

## Wildlife Act Review

### Issues Paper questions – Response 29:

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#### Primary interests:

- Protection and conservation of wildlife and habitat
- Wildlife welfare
- Offences and penalties relating to 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 use of the term wildlife in the Act does not reflect either today's values, or my expectations. The biggest problem is that it does not include habitat, which is essential for wildlife to exist. Secondly, it is restricted in its scope, excluding a multitude of species. Thirdly, it currently includes animals that are not native to Victoria and Australia, such as deer. I propose that a much wider definition be adopted that covers all native creatures, including all their parts, and their habitat. It is important that all living native species which have been identified to date, or are yet to be identified, including mammals, birds, reptiles, crustaceans, marine life and insects fall within the Act. This will ensure that the state has the necessary authority to manage, protect and care for our natural environment.

##### **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.**

Although there may be conflicting expectations in our community, this does not mean that an amended Act should necessarily seek to resolve such conflicts. Once one accepts the basic premise that all our wildlife and its habitat has intrinsic value in its own right, and therefore must be looked after, other considerations are secondary and must not impinge on the primary purpose of the Act.

##### **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?**

I do not consider that the Act must necessarily balance all interests. If we do this we will end up with the same contradictory mess that currently exists. The intent of the Act must be focused and clear; it must address the protection, management and care of our wildlife and its habitat. All consequential actions ideally should arise from this premise and actions should only be taken that are necessary for the protection of a species, for example, managing a koala population to ensure its healthy survival. Also, as a general rule the harvesting of a species for food or pleasure should not occur as this would be inconsistent with the purpose of the Act. However, where a species is abundant and there is capacity for a sustainable and humane harvest, it may be appropriate for the Act to be able to permit this where there is an overriding public or environmental interest. For example, it could be that the Act permits a species of native fish to be humanely and sustainably harvested in a manner that does not disturb other wildlife or habitat where it can be proven to be abundant and that this will not threaten its continued healthy distribution and existence. However, it may be not be

possible to justify the shooting of an abundant native duck species due to the disturbance this creates for other wildlife and the difficulty in doing so humanely.

**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?**

There are inherent contradictions in the current Act. I believe that the primary purpose of the Act should be to protect, manage and care of our native wildlife and its habitat. Hopefully this can be reflected in any amendments made.

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

See my comments in 1.1.3 above.

**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?**

I believe that the Act should reflect the rights and interests of traditional owners and the role they are able to play in protecting and conserving native wildlife and its habitat. They have a wealth of knowledge built up over many years and have demonstrated their capacity to perform this role prior to European settlement. However, while I consider that the use and taking of wildlife by traditional owners for traditional and cultural purpose is appropriate, I do not support the extension of this to commercial purposes.

**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?**

I believe that the Act must address the protection, management and care of all native wildlife and its habitat. If this purpose is drafted comprehensively enough, it should be sufficient to ensure the protection of biodiversity.

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

Under the framework I have outlined above it would be inappropriate for the Act to include game animals. See my comments in 1.1.3 above.

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

I support the management of game under separate legislation which only applies to introduced and feral species. This will enable the rules governing game to be very different and to separately deal with issues such as the damage caused by game species, and the need for their control, without having to also consider biodiversity at the same time.

**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 survival of native wildlife is inextricably linked to the retention and protection of habitat. Victoria currently has ten species listed as threatened. In most cases the destruction of habitat has been a critical contributor to the threatened status of these species. For example, the Helmeted Honeyeater and Leadbeaters Possum are both dependent on the retention of specific forest types;

in the latter case the continued logging of our native forests is a clear threat to the possum's long term survival.

### **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?**

Because much of Victoria's native wildlife and its habitat is on private property, it is imperative that landowners play an active role in their protection and conservation. Private property rights are not without limit, and the protection and conservation of wildlife and its habitat should be accepted as a responsibility of all landowners. Therefore, landowners must not be permitted to destroy habitat that native wildlife depends on without a rigorous assessment on the impact of such action. Where a native species is vulnerable or threatened, approval must not be given. In those cases where a landowner can demonstrate a substantial monetary disadvantage arising from the protection or conservation of a native species or its habitat, a compensation process should be provided for. Landowners must also be required to act in a responsible manner that does not threaten native wildlife. For example, the use of poison baits such as 1080 that can have a lethal impact when accidentally consumed by wildlife, or the use of rodenticides that can kill species such as owls that consume poisoned prey.

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

Yes, in so far as property rights should not be extended to native wildlife unless such wildlife has been acquired as the result of an approved breeding program, for example, certain species of parrots for aviaries.

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

I do not believe that landowners should have any greater rights to the use of native wildlife on their property.

### **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?**

See my comments in section 1 above.

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

While there may be a limited role for community consultation on some issues, for example, the application of penalties and the protection of native wildlife on private property, this should be the exception rather than the rule and the bulk of decision making should be determined by data, facts and science. If this approach is not adopted there is a real risk that sectional interests will dominate and that important policies will be eroded, risking the protection of native wildlife and habitat.

### **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 focus of all licences and activities should be the protection and conservation of native wildlife and habitat, it is not imperative that these are applied on the basis of full cost recovery, except for where they relate to commercial operations.

### **5.1.1 Should the Act include other offences?**

Current legislation is not sufficiently comprehensive and suffers from serious gaps, such as the protection of habitat. It is preferable that a comprehensive range of offences are created to ensure that native habitat not be disturbed or destroyed, and that native wildlife also not be disturbed or removed without authority.

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

Several recent incidents in Victoria resulting in the wilful destruction of native wildlife have highlighted the need for penalties that better reflect the seriousness of the offences. The penalties applied following the poisoning of a large number of eagles in East Gippsland were woefully inadequate, and do little to act as a deterrent. I believe that current penalties are also out of step with community opinion and that significantly higher penalties will be welcomed.

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

Yes, the Act should provide for offences and penalties to deal with continuing illegal behaviour.

**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?**

In certain circumstances the making of a costs order may be appropriate, for example, to cover the resources need to detect and prosecute a landowner who has illegally cleared habitat. It is also essential that as well as a costs order, the Act provide for the imposition of a restitution order, compelling the landowner to restore the destroyed habitat. This will reduce the financial advantage that can be gained from such behaviour and act as an important deterrent.

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