

Public consultation on the review of the *Wildlife Act 1975*

Submission from the Victorian National Parks Association

29/06/2021

Thank you for inviting public engagement into the review of the *Wildlife Act 1975*. We acknowledge that this is the most extensive review of the Wildlife Act since its enforcement over 40 years ago and we thank the independent expert advisory panel for their comprehensive and thoughtful Issues Paper.

We hope that this review will result in stronger protections for Victoria's native wildlife and their habitats, a more transparent, better regulated and closely monitored Authority to Control Wildlife system, and the removal of protections for exotic invasive species such as deer.

Our following submission provides some comments and suggestions for the purpose, objectives, principles and duties of a refreshed Wildlife Act, and provides some discussion and recommendations on how to potentially improve other aspects of the legislation including new tools to protect wildlife and wildlife habitats, a reformed ATCW system, and the benefits of establishing an expert advisory committee under the Act.

Established in 1952, the VNPA is Victoria's leading community-based nature conservation organisation. We are an independent, non-profit, membership-based group, which exists to support better protection and management of Victoria's biodiversity and natural heritage. We also run extensive programs which promote the enjoyment and care of Victoria's natural environment; these include bushwalking and outdoor activity programs, as well as citizen science programs.

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1. Purpose, objectives, principles and duties of a refreshed Wildlife Act 1975

Victorian Wildlife have legal protections under various Acts. The *National Parks Act 1975* protects our conservation reserve system and the natural areas within those reserves; the *Flora and Fauna Guarantee Act 1988* protects threatened species and encourages conservation action; the *Prevention of Cruelty to Animals Act 1986* ensures the humane treatment of animals; and the *Wildlife Act 1975* directly protects wildlife and regulates interaction with wildlife. Rather than having a focus to protect wildlife and their habitats, at the moment the Wildlife Act largely exists to protect exotic game animals like deer and to allow authorisations to control or destroy native wildlife.

With the review of the Wildlife Act, we now have an opportunity in Victoria to better protect and conserve *all* native wildlife and their habitats – a clear ‘Wildlife Protection Act’, not just a wildlife management Act.

A key objective of the Wildlife Act should be to prevent populations of native wildlife from experiencing significant decline in the first place, and then from becoming threatened with extinction. The new objectives, principles and tools of the Wildlife Act should be clear and easily applicable, and should particularly complement the *Flora and Fauna Guarantee Act 1988* and reflect the difference between the roles of the two Acts.

While the Wildlife Act currently purports to directly “protect” wildlife from harm and exploitation, there are glaring contradictions with the Authority to Control Wildlife permit system as well as the recreational shooting of native ducks and quails. In regards to the “conservation” of wildlife and the “prevention of wildlife from becoming extinct” the Act does not really promote conservation or offer any real tools to assist with doing so. It does allow for “the study, handling and management of wildlife and wildlife habitats for the purposes of conservation” and the minister can direct DELWP to undertake works for conservation. In contrast, the recently renewed FFG Act has provisions and clear tools which promote and encourage the conservation of wildlife, particularly threatened species (even though most of these tools have still never been used). For further discussion on some potential tools for protecting wildlife and wildlife habitats, see section 4 below.

Recommendations

- **Table 1 below provides some comments and suggestions for the purpose, objectives, principles and duties of a refreshed *Wildlife Act 1975*.**
- **The Act should include a duty on ministers and public authorities to properly consider the objectives and principles of the Act.**
- **The Act should include a general duty of care for all Victorians to avoid committing the various offences under the Act.**
- **An independent statutory regulator should be established to enforce the Act, along with a significant increase in penalties, including prison terms. The Act should also provide for third party civil enforcements.**

Table 1.

	<i>Flora and Fauna Guarantee Act 1988</i>	<i>Comments and suggestions for the refreshed Wildlife Act 1975</i>
Purpose	<p>1 Purpose</p> <p>The purpose of this Act is to establish a legal and administrative structure to enable and promote the conservation of Victoria's native flora and fauna and to provide for a choice of procedures which can be used for the conservation, management or control of flora and fauna and the management of potentially threatening processes.</p>	<p>An example purpose for the Wildlife Act could be:</p> <p>"The purpose of this Act is to provide legal protections and tools for the protection and conservation of native wildlife and wildlife habitats, and to allow for and regulate the study, handling and management of wildlife and wildlife habitats for the purposes of wildlife conservation or wildlife population management."</p>
Objectives	<p>4 Objectives of this Act</p> <p>The objectives of this Act are—</p> <p>(a) to guarantee that all taxa of Victoria's flora and fauna, other than taxa specified in the Excluded List, can persist and improve in the wild and retain their capacity to adapt to environmental change; and</p> <p>(b) to prevent taxa and communities of flora and fauna from becoming threatened and to recover threatened taxa and communities so their conservation status improves; and</p> <p>(c) to protect, conserve, restore and enhance biodiversity, including—</p> <ul style="list-style-type: none"> (i) flora and fauna and their habitats; and (ii) genetic diversity; and (iii) ecological communities; and (iv) ecological processes; and <p>(d) to identify and mitigate the impacts of potentially threatening processes to address the important underlying causes of biodiversity decline; and</p> <p>(e) to ensure the use of biodiversity as a natural resource is ecologically sustainable; and</p> <p>(f) to identify and conserve areas of Victoria in respect of which critical habitat determinations are made.</p>	<p>The objectives of the Act could include clauses with language that reflects the following:</p> <ul style="list-style-type: none"> ➤ to ensure that populations of native wildlife have sufficient population size and suitable habitat to maintain or improve their capacity to persist and evolve in the wild ➤ to regulate human interactions with wildlife to avoid or minimise harmful disturbance and injury to wildlife and wildlife populations ➤ to protect wildlife from exploitation and cruelty ➤ to protect wildlife habitats from damage, harmful disturbance or destruction ➤ to allow for the study, handling and management of wildlife and wildlife habitats for the purposes of wildlife conservation ➤ to ensure adequate monitoring of native wildlife populations and habitats, particularly those of threatened species, species likely to be in decline, and species subject to a control authorisation ➤ to promote research and management actions that improve, conserve or maintain wildlife habitat ➤ to appropriately regulate and manage any necessary wildlife population control authorisations ➤ to provide for expert oversight of the implementation of the above objectives

<p>Principles</p>	<p>4A Principles of this Act</p> <p>It is a principle of this Act that a decision, policy, program or process gives proper consideration to the following—</p> <p>(a) the rights and interests of traditional owners by—</p> <ul style="list-style-type: none"> (i) acknowledging cultural and spiritual connections to land, biodiversity and resources through a relationship with country; and (ii) supporting participation in decision making, planning and the development of policies, programs and processes; and (iii) facilitating access to biodiversity and providing opportunities for economic advancement; <p>(b) the potential impacts of climate change;</p> <p>(c) the best practicably available information relevant to biodiversity;</p> <p>(d) the precautionary principle, such that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;</p> <p>(e) enabling public participation;</p> <p>(f) supporting collaboration between government, the community and partner agencies.</p>	<p>The principles of the Act could follow a similar format to the FFG Act, where a decision, policy, program or process must give proper consideration of various principles that could include, for example:</p> <ul style="list-style-type: none"> ➤ the precautionary principle (as in (d) opposite) ➤ the size of populations and subpopulations of wildlife ➤ the maintenance of genetic diversity within and between wildlife populations ➤ the behavioral traits and behavioral ecology of wildlife ➤ the breeding and nesting cycles of wildlife ➤ the availability, extent and condition of suitable habitat, food sources and shelter for wildlife ➤ the cumulative effects of threatening processes on wildlife and wildlife habitats ➤ the potential impacts of existing and emerging threatening processes on wildlife and wildlife habitats ➤ the capacity of species and populations to adapt to changes in the environment and climate ➤ whether species or populations are in significant decline, or threatened with extinction ➤ listed threatened species under the <i>Flora and Fauna Guarantee Act 1988</i> and any action statement or other instrument applying to those species ➤ the rights and interests of traditional owners ➤ the best practicably available information relevant to wildlife and wildlife habitats.
<p>Duty on ministers and public authorities</p>	<p>4B Ministers and public authorities to give proper consideration of objectives</p> <p>(1) In performing any of their functions that may reasonably be expected to impact on biodiversity in Victoria, including a function under this Act or any other Act, a Minister and a public authority must give proper consideration to the objectives of this Act, so far as is consistent with the proper exercising of their functions.</p> <p>(2) In addition to subsection (1), a Minister and a public authority, so far as is consistent with the proper exercising of their functions, must give</p>	<p>The Wildlife Act could include a duty on ministers and public authorities –</p> <ul style="list-style-type: none"> ➤ to give proper consideration to the objectives and principles of the Act ➤ to develop management plans as required to meet the objectives of the Act ➤ to ensure adequate enforcement of the Act ➤ to ensure transparent decision making under the Act

	<p>proper consideration to any instrument made under this Act, including—</p> <ul style="list-style-type: none"> (a) the Biodiversity Strategy; and (b) action statements; and (c) critical habitat determinations; and (d) management plans. <p>(3) Without limiting subsections (1) and (2), consideration must be given to the potential impacts on biodiversity, including—</p> <ul style="list-style-type: none"> long and short-term impacts; and (b) beneficial and detrimental impacts; and <p>and</p> <ul style="list-style-type: none"> (c) direct and indirect impacts; and (d) cumulative impacts; and (e) the impacts of potentially threatening processes. <p>(4) The Minister may make guidelines in relation to the proper consideration of the objectives of this Act and the instruments made under it by public authorities.</p> <p>4C Minister may request information to ensure objectives are being considered</p> <p>(1) The Minister may request a public authority to provide any information that the Minister considers is necessary and reasonable—</p> <ul style="list-style-type: none"> (a) to ensure that the duty to consider the objectives of this Act and the instruments made under it is being performed; or (b) to ensure that an action taken, or to be taken, by the public authority does not threaten the persistence of a listed taxon or community or critical habitat. <p>(2) A public authority must comply with a request under subsection (1).</p> <p>(3) The Minister may cause any information obtained under this section to be published on the Internet.</p>	<ul style="list-style-type: none"> ➤ to complement the FFG Act duty on ministers and public authorities (which is to give proper consideration to biodiversity impacts, the objectives of the FFG Act (such as “to protect, conserve, restore and enhance biodiversity”) and the instruments made under the FFG Act.) <p>When undertaking any operation likely to impact upon wildlife or wildlife habitats:</p> <ul style="list-style-type: none"> ➤ to avoid harm to wildlife, particularly where it can occur as collateral damage eg. in fire management, logging operations, roads and large-scale developments and infrastructure ➤ to minimize disturbance of wildlife and their nesting or reproduction cycles ➤ to avoid, minimize and offset damage to wildlife habitats ➤ to repair and restore degraded wildlife habitats ➤ to undertake appropriate monitoring of wildlife and wildlife habitats. ➤ to properly consider best practice and adaptive management during the planning of any operation likely to impact upon wildlife and wildlife habitats
General duty of care	--	<p>The Act could have a general duty of care for all Victorians to avoid various offences under the Act, such as the following:</p> <p>Not to wilfully:</p> <ul style="list-style-type: none"> ➤ molest or injure native wildlife ➤ disturb, chase or herd native wildlife ➤ separate native wildlife from its young ➤ disturb the nesting or reproduction cycles of native wildlife ➤ disturb, damage or destroy native wildlife habitat <p>The Act could also consider promoting avoiding & minimising the harmful disturbance of wildlife.</p>

2. Definitions of protected native “wildlife” under the Wildlife Act

In regards to which *native* wildlife are currently protected under the *Wildlife Act 1975*, our understanding is that it includes:

- all vertebrates (except species defined as fish¹ under the *Fisheries Act 1995*)
- all threatened terrestrial invertebrates
- any other taxon declared as wildlife by the Governor in Council

These definitions leave a number of species unprotected under the Act. Problems particularly arise in regards to species defined as ‘fish’ under the *Fisheries Act 1995*, to which the *Wildlife Act 1975* does not apply. This ‘fish’ definition is quite broad and includes: a) all species of vertebrate aquatic fauna other than mammals, reptiles, birds and amphibians; (b) sharks, rays, lampreys and other cartilaginous fish; (c) oysters and other aquatic molluscs; (d) aquatic crustaceans; (e) echinoderms; (f) any other species of aquatic invertebrate declared to be fish. All these groups of native fauna are defined as ‘fish’ regardless of if they are targets for commercial or recreational fishing or not.

This potentially leaves many threatened species unprotected by the Wildlife Act including about 34 species of bony and cartilaginous fish, and close to 30 species of crayfish, yabbies and shrimp (Victoria has particularly high levels of endemism for freshwater galaxiid fish and crayfish, many of which are threatened species). Of 22 Australian freshwater fish considered to be at imminent risk of extinction, 10 are Victorian.² In regards to crayfish and other invertebrates, while it would be impractical and irrational to protect all invertebrates under the Wildlife Act, all *threatened* invertebrates should at least have some level of protection (such as the ability to use tools to protect them under the Act), including both terrestrial and marine invertebrates. Furthermore, despite being an iconic vertebrate species, the Australian Weedy Sea Dragon (Victoria’s marine faunal emblem) could currently be considered as a fish under definitions of the *Fisheries Act 1995* and therefore not protected as wildlife under the Wildlife Act.

Another significant issue with the definitions is that native wildlife can be considered as game species, and this results in thousands of our native ducks and quails being shot dead by recreational shooters on a yearly basis, along with countless other instances of unnecessary injury and animal cruelty. Other birds are often killed or injured by mistake in the process. This is certainly not protection, and the VNPA opposes the recreational shooting of any of Victoria’s native wildlife.

Finally, the Act allows wildlife to be declared as ‘unprotected wildlife’ which, at one stage, had the perverse outcome of wombat shooting being promoted as a tourist attraction³. The ‘unprotected wildlife’ provision should be abolished and any native wildlife control is best left to the ATCW authorisation process. .

¹ <https://www.legislation.vic.gov.au/in-force/acts/fisheries-act-1995/097>

² <https://theconversation.com/australias-smallest-fish-among-22-at-risk-of-extinction-within-two-decades-144115>

³ <https://www.theage.com.au/national/victoria/inquiry-launched-into-wombat-hunting-by-chinese-high-rollers-20190815-p52hn1.html>

Population management for native fauna should only occur where it is scientifically demonstrated that population numbers are out of natural balance to the point that they are harming the ecosystem or are an unacceptable risk to health and safety and/or agriculture. Culling of native fauna should only be used as an option of last resort, under an ATC permit.

Population management, including by culling, should not be driven by recreational interests or the provision of commercial products. Population management should be undertaken systematically and professionally based on best available science and subject to rigorous evaluation. The culling should be undertaken in accordance with an approved management plan as part of the ATC process and supervised by appropriate departmental staff.

Recommendations

- All native vertebrate fauna should be protected as native wildlife under the *Wildlife Act 1975*, including all native ducks and quails. The recreational shooting of native wildlife should be prohibited.
- All FFG listed threatened fauna should be defined as wildlife under the *Wildlife Act*, including all threatened invertebrates and all threatened 'fish'.
- It should be made clearer in the Act that any specific native fauna species, including invertebrates, is able to be declared as wildlife under the Act. This should particularly occur for species where there is significant public value or conservation value in doing so.
- The ability to declare 'unprotected wildlife' should be abolished.

3. Removing protections for non-native species (especially deer) from the Wildlife Act

We strongly urge the Independent Review Panel to recommend the removal of all protections for non-native species from a revised *Wildlife Act*. Non-native species in the Act currently include Hog, Red, Sambar, Fallow, Rusa, Chital, Sika and Wapiti deer, as well as some quail, pheasants and partridges.

The protections which the *Wildlife Act* currently offers deer actually contradict (either legally or by perception) a range of legislation aimed at protecting Victoria's natural heritage. That contrary legislation includes:

- Victoria's *National Parks Act 1975*, which obliges Parks Victoria to "*preserve and protect indigenous flora and fauna in [a national or state] park*" and, more specifically, "*exterminate or control exotic fauna in [a national or state] park*". The NP Act gives a similar level of protection to regional and other parks. In addition, park management plans required by the NP Act generally identify deer as a highly damaging invasive species.
- Victoria's *Flora and Fauna Guarantee Act 1988*, which listed Sambar Deer as a *Potentially Threatening Process*. The listing identified threats to a broad range of ecological vegetation classes in Victoria, including: several Warm Temperate Rainforest communities, Littoral Rainforest, Alpine Bog Community, Fen (Bog Pool) Community, Riparian Shrubland, Riparian Forest, Estuarine Wetland, Sand Sheet Grassland, Salt Marsh and Swamp Scrub.
- The Federal *Environment Protection and Biodiversity Conservation Act 1999*, which lists a number of threatened species impacted by deer.

More recently, given the rapid growth and spread of deer populations (especially Sambar, Red, Hog and Fallow Deer), botanists and ecologists have identified many more Ecological Vegetation Classes affected by deer. Indeed deer are impacting almost every native plant and vegetation community in Victoria, a situation that has significant and growing habitat implications for native fauna.

In addition, deer seriously impact farms, orchards and vineyards, have the capacity to spread a number of animal diseases and are a danger on our roads.

During the development of Victoria's Deer Management Strategy, there were increasingly strong calls from the public for action on deer. In 2019, a letter⁴ signed by around 100 community conservation organisations, scientists and agriculture businesses, was addressed to three Ministers responsible for deer management and/or deer impacts.

Among other things, the letter called for "appropriate legislative and regulatory changes", primarily:

- Amend both the *Wildlife Act 1975* and the *Catchment and Land Protection Act 1994* to recognise all deer as pest species. This would align these Acts with Victoria's *National Parks Act 1975* and *Flora and Fauna Guarantee Act 1988*, the federal *Environment Protection and Biodiversity Conservation Act 1999*, and Victoria's biodiversity strategy: *Protecting Victoria's Environment – Biodiversity 2037*.
- Remove regulatory barriers affecting the capacity of public land managers to control deer.

Since that time, a number of significant changes to deer management have taken place:

- In response to pressure from landowners, a Governor in Council declaration was made to make deer (excluding Hog deer) unprotected on private land so landowners could take control of feral deer on their properties.
- In 2020, Victoria's final Deer Control Strategy prescribed the action to "*Authorise public land managers to undertake deer control as required without the need to obtain individual authorisations under the Wildlife Act*". This removed a burdensome restraint on effective deer management in national parks and other public land.
- Following the 2019-20 bushfires in Victoria, urgent funding from the Victorian Government for post-fire biodiversity recovery has resulted in large scale aerial and ground shooting of pigs, goats and deer, resulting in over 6,000 deer being culled to date.

Most recently, a Senate Environment and Communications References Committee report: *Impact of Feral deer, Pigs and Goats in Australia (2021)*⁵, made the bipartisan, unanimous recommendation that all Australian jurisdictions make any necessary changes to their existing legislative and regulatory frameworks to: "*ensure that wild deer are treated as an environmental pest; maximise the ability of landholders to control feral deer on their land; and maximise the ability of park managers to control feral deer in World Heritage Areas and National Parks.*"

It is clearly time to remove the anachronistic, and now largely by-passed, protections for deer in the Wildlife Act. Victoria's final Deer Control Strategy recognised (p. 6) that "*community feedback requested that ... deer should be declared pest animals*". However, the strategy fell a little short of those community expectations, simply saying that it proposes to "*review the status of some deer species*". That proposed review is effectively this current review of the Wildlife Act.

Recommendations

- **The VNPA strongly asserts that it is time to remove all protections for non-native species from the Wildlife Act, and put into effect the Senate recommendation that all deer are treated as an environmental pest, across all jurisdictions.**

⁴ <https://vnpa.org.au/wp-content/uploads/2019/05/Open-letter-Controlling-deer-in-Victoria-April-2019.pdf>

⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Feral_DeerPigGoat2019/Report

4. Protecting wildlife habitats under the Wildlife Act

The Wildlife Act lacks direct general protections for wildlife habitats. The offence to damage, disturb or destroy any wildlife habitat is currently found under the Wildlife Regulations 2013⁶. To strengthen protections, the offence should be upgraded to the legislation and the penalties should be increased. Higher penalties should apply for wilfully damaging threatened species habitat.

The VNPA also notes that under the wildlife regulations, timber harvesting operations authorised under the *Sustainable Forests (Timber) Act 2004* are currently exempt from destroying wildlife habitats. Any exemptions for the native forest logging industry should be abolished, and in light of recent widespread landscape scale fire, the Victorian government should bring forward, as soon as possible, the transition of the native forest logging industry to plantation timber only production.

In addition to providing general wildlife and wildlife habitat legal protections, the Wildlife Act is also in need of some optional tools to assist with the protection or conservation of wildlife and their habitats. One approach could be to seek to create tools that will complement those already available under the *Flora and Fauna Guarantee Act 1988*. The FFG Act provides for:

- *Action statements* (for threatened species and threatening processes)
- *Flora and fauna management plans* (applicable to **any** taxon or community of flora or fauna or potentially threatening process for the purpose of conservation, restoration etc.)
- *Critical habitat determinations* (applicable to listed threatened species and communities, and must be followed by a critical habitat agreement, such as a public authority management agreement, to provide for the long-term conservation and protection of the critical habitat)
- *Habitat conservation orders* (provides for a Ministerial power to order the conservation, protection or management of flora, fauna, land or water within a critical habitat or proposed 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.)

The Wildlife Act could benefit from having tools such as “wildlife protection zones” and “wildlife protection orders” to allow for specific protections for wildlife and wildlife habitats in specific areas and circumstances. Wildlife protection zones and orders could apply to any fauna species and could complement FFG provisions for critical habitat determinations and habitat conservation orders (which are specifically intended for the conservation of threatened species).

Wildlife protection zones and orders could be particularly useful in protecting wildlife in animal colonies. For instance, if we wanted to better protect the Little Penguins at St Kilda Pier, a “zone” could be declared around the pier and then specific “orders” (eg. not to touch the penguins, and to maintain 1 meter distance from the penguins) could apply to the penguin colony at the pier.

The tools should also be flexible – wildlife protection orders could apply to a species across Victoria without necessarily needing to be linked to a zone. And wildlife protection zones could also optionally serve as exclusion zones (which could be useful for beach nesting birds) or could also be used in conjunction with protection orders to quickly apply protections to wildlife habitat at imminent threat (such as a patch of forest containing a population of koalas or other animal under threat from a logging operation). The provisions for wildlife protection zones and orders should also be able to be applicable

⁶ <https://www.legislation.vic.gov.au/in-force/statutory-rules/wildlife-regulations-2013/005>

to any animal taxon so as to allow for the protection of specific invertebrates and other species not otherwise defined and protected as wildlife under the Act (eg. such as Giant Spider Crabs which are currently under strong fishing pressure during their annual mass migration event⁷.)

Having clear specific wildlife protection orders can have high community value. For example, the dedicated volunteers at St Kilda pier who try to keep the public at safe distances from the penguins currently have nothing solid in legislation to educate people on the wildlife rules. Wildlife protection orders could make members of the community feel a greater sense of backing for wildlife protection.

Currently the Act allows DELWP to undertake research or works for “improving, conserving, or maintaining wildlife habitat”, and regulations made under the Act “may define the limits of any wildlife habitat, sanctuary, reserve, or other locality for the purposes of this Act”. There is also a provision where the Governor in Council can declare “the habitat of any taxon of wildlife existing on any lands of the Crown to be a prohibited area”. All such provisions relating to the definition and protection of wildlife habitats should be grouped together and refreshed and updated (e.g. to aid the implementation of any new tools under the Act and to reflect upcoming changes to Victoria’s public land legislation) to increase wildlife habitat protection options.

The legal tools available under the FFG Act have been in force now for over 30 years and have basically remained unused⁸. There should be a genuine intention that any new tools made available under the Wildlife Act will actually be implemented. The establishment of a scientific advisory committee under the Wildlife Act could for example allow the committee to recommend the use of tools for the protection of specific wildlife species and habitats (for more discussion on a potential scientific advisory committee for the Wildlife Act see section 6). This could include the ability to recommend DELWP to create *flora and fauna management plans* under the FFG Act as these plans are not restricted to threatened species but can be applied to any flora and fauna for the purposes of conservation and restoration.

Recommendations

- **The offence to damage, disturb or destroy any wildlife habitat (currently under the Wildlife Regulations 2013), should be upgraded to the legislation and the penalties should be increased. Higher penalties should apply for damaging threatened species habitat.**
- **Native timber harvesting operations should not be exempted from damaging, disturbing or destroying wildlife habitat.**
- **In addition to providing general wildlife and wildlife habitat protections, the Act should also provide tools such as “wildlife protection zones” and “wildlife protection orders” to allow for specific protections for wildlife and wildlife habitats in specific areas and circumstances.**
- **A scientific advisory committee or panel for the Wildlife Act should be able to make recommendations to DELWP to make *flora and fauna management plans* under the FFG Act (these are applicable to *any* taxon or community of flora or fauna or potentially threatening process for the purpose of conservation, restoration etc.)**

⁷ <https://vnpa.org.au/strange-yet-spectacular/>

⁸ <https://vnpa.org.au/its-tool-time/>

5. A more transparent and accountable Authority to Control Wildlife system

One of the most controversial aspects of the Wildlife Act is its very murky Authority to Control Wildlife system. From 2009 to 2019 permits to control wildlife were issued for close 100 different species of native fauna⁹ such as Wombats, Australian Fur Seals, Satin Bowerbirds and Black Swans. It is unclear which authorisations were for lethal control and which were for non-lethal control. While DELWP claims that “it is DELWP policy that all practical non-lethal control options must be exhausted before an ATCW for lethal control can be applied for”, DELWP does not disclose data to differentiate between how many authorisations were for lethal controls versus non-lethal controls.

This is a significant issue, as “control” permits have even been issued for threatened species such as Brolga, Grey-headed Flying Fox, White-eyed Duck, Magpie Goose, Broad-shelled Turtle and Murray River Turtle. There should be a clear provision in the Act that the destruction or dispersal of a listed threatened species by an ATCW permit should be prohibited, unless there is explicit approval from the environment minister for each application.

There are also many other species of concern that have been subject to control permits, such as Gang-gang Cockatoos and Red-necked Wallabies, both of which are considered to be in decline. Emus are another concern – DELWP considered emus as 'near threatened' on their advisory list but at the same time from 2009-2019 it handed out 816 permits to control 10,927 Emus.

Other issues that have been raised in public discourse include controversial commercial incentives to control kangaroos, the lack of monitoring of species subject to ATCW control permits, and the lack of reporting responsibilities for applicants to notify DELWP on the outcome of authorisations. We note that there was a review¹⁰ in 2018 of the ATCW system, however formal recommendations are yet to be developed and no government response has been provided.

The Issues Paper raises a question about “wildlife management plans”. Wildlife management plans for the control of native wildlife should not be allowed for under the Wildlife Act without strict conservation protection criteria– they have the potential for perverse outcomes such as the profit driven Kangaroo Harvest Management Plan. It is important that each application for an ATCW is considered separately with proper consideration of the necessity of the destruction or dispersal and the impacts on the species.

Criteria should include:

- Population management for native fauna should only occur where it is scientifically demonstrated that population numbers are out of natural balance to the point that they are harming the ecosystem or are a clearly unacceptable risk to agriculture, health and safety. Culling of native fauna should only be used as an option of last resort.
- Population management, including by culling, should not be driven by recreational interests or the provision of commercial products.
- Population management should be undertaken systematically and professionally based on best available science and subject to rigorous evaluation. The culling should be undertaken in accordance with **an approved management plan** and supervised by appropriate departmental staff.

⁹ https://www.vic.gov.au/sites/default/files/2021-06/ATCW-Data_annual-data-2009-2019.pdf

¹⁰ <https://engage.vic.gov.au/atcwreview>

Management plans for conservation are already dealt with under the FFG Act which has a provision for “flora and fauna management plans” and these can apply to *any* taxon or community of flora or fauna (threatened or not).

Recommendations

- **Clear principles for Authority To Control Wildlife approval processes need to be developed and legislated.**
- **ATCW approval processes require increased transparency & data collection, including clear differentiation between how many ATCW permits have been approved for lethal controls versus non-lethal controls.**
- **The destruction or dispersal of listed threatened species by an ATCW permit should be prohibited, unless there is explicit approval from the environment minister for each application.**
- **The Act should strictly prohibit commercial incentives to control wildlife – including kangaroos.**
- **ATCW approvals should be based on the best available information and followed up by monitoring of wildlife & quality assurance of decision making.**
- **ATCW applicants should be required to report back on the outcomes of the permit and these results should be published annually.**
- **Wildlife management plans for the control native wildlife need not be allowed for under the Wildlife Act, other than by referral to the FFG Act. Management plans for conservation are already dealt with under the FFG Act which has a provision for “flora and fauna management plans” and these can apply to *any* taxon or community of flora or fauna (threatened or not). Each application for an ATCW should be considered separately with proper consideration of the necessity of the destruction or dispersal and the impacts on the species.**

6. Recognising the rights and interests of Traditional Owners and Aboriginal Victorians

The VNPA has been engaged in encouraging joint management programs for Traditional Owners for some years now, and encourage clear recognition of Aboriginal cultural associations with wildlife in the revised Act.

In this regard, the revised Act should consider:

- Strong protection for species of cultural significance to recognised Traditional Owners and other Aboriginal people. There would be many instances where such protection might be appropriate, and very strong penalties for interfering with Wedge-tailed Eagles (“Bunjil” to many Aboriginal people in Victoria) would, we anticipate, be one clear instance where such protection should apply.
- Aboriginal people, especially recognised Traditional Owners, should have a role in the management decision making, and management, of native species. This would particularly apply to species of cultural significance, including returning culturally significant species to areas where they once featured.
- The taking of native species of cultural significance, especially for the maintenance of cultural education programs, should be allowed unless the species is listed as a threatened species.
- The taking of native species in the wild for commercial purposes should not be allowed.

- The recognition and re-establishment of Aboriginal language names for native species should be encouraged by the Act.
- In the case of national, state and wilderness parks, all of the above would be in the context of a TOS Act Recognition and Settlement Agreement (RSA) and a park management plan jointly developed between the State and Traditional Owners, as required by the *National Parks Act 1975*.
- There should be a clear link between a new Native Wildlife Act and agreements reached under the *Traditional Owner Settlement Act 2010*, within the context of provisions of the *Flora and Fauna Guarantee Act 1988* and the *Environment Protection and Biodiversity Conservation Act 1999*.
- It would be useful if the revised Wildlife Act included an obligation of the government to engage in public education programs about the importance of wildlife protection, including the protection of species important to Aboriginal people.

6. A scientific advisory committee for the Wildlife Act

The VNPA supports the idea presented in the Issues Paper of setting up a Wildlife Act advisory committee or panel/s to provide expert guidance on the implementation of the Act. A committee could include experts relevant to the objectives of the Act such as veterinarians, ethicists, wildlife carers, ecologists, land managers and captive breeding program managers. The FFG Scientific Advisory Committee could also potentially function with a dual or consulting role.

An advisory committee under the Wildlife Act could recommend population surveys of threatened species or other fauna, it could recommend the use of tools for protecting wildlife and wildlife habitats, and could make recommendations to the Minister or DELWP to exercise provisions currently under section 29 of the Act to direct the improving, conserving, or maintaining of wildlife habitat.

Recommendations

- **The Act should include provisions for the establishment of a scientific advisory committee or expert advisory panels to provide guidance.**
- **A scientific advisory committee under the Act could be given the ability to do the following:**
 - **make recommendations to DELWP to undertake monitoring and population surveys of specific species such as threatened species, species likely to be in decline, and species subject to an ATCW**
 - **make recommendations to the Minister or DELWP to direct the “improving, conserving, or maintaining” of wildlife habitat under section 29 of the Act**
 - **make recommendations to DELWP to make *flora and fauna management plans* under the FFG Act (these are applicable to *any* taxon or community of flora or fauna or potentially threatening process for the purpose of conservation, restoration etc.)**
 - **make recommendations to DELWP to implement wildlife and wildlife habitat protection tools under the Wildlife Act such as a wildlife protection order and/or wildlife protection zone**
 - **provide oversight and advice to the Authority to Control Wildlife system decisions and processes.**
