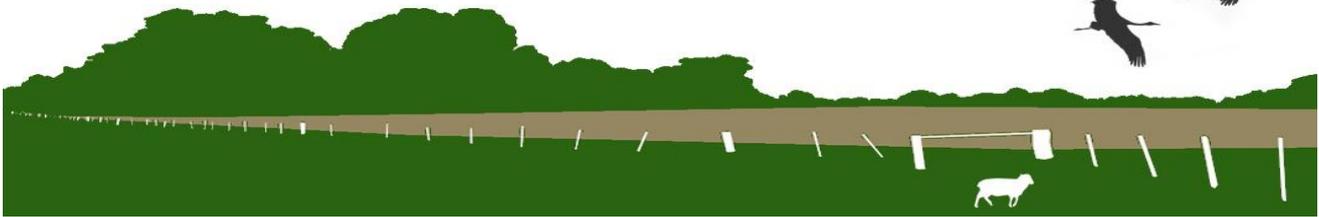


ENVIRONMENTAL FARMERS NETWORK (EFN)

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5 June 2021

Submission Victorian *Wildlife Act 1975* Review

EFN represents farmers in south-east Australia committed to sustainable farming in a social, environmental and economic sense. We represent mostly commercial farmers, but those who are concerned about:

- the loss of farm biodiversity;
- the impact of climate change on landscapes; and
- the loss of both farmland and relatively natural areas to urban expansion.

Our policies and various submissions are available at www.environmentalfarmers.net.au.

In particular, we encourage:

- the enhancement of biodiversity;
- the mitigation of greenhouse gas production;
- thoughtful adaptation to climate change; and,
- State and Federal Governments to develop market mechanisms that reward those landholders providing ecosystem services such as retention and protection of biodiversity and enhancement of carbon sequestration.

Our interest in the Wildlife Act is in its potential to give solid and practical legislative support to the protection and enhancement of biodiversity (and habitat) on farm and associated lands.

Our comments follow. Where they relate to the *Independent Review of the Wildlife Act* discussion paper, the section numbers of that paper are noted.

Comments

A. General

The current act (Wildlife Act 1975) certainly needs review. It is a heterogeneous jumble of bits, and it is unclear about what they all sum to. Further the term ‘wildlife’ causes much consternation in application. Serious consideration should be given to an alternative title – such as The Native Animal Act.

But if such an Act is to be a key plank of the suite of environmental legislation in Victoria its purpose and operational role need strong application of logic, vision and intent. Such application can only be successful if it is seen as an intimate part of the overall suite of legislation (primarily meaning environmental legislation, but also concomitantly economic and social legislation) with it thus being complementary, supplementary and unambiguous.

We argue that any wildlife legislation has to result from careful consideration, and consequent juxtaposition, of:

- Visionary goals for Victoria and the essential role of the environment in enabling such a vision. Probably the best outline of such can be found on Pages 19 and 20 of the [*Catchment Condition and Management Report 2012*](#) of the Victorian Catchment Management Council.
- Unequivocal understanding of jurisdictional responsibility.
- Strategic coordination between individual pieces of legislation.
- Clarity of the individual legislative purposes such that they unequivocally sum to the overall purpose of the total suite of (environmental) legislation.
- Clear understanding of where the priorities lie in servicing the requirements of the various pieces of legislation – including robustness in the face of non-environmental economic and social pressures.
- Regular evaluation of the success of legislation based on effective monitoring.
- Adequacy of executive government to service the operational needs of the legislation and its regulatory requirements.

All this means the Wildlife Act cannot operate effectively if it is a ‘stand-alone’ or ‘set-and-forget’ piece of legislation. It must comfortably nest in terms of its intent and purpose with the full suite of related legislation, and it must be cognisant of what might be its effect and achievements.

B. Concept (and definition) of ‘wildlife’ (see 1.5)

Let us assume that this legislation is about ensuring ‘wildlife’ is free, self-propagating, and unthreatened. So just what we define as wildlife is critical.

Currently though the legislation is somewhat arbitrary and reflects a hotch-potch of ideas, and perhaps a desire to be all things to all people - or even a simple reflection of out-dated values and ‘traditions’(see attached extract from the English satirical magazine *Punch* 1984)

It can be argued that the term ‘wildlife’ itself is also an outdated term. Both the Australian Oxford and Macquarie dictionaries have defined it as *animals in their natural habitat*. But surely wild life is more than animals? And just as surely, animals are more than the groups of vertebrates?

Leaving aside just what term might be the most appropriate - it is essential to have clarity on what the legislation intends to encompass. The first consideration is that we are talking of animals. The second consideration is of indigeneity. The third consideration must deal with the exclusion of particular indigenous animal species from the ambit of the legislation and consider all the evolutionary, temporal and ecologic reasons for doing so. It is this third consideration that involves some massive leaps of assumption and expectation. The current exclusions, and the reasons for them, are a rather unholy mix of pragmatism and politics. The clarity and logic of what is in and what is out is obscure.

It does need sorting.

C. Fundamental purpose of the Wildlife Act (see 1.2)

The current legislation (Section 1A) states:

The purposes of this Act are—

(a) to establish procedures in order to promote

(i) the protection and conservation of wildlife; and

(ii) the prevention of taxa of wildlife from becoming extinct; and

(iii) the sustainable use of and access to wildlife; and

(b) to prohibit and regulate the conduct of persons engaged in activities concerning or related to wildlife.

Purpose (b) is pretty sound, but purpose (a) brings on a lot of head scratching. What does purpose (a) give direction on? It gives no guidance on what sort of procedures fit within the ambit of the legislation – and the use of the word *promote* is hardly compatible with legislative operation.

So forgetting about the current statement of purpose, but looking hard at the endeavours of subsequent sections of the Wildlife Act 1975 perhaps we could broker some clarification.

There is a focus on wildlife and its protection – not conservation, protection. Then there is the operational focus on all the ways permits will be issued for things like study, interaction, utilisation, care, culling, transporting and so on.

So far so good, but then there are discontinuities as the Act tries to deal with Nature Reserves and Wildlife Reserves. This makes for a messy Act.

So while a Wildlife Act should be very cognizant of the intent of the full suite of environmental legislation it has to be very clear and succinct on what its area of operation is. This to us seems to be remarkably straight forward, viz:

1. Unequivocal definition of ‘wildlife’;
2. Authoritative statement that wildlife is protected and it is an offence to harm, damage or kill it by either direct intent, or as a result of other actions negatively influencing habitat, predation or behaviour;
3. Definition of applicable and acceptable exemptions to the requirements of point 2; and
4. Regulation of the conduct of anyone person or body engaged in activities concerning or related to wildlife.

D. Societal values (see 1.1)

We think it best to look at what might be regarded as societal values in terms of analysing how wildlife needs appreciation - and not just community values. Community is too narrow. A good Wildlife Act will be broad in how it deals geographically, temporally and culturally with the protection of wildlife. In fact we argue that it is necessary to look at fundamental (and long term) ecological appreciation and not get distracted by the various enthusiasms which are hard to justify in terms of environmental sustainability.

Legislation should be about setting the fundamentals. It is the policy settings and their various strategic approaches which will consider the way current societal and community values are taken into account.

We cannot argue too strongly about the need for long term appreciation of the conservation of ecosystem services and environmental values. It seems to us that a major limitation to the effective production of environmental legislation is the dearth of any clear understanding of just what we want the country and its landscape to be like in the decades ahead.

If we can get to a clear and common understanding then we can be in a better position to set milestones and adjust behaviours if these are missed. The precautionary principle¹ is an important aspect of such an approach

E. The value of 'wildlife' (see 2.4)

'Wildlife' has intrinsic value. Wildlife is an environmental resource. Wildlife lacks the resilience to withstand the economic, and social pressures that society is currently imposing on the environment. It needs protection. Its components needs conservation.

Life in its wild form is part of the tapestry of ecosystems and it is within these ecosystems that wildlife resilience is made or broken.

So what is the primary value of 'wildlife'? Is it about the continued occupation of specific ecological niches? Is it about it constituting a viable repository of genetic resources? Is the presence or absence of wildlife just an indicator of environmental health?

If the Review is to set the requirements for protection and conservation - these are important philosophical questions for answering.

F. Wildlife requires habitat (see 2.3)

This is where getting to a practical and useful purpose for a Wildlife Act becomes a bit of a conundrum. The current listed purposes for this Act talk of prevention of extinction. But an Act which says only that wildlife cannot be hunted taken or destroyed is not focussing on the prevention of extinction.

Extinction is most likely when habitat is corrupted

But as we have argued above, bringing in controls on habitat management to this legislation would up its complexity by a considerable amount. This is undesirable if the purpose of the legislation is to be kept simple and workable. Of course if the Wildlife Act sees that the 'destruction' of wildlife due to the damage or removal of its habitat as an offence, then things change dramatically.

If the prevention of extinction in the wild is to be a key goal, that land and habitat management should be in other legislation in a powerful and unequivocal form. We cannot see that the Review Group has an option to not have this as one of its recommendations

G. What constitutes "hunt, take or destroy"?

As mentioned in comment C above, a foundational purpose of this Act is to proclaim that 'wildlife' is protected.

The protection currently proffered is that (unless exempt for whatever reason) no wild animal can be hunted, taken or destroyed. OK. But the big question is whether this just covers the

¹ The precautionary principle we take to mean that actions taken to conserve and protect wildlife should not be avoided or delayed because of lack of scientific certainty about the outcome. Risks associated with unforeseeable consequences make this an important principle in decision making. Never-the-less the best approach is to increase knowledge to clarify the issue being considered.

direct act of hunting, taking or destroying, or does it also deal with the indirect acts - or negligence - which lead to the death of wildlife?

The recent case of Environmental Justice Australia vs VicForests would imply that causing the death of leadbeaters possum or greater gliders by destroying their habitat constituted wildlife destruction. It seems an acceptable interpretation to us. It also shows that the Wildlife Act may be a much more potent tool for the protection and conservation of wildlife than we previously realised. It also means that the operation and servicing of the Act may require much more monitoring and management than it has in the past.

H. Duty of care (see 1.4)

A duty of care is an interesting concept. Many argue that it can be used to define (or attempt to) what constitutes 'acceptable' behaviour to achieve some particular purpose. Its limitation is that it often will reflect behaviours that are more likely to be fashionable rather than 'acceptable'.

Given the evidence that much of our land management practice has led to severe damage to 'wildlife', truly acceptable behaviours for the protection of wildlife listed in a strongly focussed duty of care might be perceived as untenable.

However, the intellectual and practical exercise of preparing a land manager duty of care for the protection and conservation of wildlife would be invaluable.

I. How to deal with wildlife causing habitat or ecosystem damage?

An ecosystem approach to land and wildlife management is what we must aim for if we are looking for true sustainability. As mentioned in comment D, precisely how we do this has to be based on our long-term societal goals.

We have interrupted so many ecosystems such that continued management is required to keep them stable. And on top of this, climate change is going to cause massive disruption to things we thought we knew and understood.

This applies to ecosystems where a particular species of wildlife might have got a population advantage (from our land-use changes, or perhaps climate change) and has got to pest levels (think for example: galahs, grey kangaroos, and white cockatoos). Culling is a management obligation in many of these cases.

The provision of permits to 'unprotect' is important. However, the criteria for doing so are even more so. The key criteria should be related to the health of the habitat or ecosystem.

Such considerations indicate that servicing of a Wildlife Act will require a substantial knowledge and understanding of the status, needs and behaviours of wildlife. It will also require a good understanding of dependencies and relationships between the arrays of wildlife in any particular ecosystem.

J. Utilisation of wildlife

It does seem important for the review to be very clear on how society should approach and embrace the utilisation of 'wildlife'? Utilisation must be based on the primary value of wildlife and not the perceived need of any small section of society. And it must be consistent with protection and conservation.

Wildlife is a planetary resource. It probably is not a public resource – that term implying anthropocentricity. Certainly wildlife should not be the property of land owners. Of course it is possible to convert some wildlife individuals to non-wild forms (provided there were no issues of threatened wild population numbers) and maybe then individuals would no longer be wildlife and thus eligible to become property.

Assigning wildlife to any property owner is undesirable.

We mention in comment E above that wildlife are a repository of genetic resources and so it is probably necessary to give some consideration to the possibilities of genetic engineering being applied to ‘wildlife’ for potential domestication, or perhaps even as a substitute for Darwinian natural selection processes. The inexorability and speed of climate change may require this as an option

Hunting needs a particular mention here. The concept of hunting wildlife for sport is an anathema to EFN.

K. Codes, standards, guidelines and management plans. (3.3 & 3.6)

These would be potent mechanism to aid in the protection and conservation of ‘wildlife’. As we have tried to argue, it is damage to habitat that is the big influence on wildlife and its ecological decline. Of course all of these will need to be based on wildlife management principles (see 3.1) to be pertinent. The simple action of defining these would be invaluable.

If the interpretation that it is an offence to destroy wildlife by the action of inappropriate habitat destruction is valid, then the utilisation of codes, standards, guidelines and management plans may well be the pathway to avoiding inappropriate habitat destruction.

L. Monitoring and the evaluation of action and success

Critical

What is our knowledge of ‘wildlife’ status, robustness and resilience?

And just what contribution do we want the Wildlife Act to make?

M. Servicing of a Wildlife Act

How practical would it be to service all the likely regulatory requirements of a Wildlife Act (i.e. will it get adequate authorities, powers and funding)?

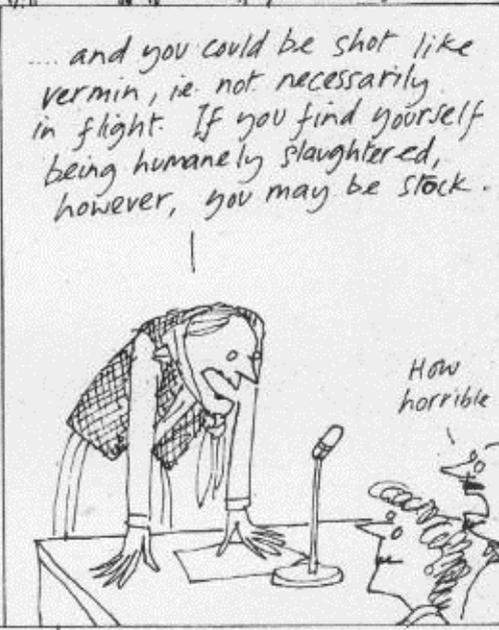
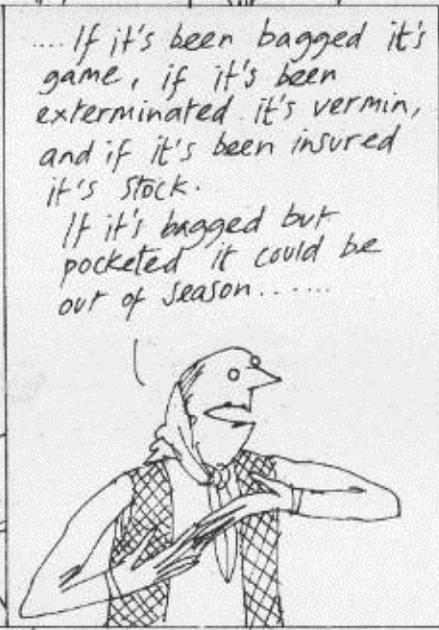
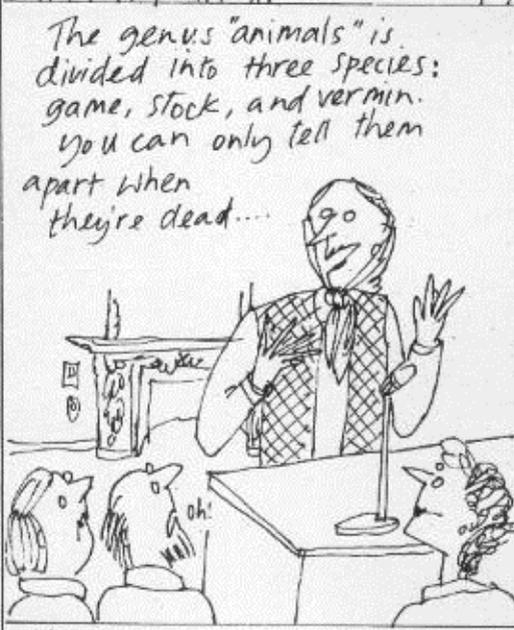
It is an important consideration in setting up any regulatory requirements.

The NIGHTMARES of DREAMTOPPING

An everyday story of weekend folk

ATTACHMENT to EFN Review of Wildlife Act Submission

A MEETING OF THE BUTTERFLY CONSERVATION SOCIETY IS BEING HELD AT THE OLD PIGSTY, CHAIRED BY JANET THORNPROOF.



NEXT WEEK: THE ICTERINE WARBLER