INDEPENDENT REVIEW OF THE WILDLIFE ACT 1975

Wildlife Victoria Submission

Part A & Part B

WILDLIFE VICTORIA

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INDEPENDENT REVIEW OF THE WILDLIFE ACT 1975

Wildlife Victoria Submission: PART A

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(a) INTRODUCTION

Who we are

Wildlife Victoria has provided the Victorian community with a Wildlife Emergency Response service for over 30 years. Our Wildlife Emergency Response Service receives more than 80,000 requests for help and assists approximately 50,000 animals a year.

This rescue service relies on an extensive state-wide network of rescue and transport volunteers and veterinarians who provide pro-bono services for wildlife and the licenced carers and shelters who accept animals into their care for rehabilitation and release.

In addition to the rescue service we provide, we advocate for wildlife whenever their welfare is under threat and provide the Victorian community with the knowledge and skills they need for peaceful and positive co-existence with wildlife and by facilitating positive community attitudes toward wildlife.

Our submission

Wildlife Victoria is grateful for the opportunity to make a submission to the Independent Review of the Wildlife Act (the Review).

We note that the Panel will examine the following issues in the Review:

- Whether the Act's current objectives and scope are appropriate, comprehensive and clear;
- Whether the Act establishes a best practice regulatory framework for achieving its objectives;
- Whether the Act appropriately recognises and protects the rights and interests of Traditional Owners and Aboriginal Victorians around wildlife and their role in decision making;
- The best ways to encourage compliance with the Act, including whether offences and penalties under the Act are appropriate to punish and deter wildlife crime.

We note that the Panel has indicated that it will not be examining how the Department of Environment, Land, Water and Planning (DELWP) and other responsible organisations administer the Act, including their policies, organisational structures and procedures.

We have identified several critical failures in the Wildlife Act. These include chronic and systemic failures in governance, implementation and enforcement of the Act. In our view it is not possible to undertake a proper examination of the reasons why the Act has failed to protect wildlife without taking these matters into account - including DELWP's performance of its regulatory functions under the Wildlife Act over the last four decades.

We have offered our detailed assessment of these failures and how they impact the effectiveness of the Wildlife Act in meeting its stated objectives. We have recommended any new Wildlife Act make provision for a new and independent regulator.

Part B of our submission relates to offences and penalties under the Wildlife Act, and the role of Traditional Owners.

We are, of course, happy to provide further submissions and evidence including references and research materials relied on, if required.

(b) EXECUTIVE SUMMARY

There is overwhelming scientific evidence that human activity, over-exploitation and climate change and its impacts represent an existential threat to ecosystems as well as biodiversity including terrestrial wildlife across the planet.

Australia, in particular, has a poor environmental record and one of the worst records when it comes to species extinctions and ecosystem decline.

This is because powerful economic interests have a disproportionate influence in environmental decision-making and are able to circumvent weak and poorly enforced environment and biodiversity laws *(OECD 2019, Review of the EPBC Act 2020)*.

This is key to understanding why the Wildlife Act has failed and continues to fail to protect Victoria's wildlife. Regulatory capture by sectional interests has allowed landowners, farmers and shooters to effectively write Victoria's wildlife laws for the last 150 years, ensuring they remain weak and poorly enforced.

The IPBES Global Assessment of Biodiversity in 2019 and the Convention on Biological Diversity's Global Diversity Outlook 5 in 2020, have urged signatories including Australia to make transformational changes to address biodiversity decline including "strengthening environmental laws and policies and their implementation".

The Commonwealth government has abdicated its responsibility to provide national leadership on protecting the environment and biodiversity.

With this review of the Wildlife Act, Victoria has a once in a lifetime opportunity to make world-leading transformative changes to the way Victoria's wildlife and biodiversity is managed and regulated and protected from the emerging threats of climate change.

In our view this can only be achieved via a fundamental re-calibration of the policy foundations of the Act by:

- Emphasising the protection and conservation (at an ecosystem level) of the diversity of wildlife over the lethal control and exploitation of wildlife;

- Introducing a public trust or interest principle that creates obligations on the state and its agencies to manage wildlife for the benefit of all Victorians, including future generations - not just the influential few - and provide for greater public participation, transparency and accountability;

- Creating a new and independent regulator to effectively govern, implement and enforce a strengthened regulatory framework which supports responsible wildlife management and builds social acceptance and tolerance of wildlife.

We have identified multiple categories of failure both in the design and architecture of the Wildlife Act and systemic failures in operation, governance, implementation and enforcement of the Wildlife Act that demonstrate the need for urgent reform.

Specifically, we advocate that the Wildlife Act should be replaced with legislation that provides strong and effective legal protections for wildlife and that DELWP should be replaced with a new and independent regulator with sufficient powers to ensure those laws are properly regulated and enforced.

In addressing the issues raised by the issues paper, we comment on a wide range of issues that we believe provides important background and context for our submission.

We have made recommendations for reform not just of the Wildlife Act but broader reforms to Victoria's biodiversity laws to promote greater consistency and integration as Victoria moves towards a more tolerant and compassionate approach to its wild animals and birds.

(c) RECOMMENDATIONS

The Wildlife Act needs to be simplified, strengthened and ENFORCED.

We make the following recommendations for changes to the Wildlife Act to achieve those objectives in Part A of our submission.

Summary

Recommendations are made across 11 key areas, summarised as follows:

Recommendation Area	Number of Recommendations	Recommendation Reference
1. The Name	1	#1.1
2. Policy Foundation	2	#2.1, #2.2
3. Structure and Organisation	7	#3.1, #3.2, #3.3, #3.4, #3.5, #3.6, #3.7
4. Governance and Institutions	4	#4.1, #4.2, #4.3, #4.4
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7. Obligations and Duties	5	#7.1, #7.2, #7.3, #7.4, #7.5
8. Reforms and Repeals	2	#8.1, #8.2
9. Access to Justice	1	#9.1
10. Other Recommendations	3	#10.1, #10.2, #10.3
11. Transition to Co-Existence	1	#11.1

The Recommendations

1. The Name

- Recommendation # 1.1: The new Act be called the Wildlife Protection Act

2. Policy Foundation

- Recommendation # 2.1: That a new overarching Public Interest Principle be incorporated into the Act to ensure the public interest is the primary interest for consideration in all wildlife policy and decision-making

- Recommendation #2.2: That there be a shift away from the current emphasis in the Wildlife Act on control and exploitation in favour of a regulatory approach that emphasises the welfare, protection, conservation and restoration of wildlife and their habitats with the goal of promoting social tolerance and co-existence with wildlife

3. Structure and Organisation

- Recommendation #3.1: That the Wildlife Act remain a stand-alone piece of legislation

- Recommendation #3.2: That the Wildlife Act be simplified to include only native species of wildlife in Victoria, including stubble quail and native water bird species currently listed as game

- Recommendation #3.3: That threatened species remain under the Flora and Fauna Guarantee Act established (FFGA)

- Recommendation #3.4: That all references to game, game management and hunting and all related provisions be removed from the Act

- Recommendation #3.5: That responsibility for the nature reserve system and related provisions be incorporated into the Flora and Fauna Guarantee Act (FFGA)

- Recommendation #3.6: That the objectives, principles and regulatory framework of both the Wildlife Act and the FFGA be uplifted, standardised and harmonised.

- Recommendation #3.7: That there be an independent Review of the Wildlife Act and the FFGA every 3 years

4. Governance and Institutions

- Recommendation #4.1: That the Act establish a new and independent statutory regulator with a name that reflects its role and function such as The Office of Wildlife Protection or Wildlife Protection Authority

- Recommendation #4.2: That consideration be given to establishing an independent statutory regulator under the FFGA

- Recommendation #4.3: That a Board of Governance be established to provide strategic direction and oversight of the day to day regulatory functions of the new independent regulator under the Act

- Recommendation #4.4: Alternatively, that overarching legislation be created to establish an independent Biodiversity Commission with responsibility for oversight of both the Wildlife Act and the FFGA, and to oversee the implementation of the state's Biodiversity strategy and co-ordinate broad scale conservation programs and efforts across the state

5. Strategy and Advice

- Recommendation #5.1: That the Act create a mechanism for the Development of a State Wildlife Action Plan

- Recommendation #5.2: That the Act establish an Independent Scientific Expert Panel to provide expert evidence on matters relating to wildlife management

- Recommendation #5.3: That the Act establish a Wildlife Advisory Council to provide community perspectives and input on matters relating to wildlife management

6. Objectives and Principles

- Recommendation #6.1: That the overarching purpose or objective of the Act be clarified to establish a legal and administrative structure to enable and promote the effective protection and conservation of Victoria's wildlife and the responsible management of human wildlife conflict.

- Recommendation #6.2: That a number of secondary purposes/objectives be incorporated in the Act to include:
  - To recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; to foster the involvement of these First Australians in land management; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes
  - To establish independent institutions to gather evidence, provide oversight of the implementation of the Act and provide advice to decision-makers;
  - To ensure fair and efficient decision-making; government accountability; early and ongoing community participation in decisions that affect the environment and future generations; and improved public transparency, understanding and oversight of such decisions and their outcomes;
  - To recognise the impact of current and emerging threatening processes as well as climate change on the health and persistence of Victoria's wild species and to mitigate those impacts
  - To promote policies and programs which encourage and enable co-existence and non-lethal solutions to human-wildlife conflicts

- Recommendation #6.3: That a set of guiding principles including both the prevention and precautionary principles be incorporated to guide decision-making under the Act

7. Obligations and Duties

- Recommendation #7.1: That there be a mandatory duty imposed on decision-makers to use their powers to achieve the Act's objects and take into account the guiding principles in all decision-making under the Act

- Recommendation #7.2: That there be a recognition of the Sentience of wildlife in the Act

- Recommendation #7.3: That there be a General Duty of Care which also includes 4 specific duties relating to wildlife be incorporated in the Act

- Recommendation #7.4: That the Act specifically include reference to traps and other equipment prohibited in other animal welfare legislation directly to the wildlife Act

- Recommendation #7.5: That the Act create a mechanism allow for the incorporation of mandatory Codes of Practice to set minimum standards for animal welfare for both the care and lethal control of wildlife

8. Reforms and Repeals

- Recommendation #8.1: Repeal S7 of the Wildlife Act

- Recommendation #8.2: Reform of S28A (1) ATCW permit system including strengthening key requirements and controls as well as inspection and enforcement activities including:
    - Re-naming ATCW permits "Wildlife destruction permits"
    - Requiring that landowners are provided with education and technical assistance available in relation to suitable non-lethal methods of control;
    - Requiring proof that non-lethal methods have been exhausted before lethal control is authorised;
    - Eliminating the exceptions available to applicants to having to demonstrate non-lethal methods have been exhausted;
    - Requiring substantiation of the wildlife damage caused and that the damage was caused by the species targeted in the application;
    - Requiring mandatory competency and accuracy assessments and accreditation for all permit applicants and holders;
    - Requiring mandatory training and competency requirements and accreditation in the methods for killing dependent orphaned young under the Code of Practice as specified in the AVMA Guidelines for Euthanasia 2016;
    - Requiring notice be given to neighbours of the intention to apply for an ATCW permit, along with rights of objection and access to alternative dispute resolution options;
    - Provision of appeal rights to challenge DELWP decisions granting ATCWs by those whose interests are affected by those decisions;
    - Limiting the length of time permits are issued for to a maximum of 12 months;
    - Requiring that all ATCW permit renewals be subject to further application and assessment with an immediate end to the practice of automatic renewals of permits;
    - Requiring that applicants seeking more than 2 consecutive 12 month permits develop and submit a wildlife management plan;
    - Establishing of a public register of ATCW permits issued providing minimum details of which council area, the number and species of wildlife subject to lethal control;
    - Introducing legally enforceable mandatory Code of Practice for the lethal control of kangaroos, wallabies and other wildlife species;

- Reinstatement of the requirement for returns and other reporting requirements under ATCW permits;
- Provision for transparent inspections and monitoring systems and the quantitative reporting of animal welfare outcomes;
- Provision for audits and evaluation of ATCW permit system program objectives;
- The introduction of harsher penalties including higher fines, imprisonment and the strengthening of licence suspensions and revocations to ensure that those penalties act as a sufficient deterrent for wrongful behaviour.

9. Access to justice

- Recommendation #9.1: That the Act include provision of:
  - Alternative Dispute Resolution procedures to assist in resolving conflicts over wildlife
  - Rights of appeal to VCAT for those affected by the decision to grant an ATCW permit
  - Rights for interested community members to seek merits review of key decisions
  - 'Open standing' for community members and groups to seek judicial review of legal errors.
  - 'Open standing' to pursue injunctive relief or civil enforcement for a breach of the Act or regulations.
  - Protective costs orders in legal proceedings brought in the public interest

10. Other recommendations

- Recommendation #10.1: There be provision of strong and effective public participation provisions at all key stages of policy and decision-making under the Act

- Recommendation #10.2: That transparency obligations be strengthened including obligations to provide timely, easily accessible public information on all wildlife management policies, actions and decisions

- Recommendation #10.3: That there be provision of strong accountability measures including systematic, independent auditing and evaluation of all wildlife management policies and programs.

11. The Transition to Co-existence

- Recommendation #11.1: That funding bet set aside to establish a multi-disciplinary advisory body or project to investigate and develop a range of strategies, policy responses and programs to incentivise the non-lethal methods of resolving human wildlife conflict and establish a sustainable co-existence and conservation approach to wildlife management

SECTION 2: CASE FOR CHANGE

- Part A: Background and Context
- Part B: The Urgent Need to Protect Wildlife and Their Habitats
- Part C: Contemporary Values and Expectations
- Special Mention: The Pest Control Narrative

THE CASE FOR CHANGE
(d) PART A: BACKGROUND AND CONTEXT

Wildlife Killing and Impact on Species

Colonial legacy

The control and exploitation model of wildlife management that underpins the Wildlife Act has its roots in Victoria's colonial history and the prevailing attitudes and values of that time.

Convinced of their own superiority and armed with private property laws, colonists and settlers systematically dispossessed first peoples and set about "improving" the land by clearing and replacing what they regarded as "useless" native vegetation with grass for sheep, cattle and grain in an effort to re-create British and European farming landscapes *(Taylor 2021)*.

The legacy of these attitudes and the vast ecological destruction they wrought across Australia is still with us today, embedded in the provisions of the Wildlife Act that allow for the widespread lethal control of wildlife and its endorsement and support of the commercial kangaroo meat and skins industry in Victoria.

These are not peripheral issues. This history is critical to understanding the policy foundations of the Wildlife Act 1975 and the entrenched cultural beliefs that have shaped and continue to shape its policy foundations, current structure, governance and operation.

The history of wildlife killing in Australia

In the days before controlled pasture studies, it was orthodox belief that all herbivores competed for the same feed/pasture. This put kangaroos, wallabies and wombats in direct competition with sheep and cattle for pasture. As fencing became more common, farmers also began blaming kangaroos and wombats for damage to fencing *(Peterson 1979)*.

In response to landowner and farmers demands, all state governments created laws in the late 1800s which first incentivised and later mandated the killing of kangaroos and wallabies as well as bandicoots, quolls and potoroos and dingoes as "vermin". At the same time, there was a rampant fur trade which also contributed to the decimation of many species.

We include the following extracts from available historical records which serve to illustrate the scale of slaughter of just macropods species in NSW between 1840 and 1940 *(Boom, Ben-Ami 2010)*:

- **1840-1850**: Eastern grey Kangaroos in NSW and Victoria were reduced to low numbers by large-scale shooting.
- **1887-1907**: Eight million kangaroos and wallaroos killed for bounties in Qld.
- **1880s**: All states in Australia introduced legislation to eradicate all kangaroos and wallabies.
- **1880s**: NSW and Victoria declared kangaroos and wallabies "vermin" and established bounty systems.
- **1884**: Bounties for 800,000 kangaroo scalps and 330,000 wallabies were paid in NSW.
- **1884-1890**: Bounties for 8 million kangaroo and 4 million wallaby scalps were paid in NSW.
- **1890-1900**: Bounties for 3 million kangaroos were paid in NSW
- **1890-1901**: Bounties for 8.5 million wallaby scalps were paid in NSW
- **1902**: Local stock boards paid for 665,607 wallaby scalps in Victoria
- **1883-1920**: Bounties for 3 million bettongs and potoroos were paid in NSW. Three of these species are now extinct in NSW.
- **1884-1914**: Bounties for 640,000 brush-tailed rock wallabies were paid in NSW. This species is now listed as vulnerable in NSW.
- **1911**: Bounties for 600,000 kangaroo scalps were paid in NSW.
- **1935-1936**: 1.25 million red kangaroo skins were traded from WA into the Sydney skins market.

In Victoria, the first of these Acts was the Vermin Destruction Act 1890. This Act both mandated the eradication of "vermin" which included all wallaby species and created a government-funded bounty system to incentivise these efforts.

These species were not the only native species that were decimated by this indiscriminate and uncontrolled killing and the fur trade.

Predators such as dingos, wedge-tailed eagles and sea eagles were shot and poisoned on an industrial scale. Wombats, bilbies, rat kangaroos, potoroos, bettongs and emus-also regarded as agricultural pests-were subject to widespread trapping, shooting and poisoning programs.

These activities as well as the massive levels of ring-barking of trees, land clearing and burning of native vegetation as well as predation by foxes and cats led to waves of extinctions and large-scale reductions in ranges and numbers of native species *(Dickman 2015)*.

The feathers and fur trades

Native birds were shot and killed for their feathers to supply a global "plume boom" which occurred between 1880 and 1914. Hundreds of millions of birds were killed worldwide for fashion items and millinery.

In Australia, lyrebirds, egrets, herons, parrot and albatross populations were reduced to quasi-extinction levels and were subject to some of the earliest legal protections from hunting under the Game Acts in Victoria.

There was also an international trade in live native birds where hundreds of thousands were exported overseas in appalling conditions. This live trade industry only ended in 1959 when the Commonwealth government finally banned it.

The fur trade was also rampant at that time. No native animal was spared.

Koalas, which were described by a NSW politician at the time as a "pest" that were "breeding like bacteria" were nearly hunted to extinction, only saved from this fate by American President Herbert Hoover who banned the import of koala skins in 1927 *(Australian Koala Foundation 2018).*

Between 1888 and 1927, approximately 8 million koalas were killed to supply the fur trade. Nearly a century later current koala populations are estimated to be 1% of their pre-settlement numbers *(Australian Koala Foundation 2018)*.

Platypus were also labelled as a pest and shot both commercially for their skins and as damage mitigation from the early 19th century until legislation was introduced to permanently protect platypuses in 1952 *(Hawke, Kingsford 2016).*

Like the seal, whale, penguin, rock wallaby and koala populations of Australia, the impact of the commercial and non-commercial shooting of platypus resulted in local extinctions and decimation of populations from which they have never recovered.

The fur trade In Victoria

From the early days of settlement in Victoria, "native game" was viewed as an unlimited resource to be hunted for food and sport and exploited for whatever commercial value they had.

The sealing industry clubbed or stabbed 100,000s seals including breeding seals along the southern coastline of Australia including Victoria for fur, skins and oil to fuel the industrial revolution. Seal populations were virtually wiped out in just 30 years 1790 and 1820 by uncontrolled killing *(Gill 1967)*.

The whaling industry which operated from 1840 decimated whale populations in the Southern Ocean to meet the global demand for oil to power machinery *(Gill 1966, Lines 1972).*

Penguin populations were also targeted during this period, particularly king and royal penguins. They were trapped, killed and boiled down for meagre amount of oil they produced. One blubber merchant killed around 3,000,000 on Macquarie Island over 50 years between 1870 and 1920 leaving only one colony of 4,000 King penguins left *(New Scientist 22/2/12)*.

Victoria's feather and fur trades which commenced in the 1840's but grew exponentially in the 1880's resulted in millions of wild animals and birds being shot and trapped and their feathers and skins exported to overseas markets in the US and London.

Extracts from newspaper articles in the Argus (Melbourne) and the Brisbane Courier in 1880, 1903, 1915 and 1927 provide an indication of the magnitude of the fur trade in Victoria:

- **1880-1889**: a total of around 18 million possums skins were exported to the London and New York markets over this 10-year period.
- **1900**: 1,534,433 possums skins and 186,521 wombat (koala) skins exported to the London Market
- **1901**: 1,941,361 possums skins and 313,526 wombat (koala) skins exported to the London Market
- **In 1902**: 3,064,631 possum skins, 229,789 wombat (koala) skins and 19,000 quolls exported to London.
- **1903**: 583,610 kangaroo skins were sold in the London market

Lucas and Le Soeuf provided a more detailed account of the number and type of skins exported from Melbourne in 1906. They recounted that in that one year alone, exported native animal skins included 873,837 Brushtail and Mountain possum skins, 9,275 Whiptail Wallaby skins, 57,933 Koala skins, 40,023 Grey Kangaroo skins, 27,620 Wallaroo skins, 31,547 Red Kangaroo skins, 352,412 Red neck Wallaby skins, 41,265 Swamp Wallaby skins and 92,590 Rock Wallaby skins. This amounted to a total number of native animal skins exported in one year of 1,526,502 *(Lucas and La Soeuf 1909).*

In the USA the total number of skins sold in the three years between 1919 and 1921 was 107,689,927. Of these, 4,265,621 were common possum skins, 1,321,623 ringtail possum skins and 1,722,588 were koala skins. In just this 3-year period a total of 7,309,832 native animal skins were sold in US markets *(The Argus 21/6/1927).*

These figures do not account for the skins traded through the Sydney, Brisbane, Adelaide or Perth markets, the wounded and escaped animals, the countless millions of joeys and young animals that were killed or perished without their parents or the marked and damaged skins that were rejected for sale *(Downes 2020)*.

Concerns about overexploitation

Articles in the Brisbane Courier 3/10/1903 and The Argus 3/6/1913 noted the extent to which the fur trade and eradication programs were decimating wildlife populations across Victoria.

The 1903 article noted that whereas wombats were plentiful all over Victoria in the 1870s, they were now only found in “rough, sparsely populated areas” and that despite the Victorian government enacting protections for platypuses, they were still being hunted and killed across Victoria in large numbers.

The 1913 article described the “lamentable thinning” of the numbers of possums in the mountainous areas of Victoria and that koalas, red and grey kangaroos and native cats (quolls) had been hunted so extensively that the Victorian government had had to impose a year-round ban on hunting them.

The article in the Argus dated 21/6/1927 went so far as to call for a Royal Commission into the slaughter of wildlife for the fur trade, describing the level of destruction as a “holocaust” which needed to be curtailed by legal protections in all states.

Government responses: History of wildlife legislation in Victoria

Early Victorian governments sought to manage wildlife through 2 distinct types of legislation. One mandated slaughter. The other mandated protection.

The first type of legislation sought to mandate the destruction of certain types of animals both native and introduced. In line with other states, Victoria introduced a series of Vermin Destruction Acts in 1890, 1897, 1899, 1901 1904 and 1915.

These Acts authorised the Governor in Council to declare any native species as vermin and created a mandatory duty on all owners and occupiers of land to eradicate that species. It is impossible to track which species were declared vermin at any one time but we know from other sources that dingoes, wallabies and from 1906, wombats were included on that list.

In 1922, these Acts became the Vermin and Noxious Weeds Act. This Act and subsequent Acts in 1949, 1957, 1958 and 1959 maintained the same regime that allowed the governor in council to declare any native species vermin.

Again, it is difficult to determine which native species were declared vermin and which were not at any given time but we know that wombats remained declared vermin until 1977-after the enactment of the Wildlife Act *(Trigg 2009)*.

Successive Victorian governments also enacted a second type of legislation designed to restrict the hunting of certain species. The first Game Act was introduced in the same year as the first Vermin Destruction Act in 1890. Further Game Acts were enacted in 1896, 1912, 1915, 1917, 1925, 1928, 1930, 1938, 1950 and 1958.

The purpose of these Acts was to provide limited protections to certain wildlife species from hunting. They applied to non-native “game” species such as deer and to native wildlife which was referred to as “native game”. These Acts provided for open and close seasons for hunting some species depending on the degree of threat they faced from overshooting by landowners and trappers in the fur trade.

The native species protected under the Game Acts changed regularly, depending on estimated numbers. In the first Game Act in 1890, the only animal to be protected, the platypus, was granted year-round protection. In 1938 this was extended to koalas. By 1958, protection had been extended to kangaroos, bandicoots, quolls, gliders, possums and native water rats. The last Game Act in 1958 formed the foundation for the Wildlife Act 1975.

The legal status of wombats

Our research indicates that wombats were the one species excluded from any legal protection at all under any of the Games Acts that operated in Victoria between 1890 and 1975.

Wombats were first declared vermin under the 1906 Vermin Act. In 1913, the Land Department provided advice to landowners on the destruction of wombats, noting they were easy to poison with baited fruit and vegetables, easy to eliminate through fumigation because it was obvious where the burrows were and often "blundered into traps" *(Peterson 1979)*.

In 1925, the Victorian government established a formal bounty system. This system operated until 1966. Between 1950 and 1960 around 64,000 wombats were killed under this system *(Trigg 2009)*.

In 1977, wombats were taken off the vermin list and wombats in Western Victoria, which were effectively locally extinct at that point were given legal protections under the Wildlife Act *(Trigg 2009).*

Wombats in eastern Victoria (east of the Melbourne to Albury rail line) were immediately declared unprotected under the Wildlife Act. This status was reviewed and re-affirmed in a further declaration in 1984 following the repeal of the Vermin and Noxious Weeds Act 1958 *(Trigg 2009)*.

The unprotected status of wombats was again reviewed in 1998 *(Marks 1998)*. That review did not prompt DELWP to revoke the unprotected status of wombats in Eastern Victoria.

In fact, that declaration was only revoked in 2020 and only after media revelations and community outrage that wombats were being hunted for recreation.

DELWPs abdication of its responsibility for these populations of wombats for 45 of the 114 years they remained unprotected in this state is one of many reasons why we argue in this submission for a new independent regulator under a new Wildlife Act.

THE CASE FOR CHANGE

(e) PART B: THE URGENT NEED TO PROTECT WILDLIFE AND THEIR HABITATS

Biodiversity loss

There is overwhelming scientific evidence that human activity, over-exploitation and climate change and its impacts represent an existential threat to ecosystems as well as biodiversity including terrestrial wildlife across the planet *(IPCC report 2018, WWF report 2018, IPBES report 2019, IPCC report 2019, WWF 2020,Global Outlook 5 2020)*.

The causes and drivers of biodiversity loss and decline such as habitat loss and overexploitation are well documented *(IPBES Report 2019, WWF report 2020, Senate inquiry interim report 2019, Interim report Independent review of EPBC Act 1999 2020)*.

Australia is one of only 17 countries classed as mega-diverse by the UN Environment Program's World Conservation Monitoring Centre (WCMC). It has the most distinctive and unique mammal fauna in the world *(Woinarski et al 2015)*.

Australia also has one of the worst records for deforestation, land clearing, extinctions and species and ecosystem decline. 50 mammal extinctions have occurred in Australia since settlement. Australia currently has over 1800 threatened species and that list is getting longer as the threats become more severe *(Senate Inquiry into the Faunal Extinction Crisis 2019)*.

The key reason for this is that Australian governments at every level prioritise economic interests and economic "growth" over strong and effective legal environmental and biodiversity protections.

This has been confirmed in several recent authoritative assessments of Australia's environmental performance:

- An OECD assessment of Australia's environmental performance in 2019 indicated that the major reason for these declines was that environmental decision-making was dominated by economic interests *(OECD 2019)*.
- The Senate has confirmed that the dominant influence of economic interests was a key reason for the failure of both the EPBC Act and state-based environmental laws in providing effective legal protection to threatened wildlife and their habitats. *(Interim Report into Australia's Faunal Extinction Crisis 2019)*.
- The Independent Review of the EPBC Act which undertook a comprehensive review of the EPBC Act in 2020 identified weak governance as a key reason for the Act's failure to prevent biodiversity loss *(Independent Review EPBC Act-Interim report 7/20 and final report 10/20)*.

Both the OECD report and the Independent Review of the EPBC Act warned that Australia needed to urgently address this issue and dramatically strengthen its climate change and biodiversity laws and policies if it wanted to arrest and reverse these steep biodiversity losses and declines.

Biodiversity loss in Victoria

The most recent *State of the Environment report for Victoria 2018* (SOE) released in March 2019 documented significant declines in Victoria's ecosystems and in both faunal and floral species native to Victoria.

The SOE report also confirmed climate change was having an increasingly deleterious effect on Victoria's environment-generating more extreme weather, less rainfall and snow cover, warmer sea surface temperatures, rising sea levels and the threat of greater bushfires-all of which directly and indirectly impact biodiversity.

The findings of this report, like the findings in the all of the other reports we have cited in this submission, leave no doubt that Victoria must take urgent action to prevent ecological and biodiversity collapses across the state.

A critical part of that response will be a major overhaul and strengthening of Victoria's biodiversity laws.

Current and emerging threats to wildlife

There is no question that the biggest threat to the long-term viability of wildlife populations in Victoria is climate change and its impacts such as increased temperatures, decreased rainfall, the increased frequency and severity of drought and the increased frequency and intensity of bushfires.

Increasing temperatures and decreasing rainfall

More frequent and extreme temperatures have the capacity to push many wild species and other native species beyond their physiological capacity to cope and constitute a major risk to the welfare and persistence of local populations *(Ritchie, Bolitho 2008) (Hetem et al 2014) (Domenici, Seebacher 2020)*.

Recent scientific evidence that involved the assessment of 19 critical ecosystems within Australia confirmed that climate change will result in permanent reductions in average rainfall, increased and more prolonged droughts and more extreme heat events which have the potential to trigger ecosystem collapse *(Bergstrom 2021)*.

Australia is a dry continent. The most critical determinant of the population dynamics and distribution of many wild species in Australia is rainfall. Even minor changes in rainfall patterns and reductions in average rainfall mean reductions in the availability and quality of food resources, threatening the survival of entire populations *(Mella et al 2019)*.

Bushfires

Every credible scientific report on the potential impacts of climate change on biodiversity and ecosystems in Australia over the past two decades has warned of the increasing frequency and severity of bushfires and the potential impacts of those fires on the long-term survival of wild species. The loss of habitat means the loss of species.

The WWF report into the impact of the 2020 bushfires confirmed that 3 billion animals died, were injured or were displaced by the fires *(Dickman 2020)*.

The level of habitat devastation caused by the bushfires resulted in over 700 wild species being pushed to the brink of extinction *(Lee, 2020) (Pickerell 2020).*

Disease

There is emerging evidence that climate change, increasing temperatures and extreme weather conditions is likely to play an increasing a role in wildlife disease epidemics and mass mortality events which threaten wildlife populations.

Recent international research indicates that environmental stress resulting from increases in temperatures has the potential cause mass die-offs unless species can shift ranges as the temperatures increase *(Fey 2015)*.

Other research has indicated that the number of mass mortality events in wildlife populations across the world is rising and there is evidence that higher temperatures may be a contributing factor to these mass deaths *(Kock 2015) (Fey, Siepielski, Nus 2015)*.

More recent and more alarming research has confirmed that as temperatures rise to levels that push wildlife populations beyond their niche physiological limits, this will trigger sudden, abrupt and severe biodiversity and ecological disruptions, causing local extinctions and threatening species survival *(Trisos, Merow, Piget 2020)*.

In order to combat these impacts, we need institutions and laws which recognise and are designed to provide the levels of legal protection that will safeguard our wildlife and prevent these types of ecological disasters.

The critical role of “common species”

By focussing almost exclusively on the conservation of rare and endangered species, the current biodiversity laws and conservation efforts in Victoria have largely ignored the central role of “common species” to the health, well-being and persistence of many of Victoria’s ecosystems.

While it is understandable that such efforts be directed towards those species most at risk, this approach is inconsistent with a growing body of scientific research and data that confirm that common and widespread species are key “ecosystem engineers” and of critical

importance to the structure and effective functioning of biological communities *(Gaston, Fuller 2007) (Gaston 2010)(Gaston 2016)*.

Conservationists are increasingly concerned about the rapid and large-scale losses of common species across the planet and the implications of those losses to ecosystem processes and functioning.

These concerns have been confirmed by the findings of two recent large scale studies that found that one-third of the 27,600 land-based mammal, bird, amphibian and reptile species studied had declined significantly both in terms of their numbers and territorial range and had resulted in widespread local extinctions *(Ceballos et al 2016/Ceballos et al 2020) (the Cebellos reports).*

These reports describe alarming evidence that globally, populations of species generally thought to be common, were declining at a rate and on a scale that the authors described as "biological annihilation" and that the losses of these common species had triggered extinction cascades and the substantial alteration of ecosystems structure and function.

Both of these reports called for an urgent need to re-assess and re-orient conservation efforts to include a balanced consideration of the roles of both of common and rare species at an ecosystem or landscape level to both prevent the loss of rare species and to avoid the depletion of common species.

Common Species in Victoria

The Victorian government has acknowledged the need to move towards broader scale "landscape level" threat management benefitting multiple species in its own strategic biodiversity plan *"Protecting Victoria's Environment-Biodiversity 2037"* and in the amendments made to the FFG Act in 2019.

However, there is no recognition of the ecological importance of common species in either the Biodiversity strategy or the FFGA. There is no recognition of either the importance of common species or the need to broad based conservation in the Wildlife Act.

Drafted over four decades ago the Wildlife Act reflects the prevailing attitude at the time that many common species such as kangaroos and wombats were little more than agricultural pests.

While the science and community attitudes have changed the policy basis and the pest control narrative that underpins the Wildlife Act has not.

Threatened Species

While it would make sense to have all wildlife covered by the legal protections of a single Wildlife Act, we are also conscious that there are significant complexities associated with the conserving threatened species including the need to preserve habitats that are critical to their survival.

We argue strongly against a consolidation of the Wildlife Act and the FFGA elsewhere in this submission. We believe consolidation would hinder rather than promote conservation efforts for both threatened and common species.

For this reason, we believe that the Acts should remain separate Acts and these species should remain under the legal protections of the FFGA.

We do, however, recommend that there be a further review of the FGGA to incorporate key additional reforms in order to standardise and harmonise the two Acts in the interests of securing better integration of Victoria's biodiversity laws and more effective and consistent legal protections for all native species in Victoria.

THE CASE FOR CHANGE

(f) PART C: CONTEMPORARY VALUES AND EXPECTATIONS

There has been a significant societal shift in the way an increasing educated Victorian community views and values wildlife over the last 45 years along with growing recognition and awareness of:

- Our dependence on nature as critical life support systems;
- The interconnectedness of ecosystems and the damage that human activity is doing to critical ecological processes and services;
- The importance of species richness to the health and persistence of those ecosystems;
- The urgent need to deal with the impacts of climate change;
- The moral imperative of ensuring that wild (as well as domesticated) animals are protected by robust animal welfare standards and laws.
- The protection of wildlife as fundamental to the community's identity, culture and community wellbeing.

This shift has been documented in a number of recent studies which have confirmed a gradual but widespread shift in community values away from the traditional view that wildlife is an open resource to be used and managed for human benefit ("domination") to the view that wildlife has intrinsic value and is deserving of protection ("mutualism") *(Manfredo 2016, 2017b, 2020)*.

Whereas domination supports the lethal control of wildlife to benefit human activities, mutualism supports restraints on human activity to protect wildlife. While domination prioritises economic well-being, mutualism favours the conservation of biodiversity *(Manfredo 2020)*.

The evidence for this shift can be seen in:

- The overwhelming community support shown for the work of wildlife rescuers and wildlife shelters;
- The increasing number of communities opposing or objecting to the lethal control of local wildlife populations such as the recent examples at Kinley, Epping and the Heritage Golf Club kangaroo protest.
- The increasing number of people involved in community activities and projects aimed at restoring or expanding wildlife habitat such as Landcare and Coastcare, Land for Wildlife and Trust for Nature programs;
- The levels of community outrage and backlash at incidents of wildlife cruelty and the failure or apparent inability of wildlife authorities to pursue and penalise offenders such as recent incidents involving the poisoning of eagles, the recreational hunting of wombats and the intentional bulldozing of koalas in blue gum plantations in the far south west of the state.

While community attitudes have changed, the Wildlife Act has not. It does not reflect these changes in community attitudes or align with contemporary society's desire for wildlife laws

to focus on the protection and conservation of wildlife and to restrain the use of lethal control and the commercial exploitation of wildlife.

Currently, the Wildlife Act does acknowledge the importance and intrinsic value of wildlife. It does not recognise that common species have critical roles in ecosystem health and persistence or the threat that climate change poses to all native species.

Most importantly, the Wildlife Act does not reflect the interests of the Victorian community and of future generations in safeguarding wildlife and biodiversity more broadly from current and emerging threats.

The extent to which the Wildlife Act has failed to keep pace with changing community expectations has been exposed in the recent series of egregious cruelty incidents that have caused community outrage.

These incidents represent the tip of the iceberg when it comes to the cruelty and damage that landowners and others inflict on our wildlife.

Over the period December 2020 to June 2021, Wildlife Victoria had close to 35 suspected serious Wildlife Cruelty incidents reported into the Wildlife Victoria Emergency Response Service by concerned members of public. Many of these incidents involved multiple animals and spanned multiple species including koalas, wombats, kangaroos, birds including emus and possums. They included wildlife which had been shot by arrows and were still alive and injured, suspicious mass bird deaths, wildlife which had been dismembered and even decapitated, wildlife trapped in cages, wildlife that had been shot, animals that members of public observed motorists deliberately targeting and running over including family groups and wildlife that members of public observed being deliberately harmed one of which was a threatened species and which subsequently bled to death. All of these cases were reported immediately to DELWP by Wildlife Victoria. Where an animal was still alive and injured a Wildlife Victoria volunteer rescuer and/or veterinarian was immediately dispatched to rescue the animal and alleviate it's suffering – with the most common outcome being euthanasia.

Systemic failures

We contend that these incidents and the many, many more we identify and discuss in this submission are the direct result of systemic failures in the policy foundations, architecture, governance and implementation of the Act.

These failures include the unmanageable conflicts of interest created by the Act and the development of a regulatory culture that has encouraged landowners to believe they can carry out these activities with virtual impunity.

There is no question that so long as the Wildlife Act perpetuates the idea that many common species of wildlife are pest animals and makes provision for a permit system that allows large numbers of these species to be killed in the name of "damage mitigation" these levels of cruelty will continue. We explore in detail later in this submission the permit system that enables killing of wildlife under the Wildlife Act and make recommendations for change.

Change can only occur by dismantling that regulatory culture through fundamental changes to the policy foundation of the Act to prioritise the interests and rights of the Victorian community, by placing constraints on the broad discretions available to decision-makers and by significantly strengthening both the regulatory controls over the permissions systems and significantly increasing the penalties for offences committed under the Act.

A public interest principle could provide this policy foundation and the mechanism for improved governance, integrity, honesty, transparency and accountability in the regulatory framework that governs common species of wildlife.

We examine this public interest principle and how it could transform the protection and conservation of wildlife in Victoria further in this submission.

(g) SPECIAL MENTION: IMPACT OF WILDLIFE ON AGRICULTURE – THE PEST CONTROL NARRATIVE

For the last two centuries, the agricultural sector has propagandised claims about the economic impacts of wildlife that kill or compete with livestock for feed and water or damage crops and fencing to justify the industrial scale slaughter of a wide range of wild animals and birds.

Close examination of these claim reveals that they are largely anecdotal, based on landowner "perceptions" and not supported by objective evidence. There has never been any economic modelling, actuarial reporting or other quantified to support any of these claims apart from landowner claims about the economic costs of fencing damage which were found to be grossly exaggerated.

Despite the lack of objective evidence for these claims, the pest control narrative has and continues to dominate the legal and policy frameworks for managing wildlife across Australia.

The designation of wild species as agricultural pests has had and continues to have a profound impact on the legal protections afforded to those species.

The weaponisation of the pest control narrative has also had an insidious impact on community attitudes towards those species, fuelling high levels of cruelty towards those species labelled as "pests" such as kangaroos, wombats, dingoes, eagles and possums.

We think it is important for the Independent Panel to understand the background to and dynamics of the pest control narrative and its impact on willdife management policy and decision-making as it conducts its review of the Wildlife Act.

Here, we examine:

- How little scientific evidence there actually is for the inflated and misleading claims made by the agricultural sector;
- How the pest control narrative is embedded in much of the Wildlife Act including S7A and the ATCW permit system;
- How DELWP uses and perpetuates the pest control narrative through the use of the concept of "overabundance" and its encouragement and support of landowners use of lethal control under the ATCW system and the KMP;
- How the legal endorsement of the pest control narrative in the Wildlife Act fuels cruel and inhumane practices against particular native species.

Until this narrative is dismantled in favour of a narrative and protections that reinforce conservation and co-existence, current levels of lethal control and cruelty directed towards wildlife will continue and cohesive, landscape level biodiversity protection and conservation efforts will suffer.

Wildlife as “pest” animals

The pest control narrative that drove close to 100 years of government-sponsored eradication and bounty programs is very much in evidence today in Wildlife Act.

Provisions like S7A and the ATCW permit system, among others, has led to the normalisation of the large-scale lethal control of wildlife as a land management tool.

Hostility towards particular species of wildlife remains prevalent in rural and regional Victoria despite the emergence of scientific evidence that has debunked many of the long-standing “justifications” for the need for widespread lethal control of wildlife.

For example, up until the 1970’s, wedge-tailed eagles were shot, trapped and poisoned in huge numbers across Australia on the basis they were widely seen as a threat to stock, particularly lambs *(Brooker 1990)*.

This myth persists even though numerous scientific field studies have repeatedly shown that the true percentage of viable lambs killed by eagles is very small in relation to the number that die from other causes, and that eagle kills are economically insignificant for the industry as a whole *(Leopold, Wolfe 1970, Debus 1999, 2012)*.

There is no question that this myth fuels ongoing incidents that involve the shooting and poisoning of wedge-tailed eagles in Victoria and was a motivation in the systematic poisoning of over 400 mostly juvenile eagles in East Gippsland that put at risk the breeding capacity of future generations of the species across Australia *(Cherriman 2018)*.

The same sorts of ingrained beliefs affect the treatment of dingoes which are legally trapped, shot and poisoned across Australia. The same goes for wombats and emus. Many of these myths have been debunked and yet the pest control narrative remains the primary justification for the use of lethal control.

For example, the origin of the myth that kangaroos are perpetually in “plague proportions” can be traced back to the legislation introduced in all Australian states in the 1880’s that allowed for the eradication of all species of kangaroos and wallabies as “vermin” *(Ben-Ami 2009)*.

In fact, kangaroo populations are self-regulating, depending on conditions and the availability of food resources. During drought, populations decline steeply and there are high mortality rates of up to 100% among juveniles. The government’s own research, based on a 10-year study in Qld between 1980 and 1990 found that kangaroo populations, even under optimum conditions, do not grow by more than 8-10% per year *(Arnold, Grassi 1991)*.

These narratives have now become mantras that are parroted by landowners and their lobbyists and representatives at every opportunity and in poor media reporting.

This has led to the pest control narrative becoming an entrenched cultural belief that is used to justify the large-scale removal of kangaroos and other wild species through damage mitigation permit systems such as the ATCW permit system and the commercial kangaroo meat and skins industry.

We review those claims below:

Competition with Stock

There is no substance to the claim that kangaroos compete with stock for water or pasture and/or damage grazing lands (except under the most severe drought conditions).

In fact, research by government scientists has confirmed that:

- Kangaroos do not compete with sheep for pasture under normal circumstances *(Edwards et al 1995, 1996) (Short 1987),*
- There is no correlation between kangaroo control and damage mitigation on pastoral properties or the landscape generally *(S Mcleod: Edwards, Croft and Dawson 1996)*
- Kangaroos do not have a significant impact on wool production *(Grigg 2002).*

Crop damage

There is no scientific support for the claim that kangaroos eat or destroy crops. CSIRO research has instead confirmed that wheat crop damage was overstated and that in any case, kangaroo killing largely takes place in regions which do not produce crops *(Arnold 1980).*

Damage to Fencing

Landholders and the kangaroo industry claim that kangaroos do extensive and costly damage to fencing, costing agricultural businesses hundreds of millions of dollars every year.

In its 1988 report the Senate Select Committee into Animal Welfare noted graziers' negative attitudes towards kangaroos meant that they nearly always mistakenly attributed damage done to pasture and fencing by other animals, by insects and even by weather events to kangaroos.

The first attempt to properly investigate and properly assess fencing damage claims did not occur until 2004. That analysis found that claims by the pastoral industry of the costs of damage caused by kangaroos were significantly overstated and that kangaroos in fact had a very low monetary impact on the agricultural sector *(R. McLeod 2004).*

The overstatement of kangaroo impacts by landholders was again confirmed in a 2011 report commissioned by the National Farmers Federation which forced it to revise its own estimate of the economic impact of kangaroos on the rural sector across Australia down from $200 million pa to $44 million pa (*Sloane Cook and King Pty Ltd 2011)*.

Perpetuation of the pest control narrative by the regulator

Despite these scientific advances, DELWP continue to rely on these and other discredited, unsupported and incorrect assertions and out of date evidence in policy positions and management practices.

One example is DELWP's use of the term "overabundant" to describe species to justify the "need" for lethal control.

"Overabundance"

The concept of overabundance has no agreed definition and no scientific validity. It is described by Dr David Lavigne, Science Advisor to IFAW as follows:

> *"In my humble (scientific) opinion, the term "hyper-abundant" has absolutely no scientific validity…it is a propaganda word, promoted by individuals masquerading as scientists…and passed on to bureaucrats, managers and politicians…none of whom seem to know that the term has absolutely no basis in science.*
> *Regardless, the term has been used so often that it has become part of the mythology and is used almost universally to justify the culling of animals" (McKay 2017).*

Corey Bradshaw Professor of Global Ecology at Flinders University recently made the following comments on the concept of overabundance following suggestions by a South Australian government committee that "overabundant" koalas should be culled:

> *"There is no working definition or accepted meaning for the words 'overabundant' or 'pest' in any legislation. Basically, it comes down to a handful of lobbyists and other squeaky wheels defining anything they deem to be a nuisance as 'overabundant', irrespective of its threat status, ecological role, or purported impacts. It is, therefore, entirely subjective, and boils down to this: "If I don't like it, it's an overabundant pest" (Bradshaw 2019).*

Cruelty

The status of pest has had important implications for animal welfare because labelling an animal a "pest" has the effect of demonising that species and encouraging illegal and cruel and practices against those animals *(Caulfield 2008)*.

We consider there is a direct line between the designation of a wild species as a pest and the nature and extent of the incidence of cruelty directed at those species.

So long as the Wildlife Act supports and enables the widespread use of lethal control of wildlife and the regulator encourages and supports the pest control narrative through its policies and decision-making, we have no doubt that high levels of wildlife cruelty will continue.

SECTION 3: RIGHTS AND RESPONSIBILITIES

- Public Interest Principle
- Legal Rights of Victorians
- Legal Rights of Wildlife
- Public versus Private Rights
- Legal Responsibility for Wildlife

(h) THE PUBLIC INTEREST PRINCIPLE

Community expectations

The Victorian community is entitled to expect both that its government agencies enact laws and policies that set appropriate standards for the protection of its wildlife and that its wildlife are managed for the diversity of interests represented by the broader community and not just an influential minority.

In its current form the Wildlife Act 1975 does not meet those expectations, largely due to the way in which the Act is designed to benefit powerful economic and hunting interests and how the operation of industry capture has allowed those interests to effectively write the government wildlife management policies and programs for decades.

In our submission, the simplest, most effective way to ensure that the public interest is the primary consideration in wildlife decision-making and to improve the governance and operation of the Wildlife Act is by incorporating a codified formulation of public trust doctrine in a "public interest principle".

We believe that this principle would democratise decision-making under the Act by giving members of the public and community groups a greater say in the setting of policy and decision making under the Act. It would also and act as a check on both government decision-makers and the farming and hunting interests that benefit from the current regulatory regime.

How power contributes to the construction of the law

In an address to prisoners at the Cook county jail in 1902 legendary American lawyer Clarence Darrow argued that "those who own the earth make the laws to protect what they have…" *(Darrow 1902)*.

This is as true now in Australia as it was in 1902 America. Wealthy economic interests have shaped the construction of environmental and biodiversity laws in Australia to benefit them and their values.

So it is with the Wildlife Act. Throughout this submission, we provide examples of how the Wildlife Act specifically benefits the interests of Victorian landowners and shooters. We examine how industry capture has undermined and ensures the Wildlife Act provides little effective legal protection for wildlife in Victoria.

The public trust/public interest principle we propose would assist in dismantling industry capture and influence over wildlife policy and decision-making by giving the broader community a greater say in these processes and by improving transparency and accountability.

Industry capture

The agricultural sector has enormous political power in Victoria. It has access to government through an entire political party that represents its interests in parliament and through the Victorian Farmers Federation which describes itself as “an active, powerful lobby group dedicated to the interests of farmers”.

The same applies to the hunting lobby which despite only representing a tiny minority of the Victorian community-there are only around 50,000 licenced gun owners in Victoria-has an outsized influence through the game and hunting provisions that sit within the current Wildlife Act.

These sectional interests have used their significant economic and political power to influence the setting of policy and decision-making in a wide range of government policy areas including the management of wildlife.

The high level of regulatory capture in the management of wildlife In Victoria is particularly evident in the client-based model of governance DELWP has developed. This model prioritises the interests and demands of farmers, landowners and shooters.

The evidence for this is the operation of the S7A, the lack of any significant regulatory controls permission provisions of the Wildlife Act that authorise the use of lethal control and in the success of the VFFs 20-year campaign to establish a permanent commercial kangaroo industry in Victoria in 2019.

It can also be seen in the way in which the state nature reserve system established under the Act provides exclusive access to over 75,000 hectares of public lands including hundreds of significant remaining wetlands to the 23,000 or so duck shooters in Victoria to kill native waterbirds for recreation.

While DELWP communications often talk about the need to “balance competing interests” in reality the Wildlife Act does not require it to undertake any such exercise.

In particular, S7A of the Act and DELWP’s administration of ATCW permit system authorizing the use of lethal control under S28A effectively operates as a service to landowners to enable them to remove hundreds of thousands of healthy wild animals and birds from the Victorian landscape every year in the name of “damage mitigation” without reference to the broader interest of the community.

The Victorian Kangaroo Harvest Management Plan (KMP) provides a service to remove kangaroos with no requirement to prove damage or apply for a permit, just the provision of consent for commercial kangaroo shooters to operate on the property.

The reason industry influence is so insidious is that neither the Wildlife Act nor the ATCW permit system contemplate let alone provide a mechanism to evaluate how constant extraction of such large numbers of animals and birds year after year impacts local wildlife populations, local ecosystems and ecosystem processes or the interests of the broader

Victorian community in ensuring those populations and ecosystems remain secure and functional.

In fact, the Victorian community has no real say in matters relation to wildlife management. This is problematic because a system of wildlife management that is not anchored in a foundation that recognises the broader public interest in wildlife has the potential to undermine conservation efforts by:

- Engendering a disassociation with nature and diminished connection or indifference toward wildlife, reducing public support for conservation; and
- Encouraging the idea that wildlife are a liability or threat to be minimised (the pest control narrative) rather than an asset to be conserved and managed for the benefit of current and future generations.

In order to counteract the high levels of industry capture that operate under DELWPs current governance model and in order for the public to obtain equitable access to the benefits of wildlife, there needs to be a major recalibration of way in which competing interests are weighed and dealt with under the Act.

This can only occur if the policy foundation of wildlife management policy and decision-making is underpinned by the broader public interest.

The public trust doctrine

In its most basic form, the public trust doctrine states that certain natural resources cannot and should not be subject to private ownership and that the state government must hold those resources in trust for the citizens of that state for the exclusive benefit of those citizens and future generations *(Sagarin 2012)*.

Incorporating a public trust or public interest principle into the Wildlife Act has the potential to transform and strengthen the regulatory framework through the imposition of normative management standards, requirements for greater public engagement and greater transparency and accountability. It would also provide third party access to justice mechanisms to ensure the state government's regulation of wildlife operates serve the diversity of interests of the Victorian community not just powerful lobby groups.

The concept of the public trust doctrine already underpins the state's governance of a range of other natural resources including public land such as state parks and reserves, wetlands and coastal areas in Victoria. All of these resources are managed by the state government in the public interest on the basis they are the "common property" of all Victorians.

Finally, the public trust or public interest principle is embodied in the whole notion of conservation which after all involves the preservation of the earth's natural resources for both current and future generations.

What is the public interest?

The public interest is a necessarily flexible concept. It varies depending on the circumstances. However, it generally means that the government, its agencies and officials must be:

- Apolitical in the development of its policies;
- Fair and impartial in the exercise of their powers and discretion;
- Transparent in their decision-making'
- Accountable for the outcomes of those decisions.

The public interest means more than just legal compliance. It is also about governance and ethics. It extends to processes and procedures as much as it is about outcomes *(Wheeler 2016)*.

This concept of the public trust/interest is not a new concept in Victoria. Versions of the public interest principle appear in numerous Victorian statutes in one form or another, including the EPA Act (1970) and the amendments to the FFGA in 2019.

The legal status of wildlife-Wildlife as common property

There is no positive assertion in the wildlife act that the state "owns" the wildlife of Victoria. Even if the state were to make that claim, in the 1999 case of *Yanner v Eaton*, the High Court made it clear that while state "ownership" of wildlife creates a right to regulate and supervise, it does not constitute absolute ownership.

We contend that wildlife is not the property of the crown but the "common property" of the Victorian community and that as common property, the state has an obligation to protect and more importantly, **conserve** wildlife as a public or common good for the diversity of interests represented by the broader community and not just an influential few.

The inclusion of a public interest principle which reflects the language of the public trust doctrine would clarify the objectives of the Act and allow for an assessment of whether or not the various provisions in the Act, including those provisions which clearly benefit narrow sectional interests, align with the broader interests of the Victorian community.

The State's obligations under a public interest principle

A legislated public interest principle would impose governance obligations on the Victorian state government and the regulator under the Act and would act as a guide in decision-making in relation to wildlife management. These obligations would include:

- An active and affirmative obligation to protect and preserve all species of wildlife;
- An obligation to ensure the diversity of interests held by the Victorian community are given priority over private and special interests;
- An obligation to manage wildlife in a way that would not infringe on the rights and interests of future beneficiaries (future generations) of wildlife;
- An obligation to ensure that wildlife management decision-making is transparent;

- An obligation to ensure that wildlife management decision-making is based on the best available evidence;
- An obligation to ensure that wildlife management provides opportunities for **effective** public engagement and participation;
- An obligation to provide sufficient, timely, accurate and up to date information to allow the Victorian community to evaluate the performance of the state government and the regulator in the management of wildlife populations;
- An obligation to provide a mechanism to enable members of the public to enforce the public interest and hold the state government and the regulator accountable for actions which result in a breach of the public interest principle.

How would the public interest principle operate in practice?

While a public interest principle would create explicit legal obligations on decision-makers under the Act, implementing it would not set unachievable standards. Rather, these obligations would provide clarity and act as guidance as to how the state and DELWP should meet the responsibilities it already has as regulator under the Wildlife Act to the community, transparently and in a way that allows it to be held accountable for its decisions and actions.

We believe that ensuring both that the public interest is fundamental to the state government's management of wildlife and what obligations that principle imposes would make implementing its substantive and procedural responsibilities clearer and more straightforward.

Codifying the public interest principle

If this principle is to be incorporated into the Act, it should be incorporated as an overarching principle.

Codifying the public interest principle would require language that clearly establishes that wildlife is held in the public interest.

For example:

"It is the intention of Parliament to give effect to the following overarching principle.

Overarching principle

"Victoria's wildlife, its biodiversity and its ecosystems are the common property of all Victorians, including future generations.

The State of Victoria, as trustee of Victoria's natural heritage, including its wildlife and their habitats, must protect, conserve and enhance that natural heritage including its wildlife and their habitats in the interests and for the benefit of all Victorians and the environment."

The Act would then need to set out what complying with the public interest principle would mean in terms of the need for public engagement, transparency and accountability in the management of the state's wildlife and create avenues for civil enforcement of breaches of the principle.

Public participation

DELWP has a "community charter" that purports to prioritise and value community engagement in wildlife management policies and programs, however in reality there is limited inclusion of the views of the broader community incorporated into key wildlife decisions.

The ATCW permit system review in 2018 was limited and there was no public consultation process prior to implementing the Kangaroo Management Plan in October 2019. These are two recent examples of significant issues relating to wildlife management for which there was insufficient and ineffective engagement with the community.

These examples raise serious questions about the seeking of public participation and how effective and consequential that participation is. Enacting a public interest principle would strengthen those commitments to ensure that the diversity of interests held by the community are properly represented.

Transparency

Implementing the public interest principle in wildlife management would require DELWP to provide more transparency in relation to the reasons for its decisions.
In order to meet this obligation, DELWP decision-makers would be required to transparently document the rationale behind wildlife management decisions, along with any associated trade-offs and implications.

It would also require that DELWP promptly make that documentation available to the public to allow the public to consider and make an evaluation of that rationale.

This level of transparency would allow for a more informed public discussion about the issues and conflicts involved in wildlife management and a proper consideration of the merits and justification for the decisions being made.

Access to information

Under the public trust/public interest principle, DELWP would be required to provide publicly accessible information about the management of wildlife including data, policies, research and reporting that could allow the community to evaluate the decisions being made and whether or not those decisions align with the state governments public trust obligations.

Enforceability

Currently, only those directly affected by DELWP decisions to refuse or cancel wildlife licences under the Wildlife Act have access to merits review of those decisions at the Victorian Civil and Administrative Tribunal (VCAT).

Incorporating a public interest principle in the Wildlife Act would require the provision of legal rights and mechanisms for third party merits review and civil enforcement to challenge DELWP decisions and actions that contravene the state's obligations to act in the public interest to members of the public and community groups.

Ecosystem level management of biodiversity

Although this requires further investigation, there is research that suggests that another major benefit of including a public trust/public interest principle in the Wildlife Act (and in incorporating that same principle in Victoria's other biodiversity laws) is that it has also the potential to provide a workable legal framework for managing the complexities of larger issues of ecosystem-based protection and conservation.

This is because it has both a broad mandate and sufficient flexibility to require that government agencies adopt and perform their duties as responsible stewards of ecosystems and ecosystem processes for current and future generations *(Sagarin 2012)*.

The public trust principle is explored further in the following pages.

(i) LEGAL RIGHTS OF VICTORIANS UNDER THE WILDLIFE ACT

The environmental rights in Australia

Australians have no environmental rights under the Australian Constitution and there is no Bill of Rights in Australia that might confer those rights.

The same situation exists in Victoria. Although Victoria has had a Charter of Human Rights and Responsibilities Act (the Charter) since 2006, that charter does not include a right to a healthy environment.

The right to a healthy environment

Although not recognised or incorporated into an international convention, the right to a healthy environment has been integrated into over 150 national legal frameworks around the world to enable citizens to participate in and challenge environmental decision-making.

Australia is one of only 15 countries that does not have this right enshrined in the constitution or federal laws *(Pointon, Bell-James 2020)*.

The Environment, Biodiversity and Conservation Act (Cth) 1999

The EPBC Act is the main national environmental protection legislation in Australia. There is widespread consensus that the EPBC Act has failed to protect the environment and to halt the precipitous declines in biodiversity in this country over the 20 years it has been in operation.

The EPBC Act was subject to an Independent Review in 2020. In both the interim report *(July 2020)* and the final report *(October 2020)* the Independent Review found the EPBC Act did not meet best practice for modern environmental regulation and was not fit for purpose or to address current or future environmental challenge.

The Australian Panel of Experts in Environmental Law (APEEL) have recommended that the government enact a substantive right to a safe, clean and healthy environment along with procedural environmental rights such as rights relating to public participation, the right to information and access to justice mechanisms as foundational to improving environmental protections in Australia *(APEEL 2017)*.

The Independent Review did not adopt this recommendation in its final report. This does not mean the Victorian government could not consider including such a right in the Human Rights Charter as a means of providing the Victorian community with environmental rights.

Victorian Human Rights Act

Victoria has a Charter of Human Rights (The Charter). It sets out a range of basic human rights for all Victorians. This legislation does not currently include the right to a healthy environment.

There is an argument that some of the rights already in the Charter could form the basis of a right to a healthy environment, including the right to life-particularly given the direct human health impacts from the increasing impacts of climate change such as heatwaves and bushfires.

In our view, the better approach would be for the government to incorporate a specific right to a healthy environment in the Charter.

This could have significant benefits for the Victorian community in seeking improvements in environmental and biodiversity governance and regulation.

How would Victoria benefit from a right to a healthy environment?

A detailed examination of the benefits of introducing a right to a healthy environment across dozens of countries found that the right had assisted in strengthening existing environmental legal frameworks, improved governance and increased public participation *(Boyd 2011)*.

Other research has indicated that in order to be effective, however, the right must be supported by precise legal rules which regulate conduct in relation to the environment, agreed mandatory standards and sufficient enforcement to deter wrongful behaviour. It also requires social and cultural awareness of the need to protect the environment and the ability to use the right to hold the government and other parties accountable *(Ilie 2016)*.

While we believe that creating the right to a healthy environment in the Victorian Human Rights Charter would be the simplest and clearest way to enable the Victorian community to effect improvements in the governance and protection of the environment and biodiversity, we understand that this option is not currently being considered.

An alternative approach to achieving these same objectives is through the incorporation of the Public Trust Doctrine (PTD) or at least the main elements of that doctrine into a "public interest principle" in the new Wildlife Act.

The Public Trust Doctrine

The Public Trust Doctrine ("PTD") is a legal concept that originated in Roman law and later developed in English common law. It appears in several countries but it has largely evolved and been applied by US courts, although some US states have codified the doctrine in legislation.

The PTD holds that:

- Certain natural resources cannot and should not be owned or managed by private interests but instead should be held in trust by the state government;
- The government has a fiduciary duty to manage the use of those resources on behalf of all citizens, both present and future.
- If the government fails to meet this obligation, those citizens can seek legal redress for that breach in the courts *(Blackmore 2017)*.

Although historically the PTD only applied to a narrow range of natural resources like shorelines and navigable waterways, the US courts have expanded the concept to include wildlife and ecosystem services.

The broad mandate and flexibility of this doctrine also makes it an attractive as a legal framework and to provide guidance for ecosystem-based management and sustainability measures *(Sagarin, Turnipseed 2012)*.

The Public Trust Doctrine in Australia

Other countries have adopted the PTD as part of the common law they inherited from England. For example, in 1997, the Supreme Court of India declared that the PTD was part of the common law it inherited as a British colony and therefore it applied in India *(MC Mehta v Kamal Nath (1997) 1 SCC 388).*

Academic research in New Zealand has suggested that New Zealand also inherited the PTD in 1840 as part of the English common law under the English Laws Act 1858 *(Hulley 2018)*.

Whether or not same or similar argument could be made to support Australia's inheritance of the PTD is beyond the scope of this submission. The current position is that the PTD has never been explicitly approved or applied by Australian Courts although there have been several cases that offer implicit support for the PTD *(EDO (NSW) 2003).* While it is possible that at some stage Australian courts may directly deal with questions relating to the application of the PTD, this could years if not decades.

Our position is that even though the PTD has never been considered or applied in Australia, it does not necessarily need to be in order to become incorporated into Australian law.

Several countries including South Africa, Ecuador and the Philippines have used "PTD-type" language in their constitutions or biodiversity laws to incorporate the basic principles it embodies.

We see this approach - the codification of the PTD or at least the main features of the PTD in the Wildlife Act - as a simple and effective way to give the community a greater say in the governance and regulation of wildlife in Victoria.

(j) LEGAL RIGHTS OF WILDLIFE

Rights of nature

Under the current law nature is broadly treated as property or a resource. The Rights of Nature movement rejects this idea and instead asserts that natural entities have an independent and inalienable right to exist, thrive and evolve. As such, they have rights that can be enforced by people, communities and governments.

Rights of nature have been adopted in a number of countries through constitutional reform, incorporation into existing environmental laws or through legal mechanisms for First Nations peoples.

While we support the movement for rights of nature and see the use of legal agreements as a useful tool for traditional owners in protecting local natural resources, we do not see it having a broader application in the context of the current review.

Legal personhood for wildlife

We also support the nonhuman rights movement which seeks to establish legal personhood and rights for animals.

This movement has gained particular traction in India's courts where the High Courts in two different states have recognised the legal personhood of animals in the last decade.

India has a unique legal system which includes constitutional provisions relating to the obligation to have compassion for animals and incorporates strong social, religious and cultural values and beliefs about the importance and value of animals.

While we do not believe there is sufficient consensus in the community for the recognition of legal personhood for animals in Victoria, the recognition of the sentience of animals upon which legal personhood is based, certainly does.

Recognising sentience in the Wildlife Act

The ACT introduced legislation recognising the sentience and intrinsic value of animals in amendments to the Animal Welfare Act (1992) in 2019.

Similar legislation has been introduced in the UK and New Zealand. NSW and Victoria are set to introduce similar recognition in amendments to the Prevention of Cruelty to Animals Act later this year.

We consider this same recognition should be extended to wildlife under any amendments to the Wildlife Act.

While legal recognition of sentience is primarily of symbolic value because it does not in itself create new legal obligations, it is still a significant step towards improving animal welfare because:

- It indicates a shift away from classifying animals as property;
- It can influence the interpretation of other substantive provisions in the legislation;
- It increases public awareness of the issues facing animals;
- It encourages compassion and tolerance towards animals *(Kotzmann 2020)*.

General Duty of Care

We support introducing a minimum standard of care to the Wildlife Act. It is important to set an objective standard for those with whom have responsibility for wildlife must meet.

We have provided a detailed account of what that duty of care should look like and encompass in relation to wildlife in this document.

(k) PUBLIC VS PRIVATE RIGHTS IN WILDLIFE

We do not support the granting of private rights of ownership in relation to wildlife in any form, under any circumstances.

For several decades there has been a consistent push by some long-time advocates of the kangaroo industry to establish a regime under which landowners are granted property rights to commercially exploit “abundant” wildlife such as kangaroos and emus in exchange for supporting conservation efforts in relation to threatened and endangered species.

This proposal and others like it run contrary to the public trust/public interest principle which is based on the idea that wildlife should not be subject to private ownership but be managed responsibly in the interests of all citizens.

It should be viewed against the reality of what the private ownership of wildlife has meant for animal welfare in other countries and in light of the reputational and economic damage it has done in places like South Africa, Zimbabwe and Namibia.

South Africa’s commercial lion industry

In South Africa, the government effectively transferred ownership of wildlife to private interests under laws passed during apartheid. These laws classified wild animals as property and entrenched and promoted the commodification of wildlife as a form of “sustainable use”.

Landholders and ranchers fenced their properties to establish ownership of the wildlife that lived on those properties, allowing them to monetise wildlife for commercial activities like trophy hunting, including canned hunting and large-scale captive breeding programs for the international market in lion meat, hides and bones.

The commercial exploitation and “use” of blood lions in South Africa is a perfect example of how private ownership rights in wildlife can have disastrous outcomes.

Only about 3,000 lions live in the wild in South Africa. The vast majority of the country’s lion populations – between 9,000 to 12,000 lions - are confined in more than 300 private captive breeding facilities and are bred for commercial purposes *(Wilson 2019)*.

The commodification of these lions has led to disastrous animal welfare outcomes with evidence of widespread abuse and neglect of these animals.
There is also evidence that the large-scale slaughter of lions for meat and bones is fuelling the illegal trade in lion bones, increasing the trafficking of other species such as rhino and tiger, normalising demands for these products and hindering conservation efforts in other countries *(Wilson 2019)*.

The issue of trophy and canned hunting as well as the cruelty involved in the intensive captive confinement and breeding of lions for slaughter has done enormous damage to

South Africa's international reputation, to its non-consumptive eco and wildlife tourism industries and to the South African economy generally.

An economic analysis commissioned by the South African government put the value of that economic and "brand" damage at South Africa ZAR 45 billion over the next 10 years *(Forbes 2021)*.

In recognition of the extent of that reputational and economic damage, the South African government recently announced it will end the captive breeding of lions for both canned hunting and the lion bone trade.

The commercial exploitation of wildlife is something that should be eliminated, not encouraged or legitimised through the granting of private rights of ownership under the Wildlife Act.

Wildlife as pets

We also oppose any relaxation of the licensing requirements for the ownership of wildlife as pets or broadening the range of species that can be kept under licence.

Each species of native wildlife has specific care requirements, including nutrition and enclosure requirements. Those that care for and rehabilitate wildlife undergo extensive training and are subject to permits with strict conditions.

The private ownership of wildlife as pets would open a broader range of wildlife up to potential suffering, neglect and abuse and opens the door to the development of a domestic trade in wildlife as pets.

This is not appropriate and should not be considered in any amendments to the Wildlife Act.

(I) THE LEGAL RESPONSIBILITY FOR WILDLIFE

Commonwealth responsibility for wildlife

The Commonwealth government has a limited role in dealing with issues relating to animals (including wildlife) because it does not have a clear legislative power to do so under the constitution.

Instead, it relies on the external affairs power (S51 (xxix)), the trade and commerce power (S51(i)) and the quarantine power (S51(ix)).

The trade and commerce power allow the Commonwealth to legislate in relation to the import and export of wildlife specimens and has done so in the Environment Protection and Biodiversity Act 1999 (The EPBC Act) which provides an overall framework for environmental protection.

This protection includes the protection of Australian native wildlife in accordance with its obligations under CITES. Under that framework, each of the states must obtain Commonwealth approval to export wildlife products, including meat and skins.

These powers also mean the Commonwealth government is able to impose national animal welfare standards in relation to wildlife. These standards include the two National Codes of Practice for Shooting Kangaroos and Wallabies.

Commonwealth Government responsibility for Biodiversity

While the Commonwealth government has limited powers under the Constitution to protect wildlife specifically, it can set national standards for the protection of biodiversity more broadly as a signatory to the Convention of Biological Diversity (CBD).

Both the *IPBES Global Assessment of Report on Biodiversity and Ecosystem Services (2019)* and the most recent report of the *CBD-Global Diversity Outlook 5 (2020)* identified "strengthening environmental laws and policies and their implementation" as critical to preventing further biological and ecological losses.

As a signatory to the (CBD) the Australian government committed to achieving the 20 targets set by the Convention at Aichi in 2010.

The Commonwealth government's Biodiversity Strategy was released in 2019. It contained no measurable targets, no new actions and no funding for projects or programs designed to meet the Aichi targets.

Importantly, it contained no commitment to strengthening existing laws or create new ones to combat biodiversity loss or the increased threats to wildlife posed by climate change.

This lack of commitment was confirmed by its lukewarm response to the EPBC Act review in 2020.

Independent Review of the EPBC Act 2020

Last year, the Independent Review of the EPBC Act identified fundamental weaknesses in the current EPBC Act that were undermining the effectiveness of the legal protections for the environment and wildlife available under the Act.

Both the interim and final reports of the Independent Review called for national leadership on environmental issues, the creation of national environmental standards as well as greater enforcement of environmental protections and independent oversight of the Act.

The current government appears to have no intention of implementing those recommendations.

With the Commonwealth government effectively abandoning its national leadership role on environmental issues, responsibility for these issues is being left to the states.

State Government responsibility

The State governments have responsibility for wildlife within their jurisdictions and each state has legislation and regulations to deal with the protection and "use" of wildlife.

These laws were enacted in the mid-1970s in response to evidence given at Senate Inquiries in 1971 and 1973 that had indicated the uncontrolled killing of red kangaroos across Australia was pushing that species to the brink of extinction *(Calaby, Frith 1969) (Senate Inquiry reports 1971 and 1973)*.

In Victoria, this legislation was the Wildlife Act 1975.

Current Legislative and regulatory framework for the protection of wildlife in Victoria.

The principal legislation dealing with biodiversity conservation in Victoria is the Flora and Fauna Guarantee Act 1988 (FFGA).

The Wildlife Act 1975 (the Act) had previously established a separate legislative regime for the protection and use of common species of native fauna.

Both Acts were administered and regulated directly by the Department of Environment, Land, Water and Planning (DELWP) until 2019.

Responsibility for the regulation of these Acts was transferred to the Office of the Conservation Regulator (OCR) in early 2019. The OCR is not an independent regulator. It is an administrative office within the DELWP organisational structure.

We examine the need for the creation of a truly independent regulator elsewhere in this submission.

Flora and Fauna Guarantee Act 1988

The Flora and Fauna Guarantee Act (FFGA) deals with the assessment and listing of threatened species. It also deals with the protection and conservation of native vegetation and critical habitats.

The FFGA underwent significant review in 2018 to identify why it had failed to halt the decline of threatened species in its first 30 years of operation.

As a result of that review, significant amendments were made to the FFGA in 2019. These amendments included incorporating a set of guiding principles for decision-making under the Act and improvements to the assessment methods for threatened species and critical habitats.

The amendments did not, however, address the broad discretions conferred on government decision-makers over critical decision-making under the Act-the key reason for its failure to address the protection and conservation of threatened species and critical habitats.

In addition to the recommendations we have made to reform the Wildlife Act, we have also recommended further review of the FFGA so that action be taken to further strengthen that Act and better integrate biodiversity laws in Victoria.

The Wildlife Act 1975

The Wildlife Act has two main purposes. It establishes procedures to regulate species (common species) that are not subject to the FFGA for the purposes of:

- Promoting the 'protection and conservation of wildlife' including the 'prevention of taxa of wildlife from becoming extinct'; but also to allow for
- The 'sustainable use of and access to wildlife'.

The Act covers a diverse range of human activities and interactions that impact wildlife. It also covers the "control" of wildlife that impact human activities, including economic activities.

Unprotected Wildlife

All wildlife is protected under the Wildlife Act with some exceptions including wildlife declared to be "unprotected" wildlife under S7A of the Wildlife Act itself.

Under this provision, the Governor-in–Council on the advice of the Environment Minister can declare a wild species to be "unprotected" in Victoria.

The effective result of this designation is that these species have no legal protections under the Act and as a consequence can be killed on sight, without the need to apply for an authorisation for lethal control (ATCW) permit or to prove that lethal control was "necessary". **This amounts to a permanent and unregulated open season on these species.**

The ATCW permit system-prohibition and prescription

The protection of wildlife under the Act is subject to a system of licences, permits and authorisations. One of the authorisations set out in the Wildlife Act is the Authority to Control Wildlife (ATCW) permit set out in S28 A (1) of the Act.

Section 28A has a pivotal role within the scheme of the Act. Under this provision, the Secretary (of the Department-DELWP) is empowered to provide written authorisation to kill or harm otherwise protected wildlife.

In granting these authorisations, the Secretary must be satisfied the killing of wildlife is "necessary" for one of 7 reasons specified in S28A (1) (c) to (i).

One of these reasons is for "damage mitigation" purposes where wildlife is alleged to be damaging farm infrastructure such as fencing or competing with stock for pasture or water.

This provision is not consistent with either of the stated purposes of the Wildlife Act. It neither promotes the protection of wildlife nor does it qualify as a "sustainable use" of wildlife because it has no conservation or other "public good" benefit.

We contend that the way in which the ATCW permit system is administered and implemented has led to an exponential rise in the numbers of permits issued and wild animals and birds being killed by landowners in the name of "damage mitigation" over the last 2 decades.

We also contend that the removal of hundreds of thousands of wild animals and birds from ecosystems and landscapes across the State is contributing to the loss of biodiversity in Victoria and presents a potential risk to the long term viability of those species.

We raise concerns about the legitimacy of its role and function within the legislative scheme of the Wildlife Act and have recommended significant reform. We examine S28 A and the ATCW permit system in more detail further in our submission.

SECTION 4: FRAMEWORK FOR A NEW ACT

- Interaction with other legislation
- Intent and Objectives
- Statement of Principles
- Trusted Institutions

(m) INTERACTION WITH OTHER LEGISLATION

The case against consolidation of Victoria's biodiversity laws

It is inevitable that wildlife laws are complex because the management of wildlife is a complicated subject and the law concerning it needs to apply in a range of different situations and reflect a range of (potentially competing) interests *(Vincent 2014)*.

Because the management of wildlife is a complex and important issue, we believe that it warrants and deserves to be dealt with under dedicated, stand-alone legislation.

While we acknowledge there are gaps and inconsistencies between the FFGA and the Wildlife Act, we do not believe that consolidation is the answer.

We believe that consolidation would add to the complexity and create confusion surrounding these laws and the regulatory framework for biodiversity in Victoria.

We also believe that consolidation would lead to weaker controls and regulations as well as less public participation, less transparency and less accountability in decision-making relating to wildlife management.

Consolidation in NSW - the Biodiversity Conservation Act 2016

An example of the failure of consolidation is the *Biodiversity Conservation Act 2016 NSW.* Consolidation has made this law cumbersome and unworkable. It has also led to weaker regulation that has resulted in massive increases in land clearing and the destruction of wildlife in those states.

In 2020, a NSW Natural Resources Commission's report revealed that land clearing had increased 13-fold since 2016 and that biodiversity was at risk in 11 out of 13 regions in NSW *(NRC 2020)*.

In addition, the deregulation of the damage mitigation permit system under the Act in 2018 has led to a massive increase in the numbers of wildlife being killed under permit in NSW.

The EPBC Act - The case for Separate Acts

The Independent Review of the EPBC Act in 2020 confirmed that one of the main reasons the Act had had been ineffective was its complexity.

In its final report, it noted that targeted legislation would bring greater focus to specific issues and made a recommendation that consideration be given to simplifying the Act by de-consolidating it and creating separate legislation for some or all of the Acts functions, including its biodiversity and ecosystem management functions *(EPBC Act Review-Final report 2020).*

We endorse this approach. It is our submission that we need to simplify these laws to make them more easily accessible and navigable by the Victorian community.

Simplifying and integrating Victoria's biodiversity laws

If the Wildlife Act were to remain stand-alone legislation, the gaps and inconsistencies between the FFG Act and the Wildlife Act could be dealt with through common sense re-alignments and re-allocations of legislative responsibility and by standardising and harmonising (to the extent possible) the objectives, guiding principles, duties and other relevant provisions and mechanisms in both Acts.

(n) THE INTENT AND OBJECTIVES OF THE ACT

The Wildlife Act contains a variety of purposes and functions, some of which are conflicting. These conflicting purposes create confusion and make application of the Act more difficult.

Laws which govern wildlife both here in Australia and overseas have four basic themes *(Vincent 2014)*:

- **Control**: wildlife laws provide the framework within which wildlife can be controlled so that it does not interfere unduly with the conduct of human activity;
- **Exploitation**: wildlife laws create rights that allow for the use and exploitation of wildlife as a natural resource;
- **Welfare**: wildlife laws seek to protect individual animals from harm beyond a permitted level through the creation of offences and penalties;
- **Conservation**: wildlife laws seek to conserve wildlife as part of our common natural heritage for future generations.

In its current form, the Wildlife Act emphasises the control and exploitation of wildlife over the welfare of individuals and broad scale conservation of species and habitats.

Contemporary public sentiment is that there is a need for greater legal protections of wildlife and a stronger emphasis on conservation and restoration of biodiversity.

A new Wildlife Act should reflect this shift by prioritising protection and conservation and ensuring lethal control is a measure of last resort. It should also put in place mechanisms to phase out and ultimately put an end the commercial "use" or exploitation of wildlife.

A new Wildlife Act should also contain or reflect contemporary scientific understanding of the importance of wildlife as a significant component of ecosystems through:

- The recognition of the ecological value of all native species;
- The recognition of the potential impacts of rapid climate change on wildlife populations and their habitats;
- A commitment to ecosystem or landscape-scale conservation and restoration efforts.

Current purposes

Ensuring that the purposes and intended operation of legislation is clearly expressed is critical as these provisions reflect legislative intent and provide the foundation for good governance and decision-making *(OPC 2016)*.

Currently the Wildlife Act seeks to regulate wildlife for a number of conflicting purposes-to protect and conserve wildlife as well as regulate a wide range of human activities ranging from the benign such as whale-watching to the use of lethal control to "manage" wildlife.

These conflicting purposes create an unmanageable conflict of interest for the regulator and confusion regarding the actual levels of legal protection provided to wildlife.

As well, the current purposes of the Wildlife Act do not recognise and address the importance of traditional owner involvement in decision-making under the Act, the threat posed to wildlife by the impacts of accelerating climate change and a range of other important issues.

We support modernising, clarifying and strengthening the objectives of the Wildlife Act and ensuring those purposes reflect the Victorian community's desire for **strong and effective legal protections for wildlife and their habitats.**

New Objectives

Objectives are a set of statements about what the legislation aims to achieve and they serve as an aid in interpretation to the provisions of the Act.

Objectives should clearly set out the level of ambition that the law envisages for the subject matter of that law *(APEEL 2020)*.

We have reviewed a range of legislation within Victoria including the EPA Act 1970, the Climate change Act 2017, the FFGA 2019 and other states as well as at the Federal level such as the Climate Change Bill 2020 that contain well drafted and clearly stated objectives.

Based on that review, we offer the following comments.

The FFGA template

The amended FFGA contains a useful template for a comprehensive, coherent and easily understandable set of objectives for a new Wildlife Act.

Following this template would also go some way towards standardising and harmonising the objectives, principles and standards in both Acts.

Objectives

Using the objectives set out in the FFGA as a template, we make the following suggestions:

"The objectives of this Act are to:

- Protect and conserve all native species of wildlife in Victoria including their natural habitats for the benefit of all Victorians, including future generations;

- To recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; to foster the involvement of these First Australians in land management; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes

- To establish independent institutions to gather evidence, provide oversight of the implementation of the Act and provide advice to decision-makers;

- To ensure fair and efficient decision-making; government accountability; early and ongoing community participation in decisions that affect wildlife and improved public transparency, understanding and oversight of such decisions and their outcomes;

- To recognise the impact of current and emerging threatening processes as well as climate change on the health and persistence of Victoria's wild species and to mitigate those impacts;

- To promote policies and programs which encourage and enable non-lethal solutions to human-wildlife conflicts and sustainable co-existence."

Purpose

The wording should elevate protection and conservation as the primary purposes of the Act such as:

"The primary purpose of this Act is to establish a legal and administrative structure to enable and promote the effective protection and conservation of Victoria's wildlife and the responsible management of human wildlife conflict recognising its importance to Victoria's biological diversity and ecosystems in the interests of all Victorians"

Mandatory duty for decision-makers

Currently, the Wildlife Act confers broad discretions on the Secretary (of DELWP) in decision-making under the Act.

These high levels of discretion mean there is little the community can do to address or challenge decision-making under the Act.

These broad discretions should be constrained by imposing mandatory duties which require decision-makers to give consideration to both the purpose and objectives of the Act as well as to the guiding principles in the performance of their functions and duties.

Using S4B of the FFGA as a template, the Wildlife Act should include a provision mandating that decision-makers under the Act:

"…give proper consideration to the purpose and objectives of this Act and any instruments made under the Act when performing their role and functions to ensure the Act's objectives are met."

DEFINITIONS UNDER THE ACT

The entire suite of definitions under the current Act require revision and modernisation to bring them into line with modern developments in wildlife protection and conservation, animal welfare standards, wildlife management principles and usage.

(o) STATEMENT OF PRINCIPLES TO GUIDE DECISION-MAKING

Criteria for decision-making

In addition to enforceable duties, a new Wildlife Act should ensure that key decisions are made in accordance with clear criteria.

Where the Act gives decision-makers discretion as to how to exercise power, it should also provide clear and concise guidance regarding the considerations that must be taken into account when exercising that discretion.

The incorporation of these sorts of guiding principles provide an important opportunity for governments to articulate the expected standards against which to assess the way in which the law is regulated and implemented *(ALRC 2010)*.

As well as informing and guiding decision-making, these guiding principles can also perform an important symbolic and educative role and even help to change cultural beliefs and biases in the broader community.

The guiding principles should prioritise reliance on objective facts and evidence in decision-making, rather than the decision-maker's subjective opinion or a state of satisfaction (for example, under S28A (1)-whether the decision-maker is satisfied the issuing an ATCW is "necessary").

The new Act should also provide that certain key decisions or processes are undertaken by an independent expert body such as an independent expert scientific committee or expert panel rather than the decision-maker.

Both the EPA Act and the FFGA provide excellent templates from which to build a comprehensive set of guiding principles to inform decision-making under a new Wildlife Act.

We have suggested the incorporation of important additional principles including an overarching and foundational principle prioritising the public interest in all policy, practices and decision-making under the Act.

Overarching principle: the public interest principle

This overarching principle would codify that the primary obligation on the government and decision-makers is to ensure that Victoria's wildlife is managed in the interests of the Victorian community over all other interests.

We suggest the following formulation of that overarching principle:

"The wildlife of Victoria are held in trust for the Victorian community and the administration, regulation and management of Victoria's wildlife under this Act must ensure that Victoria's wild species are protected and safeguarded from harm and damage in the interest of all Victorians, including future generations"

We recommend that in any new Wildlife Act, decision-makers should be required to have regard to the following other guiding principles in the performance of functions or duties, or exercise of powers under the Act.

The prevention principle

This principle would require that decision-makers under the Act must investigate and understand the potential negative impacts of their decisions on wildlife and their habitats in order for them to ensure suitable measures are in place to prevent those impacts occurring.

The precautionary principle

This principle mandates that if there are risks or threats of serious or irreversible damage to wildlife populations, the lack of full scientific certainty should not be a reason for postponing measures to prevent harm to those populations or the degradation of the habitat and ecosystems they inhabit.

Principle of integration of economic, social and environmental considerations

This principle would require the integration of economic, social and responsible wildlife management in decision-making processes with the need to improve community well-being and the benefit of future generations.

Principle of intergenerational equity

This principle would require that the present generation ensure that the health and diversity of wildlife is safeguarded, maintained and enhanced for the benefit of future generations.

Principle of conservation of biological diversity and ecological integrity

This principle would require that conservation of biological diversity and ecological integrity be a fundamental consideration in decision making under the Act.

Principle of shared responsibility

This principle would require that protection of Victoria's wildlife be a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.

Principle of integrated environmental management

This principle would require that decision-makers under the Act seek the best possible and most practicable outcome where approaches to managing wildlife impacts on one segment of the environment have potential impacts on another segment.

Principle of enforcement

This principle would require that effective enforcement activities be undertaken to ensure wildlife is protected from harm and over-exploitation and to deter wrongful behaviour.

Principle of transparency, accountability and public participation

This principle would require that decision-makers under the Act provide members of the public with timely access to reliable and relevant information and ensure Victorians are given appropriate opportunities to effectively participate in policy development and decision-making under the Act.

Mainstreaming climate change in the Wildlife Act

There is extensive evidence that climate change is already threatening the persistence of many native species *(Maxwell et al 2019).*

There is also compelling evidence that climate change is resulting in changes in the distributions of wildlife species and populations that are altering ecosystem processes and creating new sources of conflict and challenges for wildlife protection and management *(Pecl et al 2017)*.

Currently, the Wildlife Act contains no reference at all to climate change or its potential impacts on Victorian wildlife populations or habitats.

The Climate Change Act 2017 (Vic) (CCA) creates an obligation on decision makers under various Acts to give proper consideration to climate change in decisions, policy and program development or processes. Those Acts are listed in Schedule 1 of the CCA.

This obligation was incorporated into the Flora and Flora Guarantee Act in amendments made to the Act in 2019.

The Wildlife Act should be included in Schedule 1 of the CCA and the same obligation to take the potential impacts of climate change into consideration in decision-making should be incorporated into any new Wildlife Act.

(p) TRUSTED INSTITUTIONS

The need for trusted institutions to manage wildlife and biodiversity

In order to ensure that Victoria's wildlife and biodiversity is properly and effectively protected, any new biodiversity legislation needs to establish trusted institutions to regulate and oversee the implementation of that legislation and the co-ordination of the landscape level biodiversity strategies and policies that are needed to halt and reverse the current declines in biodiversity and ecosystem function.

The Interim Report of the Independent Review of the EPBC Act emphasised the importance of having an independent regulator to community trust and confidence in the governance and regulation of biodiversity laws *(EPBC Act Review-Interim report 7/20)*.

Currently, responsibility for decision-making under the Act rests with the Secretary of DELWP. This responsibility is then delegated to a variety of "authorised officers" within DELWP, the Game Management Authority and the Victorian Fisheries Authority.

In 2019, DELWP created the Office of the Conservation Regulator (OCR) to take over DELWP's regulatory functions under the Wildlife Act and the regulation of another 20 or so pieces of legislation for which DELWP was responsible.

OCR is not independent of DELWP. It functions as an administrative department within the larger DELWP organisational structure.

While administrative offices are discrete business units and have a degree of autonomy from their parent department, they are still subject to the direction of the Department head and the Minister, limiting their independence and making them vulnerable to political pressure.

DELWPs performance as regulator

In the more than four decades since DELWP has had responsibility for protecting and conserving the wildlife in this state, there have been significant declines in the biodiversity and the health and functions of ecosystems across Victoria that have been documented in not only successive State of the Environment reports but in the large number of both government and independent authoritative scientific reports that have been published in that time.

Contemporary best practice for independent regulators require that they are independent, consistent, trusted, expert, transparent and accountable *(OECD 2014)*.

DELWP have been subject to public backlash and concerning wildlife issues have occurred across the state, examples of which include:

- public outcry of poor and inadequate responses to the wildlife welfare crises following the 2020 Black Summer bushfires;

- failure to review and revoke the unprotected status of wombats in Eastern Victoria for the last 45 years, with action taken only very recently after media exposure into canned hunting of wombats by wealthy international tourists at a property in Victoria;
- a massive rise in the numbers of wild animals and birds being killed under permits over the last 20 years in the name of damage mitigation;
- the over-population of koalas at Cape Otway over many years with no intervention, allowing that population to decimate local eucalypt forests to the point where thousands of koalas starved to death or had to be euthanised or translocated to other regions;
- limited investigation of cruelty and record of conviction on other wildlife crimes and on compliance and enforcement under the Wildlife Act more generally.

The review of the Wildlife Act provides the opportunity to overlay a new model of governance and oversight to one that is capable of managing wildlife in the public interest and meeting the challenges of the emerging threats to wildlife and biodiversity that ecosystem decline and climate change pose.

The OCR as regulator

The OCR assumed regulatory responsibility for the regulation of the Wildlife Act in early 2019. And, as articulated earlier, it functions as an administrative department within the larger DELWP organisational structure.

Of the suspected Wildlife Cruelty Incidents reported into the Wildlife Victoria Emergency Response Service by concerned members of public between December 2020 to June 2021, 100% of which were reported to DELWP, Wildlife Victoria have received no notification after submitting reports of these incidents as to whether they have been actioned by DELWP and the OCR, with one exception. Wildlife Victoria are not provided with any official ongoing information or updates after Wildlife Victoria provides reports. Wildlife Victoria are provided an email address for DELWP, who operate during business hours, and regularly need to seek assistance from Victoria Police for out of hours support when attending to wildlife rescues where we suspect there may be risk to Wildlife Victoria volunteers or wildlife cruelty taking place.

Time for Change

It is critical that any amendments to the Wildlife Act include the establishment of statutory authority to function as an independent regulator under the Wildlife Act.

The moment calls for transformational change. The creation of this statutory authority should be an opportunity to break from past failures of governance over the past 45 years and from the captured culture that has led to those failures.

We urge the Review to recommend the constitution of entirely new authority along with new leadership and governance structures.

Good governance

Governance refers to the authority, leadership, stewardship, direction, control and accountability exercised in an organisation including the processes by which organisations are controlled, directed and held to account.

Good governance also establishes and maintains the culture and values of an organisation and provides guidance about appropriate decision-making and behaviour.

Good governance strengthens community confidence in a public entity and maintains and enhances the reputations of an organisation. It enables organisations to perform efficiently and effectively and respond to changing circumstances and demands *(Uhrig 2003)*.

The question is how best to ensure there are effective governance arrangements under the Wildlife Act given the importance and complexity of the subject matter of the Act and the role of the Act within the broader legislative framework for biodiversity in Victoria.

Effective institutional arrangements-an independent regulator

Wildlife is an important and complex subject area. It is important to the community that wildlife is properly safeguarded from harm.

The Wildlife Act is a complex and specialised piece of legislation. It impacts many Victorians and millions of Victoria's wild animals and birds. It both warrants and requires a specialist organisation to administer and regulate it.

We have provided extensive evidence of the degree to which the administration and regulation of the Wildlife Act has been and is influenced by and benefits farmer, landholder and shooter interests.

The only way to dismantle the culture and the levels of industry capture by special interests is by having strong and independent regulator that is both willing and able to implement the public interest *(Carpenter, Moss 2014)*.

We believe these are compelling reasons to justify the establishment of a new and independent regulator under the Wildlife Act:

- Statutory independence in the performance of an independent regulator's functions would limit ministerial powers of direction, ensuring decision-making is arms-length from routine ministerial and departmental control;
- Statutory independence would also instil greater public confidence that decision-making under the Act is impartial and fair to all stakeholders and members of the community;
- A regulator that has a clearly defined range of specialist functions would allow those managing the regulator to concentrate on those functions, increasing efficiency and the effectiveness of decision-making and ultimately, producing better outcomes.

We believe the title of this new authority should reflect its fundamental role and suggest it be called the Office of Wildlife Protection or Wildlife Protection Authority.

This will make it clear to the public what the new authority's core objective/function is and assist in establishing and promoting its public profile.

This new regulator would have responsibility for the administration and implementation of the provisions of the new Act including the day to day operations and decision-making.

Like other legislation that establishes a statutory authority, the new Act should specify the role of the new regulator and its functions. These functions should include:

- Monitoring and identifying impacts and risks to wildlife;
- Developing tools and instruments to prevent and reduce those impacts and risks;
- Monitoring compliance and enforcing the law;
- Leading, coordinating and collaborating with other government agencies and authorities on issues relating to wildlife management and conservation;
- Educating and engaging with the community on preventing harm to wildlife and encouraging and promoting protection and conservation efforts;
- Providing advice to government on matters relating to wildlife management and conservation, if and when required;
- Evaluating and reporting on the effectiveness of wildlife management policies and regulatory interventions.

Expanded role for a new regulator

We believe that a new independent regulator for the Wildlife Act should have an expanded role in strategic planning and decision-making in relation to issues affecting wildlife and biodiversity within government.

A new regulator should have an expanded role in obtaining, commissioning and making this type of evidence and data publicly accessible. While DELWP claims that it's decision-making

under the current Act is “evidence-based”, in reality very few wildlife management decisions made under the Act are supported by independent scientific or other evidence, analysis or data.

The Act should also clarify and expand the role of the new authority in emergency management under the State Emergency Management Plan.

A regulator for the FFGA

Although we acknowledge that the current Review is limited to the Wildlife Act, we suggest the review of the Wildlife Act presents an opportunity to consider broader changes to and a re-structuring of Victoria’s biodiversity laws.

While amendments were made to the FFGA in 2019, those changes did not limit or constrain the broad discretions conferred on DELWP in decision-making under that Act.

We recommend that alongside reforms to the Wildlife Act, there be a further review of the FFGA to uplift and harmonise that Act in line with the changes made to the Wildlife Act including the incorporation of an overarching public trust/interest principle.

We also recommend that any further review of the FFGA include consideration of the need to create an independent regulator to administer that Act for all the same reasons we have recommended changes to the governance arrangements under the Wildlife Act.

Governance structures

A new independent regulator (or two, if one is established to administer and regulate the FFGA) will require a governance structure that can provide strategic direction and purpose and oversight of management and the discharge of the independent regulator’s role and day to day regulatory responsibilities under the Wildlife Act.

The question is what is the most appropriate form of governance for a statutory authority under the Wildlife Act?

Best practice contemporary governance structure for independent regulators can be achieved through a variety of governance structures including a Board of Governors or the appointment of a Commission *(OECD 2014)*.

Board of Governors

The Board model is a straightforward and standard governance structure for most Victorian regulators. Boards provide strategic direction to the organisation they oversee, supervise management and the implementation of policy, manage risk in a manner consistent with the legislation and account to the relevant Minister for the performance of the regulator.

We believe that if a new independent statutory authority is established to administer the Wildlife Act then it a board of governance would be an appropriate governance structure.

Integration-Biodiversity Commission

If, on the other hand, consideration were to be given to the creation of a second statutory authority to perform regulatory functions under the FFGA then we believe that a commission governance structure could be a better governance option. The commission model is designed to take on a range of functions in complex subject areas.

We note in particular the success of the Emergency Services Commission in regulating a number of different Acts which cover wide range of emergency services in Victoria.

A Biodiversity Commission with a number of Commissioners could, as well as performing its strategic, advisory and oversight responsibilities, also oversee collaboration between agencies to meet common objectives including the sharing of information and expertise on matters relating to biodiversity, oversee the implementation of Victoria's biodiversity strategy and co-ordinate conservation and restoration programs and efforts across the state.

Finally, a commission structure would provide an effective way of integrating the entire regulatory framework and to implement and promote the kind of ecosystem or landscape level conservation and restoration efforts that will be required to address the current declines in biodiversity and meet the challenges of rapid climate change.

SECTION 5: WILDLIFE WELFARE AND PROTECTION

- Recognition of sentience
- Duty of care
- Prohibited Traps and Equipment
- Animal Welfare Mandatory Codes of Practice
- Wildlife Licences
- Repeal of S7A of the Wildlife Act

(q) RECOGNITION OF SENTIENCE

We strongly support the recognition of the sentience of wild animals and birds in the Wildlife Act not just for its symbolic and educational value but to promote consistency in animal welfare legislation within Victoria (noting the likely changes to POCTA to include such a recognition) and across Australian states and territories.

We consider that the wording in the objects of the Australian Capital Territory's Animal Welfare Act 1992 (ACT) could be a useful template for recognising sentience in the Wildlife Act:

"That animals are sentient beings that are able to subjectively feel and perceive the world around them, and have intrinsic value and deserve to be treated with compassion and have a quality of life that reflects their intrinsic value"

(r) GENERAL DUTY OF CARE

We strongly support provision in the Act for a general duty of care which defines what conduct is both morally and legally acceptable and unacceptable when it comes to interacting with wildlife.

Breach of this duty or these duties should constitute a criminal offence and attract criminal penalties.

The introduction of this duty and the specific duties we have recommended should be accompanied by a public education campaign to alert members of the public to these obligations.

The formulation of that duty of care will necessarily be different from the legislated duties of care for companion and other domestic animals because other than those licenced under the Wildlife Act, the public are not authorised to handle or care for wildlife except in a limited number of circumstances.

We suggest that a general duty of care should contain a general duty as well as specific reference to four specific duties that deal with situations in which the actions of members of the community can have a significant impact on the welfare of native wildlife as follows:

Road Trauma - Wildlife Vehicle collisions

It is estimated that 4 million wild animals and birds are hit by vehicles in Australia every year *(Englefield, Starling & McGreevy, 2018).*

Many of those animals and birds are not killed outright. Even if they are, many of our marsupial species have dependent pouch young which many survive the impact but are left without maternal care and will perish if not checked on, rescued and taken into care.

While many people in Victoria stop and call a wildlife rescue organisation for assistance for injured wildlife, the vast majority do not and tens of thousands of wild animals and birds are left to suffer and die slow and painful deaths on roadsides across Victoria every year.

The Road Safety Act 1986, Section 61 (1) requires drivers to stop and render assistance in an accident where persons are injured or property, including animals, is damaged or destroyed.

It is clear that while there is an obligation to stop and render assistance when an “owned” animal is struck and injured, there is currently no such obligation relating to wild animals.

We believe the Road Safety Act should be amended so that the obligation to render assistance is extended to wildlife.

We also believe that the same obligation should be incorporated into a general duty of care under the Wildlife Act. This obligation would require drivers that collide with wildlife to

stop and render assistance to the extent they are able to even if that assistance is limited to placing a call to an emergency wildlife rescue service such as Wildlife Victoria.

Sick or injured and orphaned wildlife

A major but largely hidden issue faced by Wildlife Victoria and other wildlife rescue and rehabilitation organisations is where members of the public find, keep and attempt to raise or care for sick, injured or orphaned wildlife themselves.

Sick, injured and in particular orphaned wildlife require highly specialised care. Without that level of specialised care, many of these animals suffer and die slow deaths in the hands of these members of the public or are handed to vet practices and licenced shelters when the animal's condition deteriorates to the point where they cannot be saved.

These situations cause enormous suffering for the animals and trauma and frustration for vets, wildlife rescuers and wildlife carers.

The Wildlife Act Regulations 2013, Regulations 45 (2), 50 and 52 contain exemptions for members of the public who are in possession of wildlife for the purposes of rescuing and transporting a sick, injured or orphaned animal or bird to a registered veterinary practitioner or licenced wildlife shelter for the purposes of assessment, treatment and specialised care.

We believe that a strengthened formulation of these requirements should be incorporated directly into the Wildlife Act as part of a general duty of care.

This aspect of the duty of care would create an obligation on non-licenced rescuers or transporters of sick, injured and orphaned wildlife to seek **immediate** assistance for sick, injured and orphaned animals from a vet or licenced shelter or wildlife rescue organisation, which could also take the form of a phone call in the first instance for immediate triage advice.

Domestic Animals

One of the biggest killers of wildlife in Victoria are uncontained domestic animals. While governments take action to control feral cats, uncontained domestic cats also kill massive numbers of small mammals, birds and reptiles. Unleashed and uncontained dogs regularly harass, injure and kill kangaroos, koalas, wombats and possums and birds.

The Domestic Animals Act 1994 contains extensive provisions in relation to the liability (including criminal liability) of owners for cats and dogs that are found at large, cause a nuisance or that attack people or other animals. Wandering animals can be impounded or destroyed if not claimed.

Department of Agriculture Codes of Practice for both cat and dog ownership create mandatory duties on owners to confine these animals to the owner's property.

To highlight the role of domestic animals in the injuring and killing of native wildlife and to promote clarity and consistency with other animal welfare legislation, we believe that the general duty of care in the Wildlife Act should create a specific obligation on pet owners to contain and confine domestic cats and dogs to prevent them from injuring and killing wildlife.

The use of lethal control

As we indicate in our examination of the ATCW permit system under the Wildlife Act, the lethal control of wildlife is the standard response to human wildlife conflicts in regional Victoria.

Under ATCW permits, there is no requirement for shooter competency and there are no mandatory and enforceable minimal animal welfare standards in the Wildlife Act, in the ATCW permit licence conditions or the even in the sole applicable code of practice that covers the non-commercial shooting of kangaroos and wallabies to ensure that suffering is minimised.

We note that under the ACT Animal Welfare Act 1992 there are criminal penalties for not alleviating or ending the suffering of wounded or injured animals including wildlife:

"A person commits an offence if they injure a live member of a vertebrate species and do not take reasonable steps to alleviate any pain suffered by the animal".
We recommend that a formulation of a mandatory duty of this sort be included in any general duty of care under the Act to reinforce the need for landowners to minimise suffering in killing wildlife.

(s) PROHIBITED TRAPS AND EQUIPMENT

As well as incorporating a general duty (or duties) of care in the Wildlife Act, we believe it is important that the Wildlife Act also incorporate the express prohibitions on the use of certain equipment and materials contained in other animal welfare legislation in Victoria.

For example, under amendments to POCTA regulations in 2019, provision was made to ban the use of glue trap devices (which harm many species of wildlife including micro-bats, small birds and small reptiles) and certain types of fruit tree netting (which kill and injure large numbers of flying foxes, birds and larger reptiles).

Another example is the amendment of the Fisheries Act regulations in 2019 to ban the use of “opera house nets” to prevent the killing of platypus and rakali in Victorian rivers.

Explicit reference to these prohibitions would promote both consistency in the legislation and promote and improve public education about the dangers this banned equipment pose to wildlife.

(t) ANIMAL WELFARE - MANDATORY CODES OF PRACTICE

The Victorian community rightly expects that there are minimum and enforceable animal welfare standards that govern human-wildlife interactions, especially those that involve lethal control.

The Wildlife Act was not designed nor was it ever intended to include or set animal welfare standards. As a result, there is currently no mechanism in the Wildlife Act to allow for enforceable minimum animal welfare standards to be incorporated into the Act or regulations.

While mandatory Codes of Practice are not a substitute for good governance and strong regulation, they would improve and promote public confidence that the Act provides appropriate welfare safeguards, especially in relation to the use of lethal control.

Codes of Practice for Shooting Kangaroos and Wallabies

Currently there are only two codes of practice which govern the welfare of wildlife in Victoria.

These are the two national Codes of Practice for the Shooting of Kangaroos and Wallabies. The commercial code of practice applies to kangaroo shooters operating within the commercial kangaroo industry. The non-commercial code of practice applies to landowners that shoot kangaroos and wallabies under ATCW permits.

These codes are voluntary codes. They are not legally enforceable directly against the offending shooter or landowner. Breaches are only enforceable as breaches of licence conditions.

Cruelty in the Kangaroo Industry and the ATCW permit system

The use of cruel and inhumane practices is widespread both in the commercial kangaroo industry and in non-commercial shooting.

Over the past 4 decades research conducted by the RSPCA and other animal welfare organisations has exposed the fact that non-fatal body shots are a regular part of the commercial kangaroo industry.

In 1985, the RSPCA found that only about 86% of adult kangaroos were head shot. In 2000 and 2002 the RSPCA confirmed that although this figure had risen to 95.9%, this still meant that as many as 120,000 kangaroos were not killed humanely across Australia every year *(RSPCA 1985, 2000 and 2002)*.

Other research by the RSPCA in 2002 also found high levels of non-compliance in the killing of joeys, with shooters using a variety of unauthorised and inhumane methods that did not result in a quick or painless death. The 2002 report found that in particular, shooters had

difficulty catching young at foot joeys and that many of these dependent young were left to suffer from exposure, starvation or predation.

These findings led to the development of the 2008 Codes of Practice. These codes appear to have had little impact on the widespread use of cruel and inhumane methods being used by kangaroo shooters and landowners.

In 2014 the RIRDC (now Agrifutures) published a report which documented the extent of the cruel and inhumane practices employed by shooters in killing both adult and dependent young kangaroos in the commercial kangaroo industry *(McLeod, Sharp 2014)*.

This report found that:

- Kangaroo shooters had little or no understanding of kangaroo biology and development;
- Kangaroo shooters were largely ignorant of their obligations under the Code of Practice in relation to the humane killing of dependent pouch young and young at foot;
- The use of inhumane practices in the killing of both adult and dependent young kangaroos was widespread;
- Kangaroo shooters were largely indifferent to the suffering and welfare outcomes of the kangaroos they killed.

The RSPCA reports in 1985 and 1987 indicated that there were far higher rates of cruelty in non-commercial permitted shooting. This is consistent with the fact there is no requirement for competence or accuracy testing under damage mitigation permit systems.

Voluntary codes have not worked to improve animal welfare outcomes for kangaroos.

Making these codes of practice legally enforceable against both commercial and non-commercial shooters in Victoria would send a strong message that employing inhumane practices could render them criminally liable.

We believe that these changes and the imposition of stricter controls over landowner and shooter activities through reform of the ATCW permit system would lessen the incidence of cruelty that currently occurs under the current codes.

Mandatory Codes for other species

Mandatory codes of practice specifying minimum animal welfare standards should be developed for all native animal and bird species that are targeted for lethal control under ATCW permits.

Voluntary codes already created under the Prevention of Cruelty to Animals Act 1986 (POCTA) and Domestic Animals Act 1994 (DA Act) already exist for the keeping of native birds, reptiles, amphibians, emus and for the exhibition of animals, the use of animals in films and for scientific procedures should be made mandatory with enforceable minimum standards to ensure the proper care of captive wildlife.

Mandatory Code for Wildlife care and Rehabilitation

The issues paper specifically raises the issue of making the currently voluntary code of practice for the welfare of wildlife during rehabilitation issued under POCTA be made mandatory and legally enforceable against shelters as is the case in Qld.

We note that the state government recently published a revised Code of Practice for the Welfare of Wildlife during Rehabilitation that has been incorporated under POCTA. This code is advisory only and is not legally enforceable against wildlife shelters.

This code has not been but should be incorporated into the Wildlife Act. The question is whether the code should be made mandatory and legally enforceable against shelters.

Wildlife shelters and carers provide a public good. The public interest is served by having a well-supported wildlife rescue and rehabilitation sector.

There is a good argument that enforceable standards would ensure minimum standards of care. We support this.

However, this should not be done without a comprehensive review of the wildlife rescue and care sector to ensure it is provided with the appropriate educational, training, technical and financial supports it requires to meet the requirements of a mandatory code.

(u) WILDLIFE LICENCES

Wild animals and birds, like all other animals, are vulnerable to cruelty and exploitation. In line with community expectations the Wildlife Act should ensure there are appropriate levels of protection and oversight built into the licensing system.

We are strongly of the view that licensing for all categories of activities should be retained and there should be more oversight not less of licenced activities.

We also support the retention of strict reporting requirements for all categories of licence.

Reporting requirements enhance transparency and accountability and make it easier to detect of breaches of animal welfare standards and other offences.

As we have recommended elsewhere in this submission, the requirement for ATCW permit holders to provide reporting through shooter returns should be re-instated.

Licence Fees

As we have indicated elsewhere in our submission, the ATCW permit system is currently fully funded by Victorian taxpayers. There is no justification for this. **These permits have no conservation or other public good benefit.**

Given the holders of ATCW permits obtain a commercial benefit from the removal of wildlife, they should fully fund the administration of the permit system. In addition, we believe that imposing a cost for killing wildlife would encourage the consideration and use of non-lethal alternatives.

In relation to other fees, we consider reducing or waiving licensing fees where the issue of the licence is in the public interest, or where the issue of a licence is conditioned with a requirement for information sharing that contributes to improved public education and knowledge would improve equity in setting licence fees.

(v) REPEAL OF S7A OF THE WILDLIFE ACT

S7A reflects the power of the pest control narrative and the way it has shaped wildlife laws and management in Victoria.

This provision was introduced in 1980, just five years after the enactment of the Wildlife Act, because landowners in eastern Victoria claimed the permit system in place at the time was too 'inflexible' *(EJA 2020)*.

This amendment is yet another example of industry capture and how special interests are able to influence the law to their benefit (in this case, not having to go to the trouble of applying for an ATCW permit in order to use lethal control on these populations of wombats).

The effect of a species being declared "unprotected" effectively removes any legal protections for that species under the Act. The effect is that these animals can be shot on sight whether or not they are causing damage.

The entire basis for and process under which these declarations are made is opaque. DELWP do not publish any information or data relating the declarations and other information about these declarations is difficult to find.

According to S7A, where it "appears" to the Minister that wildlife is causing injury or damage to property, crops or other animals, he or she can recommend that the Governor in Council make a declaration unprotecting that species.

The provision does not specify whether these recommendations need to be supported by evidence nor does it provide any mechanism for review or reconsideration of these orders.

We have previously described how wombats in eastern Victoria were first subject to this kind of declaration from 1984 but in fact had been unprotected under previous Vermin and Noxious Animal Acts for over 114 years.

The failure to review and revoke this declaration highlighted DELWP's lack of governance and oversight and its lack of transparency and accountability in relation to these orders. Although the order in relation to wombats has now been revoked, other animals and birds are still subject to these declarations.

These include brushtail possums in buildings and public parks, dingoes within a certain distance of private property, long billed corellas, sulphur crested cockatoos and galahs. It is unclear how long these declarations have been in place, which areas of Victoria these declarations apply to or when, if at all, these declarations have been reviewed or reconsidered.

There is an established permissions system available to landowners who seek to control wildlife on their properties under the Act.

In these circumstances, there is no possible justification for continuing to allow landholders to engage in what amounts to a permanent and unregulated open season on these species of wild animals and birds.

For these reasons, we seek the repeal and excision of this provision from the Act.

SECTION 6: GAME AND GAME MANAGEMENT

(w) GAME AND GAME MANAGEMENT

The inclusion of a number of non-native species and game management provisions in the Wildlife Act is one of the legacies of the Games Acts that regulated the hunting of both native and non-native species between 1862 and 1975.

Having game and hunting provisions as well as offences and penalties which relate to game and hunting in the Wildlife Act creates confusion by blurring those lines.

These provisions do not belong in the Wildlife Act.

The Act should only provide protections for native wildlife not non-native and invasive species.

We have recommended these provisions be removed from the Act entirely, as NSW did in 2002 through the enactment of the Game and Feral Animal Control Act (2002) in NSW.

Native waterbirds and native quail

We do not consider any native animal or bird species should be classified as “game” in Victoria.

We strongly oppose quail and duck shooting and urge the government to permanently ban open seasons in relation to these species.

We oppose these activities because there is compelling evidence that native waterbird populations across south eastern Australia have been in serious decline over the past 30 years *(Porter, Kingsford 2018, 2019, 2020)*.

In order to simplify and strengthen protections for all native species in Victoria, these water bird species should not be classed as “game” or subjected to annual open seasons.

It is our strong recommendation that status of these species as “game” be revoked and that they be afforded the legal protections available to all other native bird species under the Wildlife Act.

The state nature reserve system

Another legacy of the Game Acts is the fact that the Wildlife Act provides for a nature reserve system which sets aside extensive public land for the exclusive use of quail and duck shooters.

There are currently 335 such nature reserves. Under the Wildlife Act these reserves are divided into two groups. The first are classified as Nature Conservation Reserves which are

open to the public and where hunting is prohibited. According to an audit of these reserves in 2016 there are currently 135 of these reserves in Victoria *(Game Management Authority 2016)*.

The second group are classified as State Game Reserves (SGRs). There are 199 of these reserves which mostly consist of what remains of Victoria's wetlands systems. These reserves allow for "game" hunting by duck shooters.

The area covered by SGRs is not insignificant. Currently these reserves cover 75,318 hectares or 186,114 acres of wetlands on public land across Victoria.

Many of these SGRs are of significant conservation value. They consist of 19 different wetland types spread across 12 of Victoria's 28 existing bioregions. 18 SGRs are listed as internationally significant wetlands under the RAMSAR convention. 70 SGRs support threatened species that are listed under the FFGA.

Given the ecological importance of these reserves, especially those wetlands that are RAMSAR listed, it is of significant concern that so many (132 out of 199) are effectively set aside for the exclusive year-round use of recreational duck and quail shooters.

Duck and quail shooters are a tiny minority of the Victorian community. According to the Game Management Authority's Annual report 2019-2020, it issued licences to 23,378 duck shooters in 2020. This represents around 0.003 % of the current population of Victoria of 6.68 million people.

This is yet another example of how powerful vested interests with ready access to government through influential lobby groups and representatives obtain significant advantages over the rest of the Victorian community under the Wildlife Act.

There is no justification for privileging the recreational activities of this group over the interests of the rest of the Victorian community in relation to access to these public spaces under these legislative arrangements.

Duck shooting under the Act

The Wildlife Act legitimises duck and quail shooting and institutionalises the destruction and cruelty this activity inflicts on Victoria's native waterbird and quail populations during open seasons which occur between March and June every year.

A state government ban on these activities would not only end the destruction and cruelty but it would free up the public land set aside in the Wildlife Act for state game reserves for the benefit of the broader community.

This is what has occurred in other states including NSW. Native duck or quail shooting is prohibited on any public land in NSW including the over 300 state nature and flora reserves and wetlands.

A ban would also free up the significant government funding that is currently allocated to the Game Management Authority to police duck shooting.

This money could be used for initiatives that encourage and support conservation efforts and other recreational activities that are consistent with the protection and conservation of these wetlands and the wildlife they support such as bird watching, bushwalking, cycling and nature tourism.

Freed from the activities of duck shooters, the 334 reserves that comprise the nature reserve system under the Wildlife Act could form the basis of a system of protected areas upon which to build wildlife corridors and connectivity across the state.

Other comments on the nature reserve system

Part II and Part V of the Act which deal with arrangements relating to the reserve system are confusing and difficult to understand.

There are a wide range of reserve classifications under these Parts including State Wildlife Reserves, State Game Refuges, State faunal Reserves and Game Management Stations. Separate provisions in the Act also refer to Wildlife Management Co-operative Areas, Prohibited Areas and Wildlife Sanctuaries.

We recommend a complete review of these provisions to ensure they provide both clarity and consistency of the classification and purposes of these reserves.

We also note there is a requirement that management plans be developed for each reserve. There is no specification of what should be included in those plans. These matters should be clarified including a requirement for an ecological assessment including flora and fauna surveys for each reserve. This information should inform management decisions and be a public resource.

We also suggest that, like all other provisions which require the development of management plans, the Wildlife Act incorporate a requirement for a public register of those plans so that they are easily accessible to the public.

We note that should the state government ban duck shooting and the game and hunting provisions in the wildlife Act are removed, there are a range of other consequential provisions that would no longer be required.

These include a range of provisions in S58C-R which were specifically enacted in 2014 to protect duck shooters and their activities during duck shooting season which would be redundant and could be excised from the Act.

SECTION 7: WILDLIFE CONTROL AND KILLING OF WILDLIFE

- The ATCW Permit System
- Reform of the ATCW Permit System
- Victorian Kangaroo Harvest Management Plan (KMP)

(x) THE ATCW PERMIT SYSTEM

The protection of wildlife and wildlife habitat under the Act are subject to a system of licences, permits and authorisations.

One of the authorisations set out in the Wildlife Act is the Authority to Control Wildlife (ATCW) permit set out in S28 A of the Wildlife Act.

Section 28A has a pivotal role within the scheme of the Wildlife Act. Under this provision, the Secretary (of the Department-DELWP) is empowered to provide written authorisation to kill or harm otherwise protected wildlife.

In granting these authorisations, the Secretary must be satisfied the killing of wildlife is "necessary" for one of 7 reasons specified in S28A (1) (c) to (i) and can impose conditions on the granting of the authorisation.

S28A (1) (c) of the Wildlife Act allows landholders to apply for permits to kill wild animals and birds which they claim are causing damage to their property or are having a financial impact on their business.

S28 A (1) (h) allows for the killing of wildlife to "support a recognised wildlife management Plan". This provision was used to develop the Victorian Kangaroo Harvest Management Plan (KMP) which created a permanent commercial kangaroo meat and skins industry in Victoria in October 2019.

We examine S28 A and the ATCW permit system in detail below and detail how industry capture, weak regulation and lack of oversight and enforcement has resulted in the industrial scale slaughter of hundreds of thousands of healthy wild animals and birds every year in Victoria.

We believe the ATCW system does not align with contemporary values and attitudes towards wildlife and should be phased out over time and replaced with programs and incentives which encourage and support social and cultural acceptance of wildlife and co-existence with such.

We acknowledge this is not under consideration in this current Review so offer a range of recommendations to strengthen controls over this system until that occurs.

Background

Killing wildlife, whether justified or not, has become normalised as a land management tool in Victoria over the last century and a half.

The pest control narrative remains a powerful cultural force that drives industrial scale killing of wildlife in Victoria in the name of "damage mitigation" in the land management arena.

This is offset now by a fundamental community expectation that those that seek to use lethal methods to control wildlife should have a legitimate reason for doing so and that the process under which lethal control is authorised should be robust, evidence-based and transparent. It also requires there is oversight of shooter activities and that permit holders are accountable for the activities they undertake through the provision of records or reporting.

The current ATCW permit system does not meet these expectations.

Industry capture and the deregulation of the ATCW permit system

The ATCW permit system has over time consistently eased the administrative, regulatory and costs burden of the obtaining, issuance and use of ATCW permits. As a result:

- **Landowners do not pay any fees for permits. The costs of administering the permit system is borne by Victorian taxpayers.**
- Landowners are only required to provide best estimates of the animals they seek to remove.
- There is no requirement for corroboration of the damage claimed.
- The assessment processes lack rigour and transparency.
- There is no requirement for competency testing.
- Monitoring, oversight and enforcement is non-existent.
- There is no requirement for returns or reporting.
- There is no process for evaluating the success or otherwise of the permitted activities or the program more generally in achieving its stated objectives.

Still, the one and only review DELWP has conducted into the ATCW permit system in 2018, the outcome of which has never been published, was not directed at strengthening controls or addressing obvious regulatory gaps but at "streamlining" administrative processes to make the system more "user-friendly".

Still, the sole current strategic priority for the OCR in relation to wildlife management under the Wildlife Act is to ensure that a streamlined online process for ATCW applications is operationalised as quickly as possible.

This focus on needs and demands of landowners has led to a gradual erosion of regulatory controls and an effective deregulation of the permit system over the past decade or so.

This should be of significant concern to the Victorian community because the weakening of these controls has resulted in a huge increase in the numbers of permits issued and the numbers of wild animals and birds killed under these permits over the last 10 years, raising serious questions about the impact these extractions are having on local populations and ecosystems.

DELWP's risk-based approach to wildlife management

DELWP uses a risk-based approach to wildlife management. The theory is that by focussing on risk, rather than prescriptive rules, regulatory effort can be more targeted, freeing up resources for regulators and removing administrative burdens for those that conduct low risk activities.

However, for a risk-based regulatory approach to work effectively, it needs to be guided by the best available science and information, linked to measurable objectives, designed to set clear parameters for decision-making which are transparent and capable of scrutiny by the public *(Rothstein et al 2007).*

DELWP's risk-based approach to wildlife management under the ATCW system does not meet these best practice standards.

Decision-makers retain broad subjective discretions in relation to the granting of ATCW permits, decisions are not based on science or evidence but on landowner self-assessment and estimates, there are no measurable goals for the permitted activities, the decision-making process is not transparent and there is no reporting or evaluation of the outcomes of the permitted activities.

The scale of the killing under ATCW permits (2009-2019)

According to data previously (but not now) published by DELWP on its website, landowners kill large numbers of wild animals and birds under ATCW permits every year in Victoria.

We note this data does not include the lethal control of dingoes, possums, wombats and parrot species that were unprotected under S7A during this period or ATCW permits issued to blue gum companies to disturb koalas in blue gum plantations.

These figures also do not include the tens of thousands of native quail and hundreds of thousands (estimated at around 400,000) native waterbirds killed every year during duck shooting season.

Review of this data shows that these numbers have increased year on year since 2009 when the first ATCW permit data was published.

The ATCW data shows that in the 10 years between 2009 and 2019 (last reported figures for a full year), the total number of wild animals and birds (including all species) killed under ATCW permits in Victoria was 1,702,372 in the name of "damage mitigation".

The numbers of wild animals and birds killed under ATCW permits in that 10-year period more than doubled from 112,243 in 2009 to 230,844 in 2019.

In particular the numbers of kangaroos killed under permit has risen sharply in that time from 64,152 in 2009 to 168,992 in 2019. The steepest rise occurred following the introduction of the Kangaroo Pet Food Trial (KPFT) in 2014.

A DELWP evaluation of the KPFT in 2017 confirmed that the 250% rise in the numbers of kangaroos being killed by commercial shooters was being driven by the profit incentive and widespread fraud and overshooting *(DELWP-KPFT Evaluation Summary 2017)*.

Other than kangaroos and wallabies, the species subject of lethal control under these authorisations are many and varied from wombats to Australian fur seals to wattlebirds and swallows. In 2019, for example, DELWP authorised the destruction of a total of 188,759 wild animals and birds consisting of 65 different native species.

It is worth noting that even threatened species are not exempt. One of those species was grey-headed flying foxes which are listed as vulnerable under the FFGA.

ATCW data 2020

Figures recently released by the Office of Conservation Regulator show that in 2020 a total of 2,835 ATCW permits were issued for the lethal control of a total of 151,846 wild animals and birds.

2,273 or 80% of these permits were for the lethal control of 77,442 kangaroos. Using the same percentage for females killed in commercial operations (31%) means that an estimated additional 23,046 dependent young were also destroyed under these permits.

Figures released by DELWP in relation to 2020 commercial kangaroo meat and skins industry confirm that 46,046 adult kangaroos were slaughtered. 31% or 14,279 of these adult kangaroos were females. 96% of these females had dependent young. This meant that an additional 13,850 pouch young and young at foot joeys were also destroyed by commercial shooters *(Scroggie, Ramsey 2021)*.

Based on our calculations a total of 160,384 kangaroos and their young were killed under permits and for commercial purposes in 2020. This is well in excess of the maximum total quota figure of 137,800 kangaroos set by DELWP for 2020.

In all, DELWP authorised the killing of a total of 234,788 wild animals and birds last year in Victoria.

Illegal killing

On top of the large numbers of wild animals and birds removed from the landscape under ATCW permits and the increasing numbers of kangaroos being allocated for slaughter by the commercial kangaroo industry, a further unknown number of wild animals and birds are killed without authorisation every year in Victoria.

Evidence given to the Senate Inquiry into Kangaroos in 1988 found that the illegal killing of kangaroos was as large as the levels of legal or authorised killing in Australia. We have no reason to expect this has changed, based on Wildlife Victoria's experience over the last 30 years.

These illegal activities take two main forms:

- Illegal killing by landowners. These are landholders that do not know they are required to get a permit, know they need a permit but do not bother to get one, have a permit but kill in excess of the number of wild animals or birds permitted or kill for dog food;
- Illegal killing by hunters and thrill killers who, often under the influence of alcohol, go out at night or weekends to shoot wildlife for "fun". Often these people use inappropriate firearms or bow and arrows to shoot wildlife which results in horrific injuries and immense suffering.

Kangaroos

While we review the nature and extent of the legal protections for all species of wildlife in Victoria in this submission, it is important to note that in Victoria kangaroo species:

- Represent the vast majority of animals killed under ATCW permit system;
- Are the only native species subject to large scale commercial slaughter;
- Are the target of the vast majority of known illegal shooting and cruelty incidents

For this reason, we focus on kangaroo species in particular in our assessment of the current ATCW permit system.

Failures in the governance and administration of the ATCW permit system

We have identified multiple factors that contribute to the weak management and administration of the ATCW permit system. These factors include:

- Limited institutional capacity;
- High levels of industry capture by landowners;
- Limited co-ordination across DELWP regions;
- Low levels of compliance activity;
- Limited enforcement activity;
- Lack of transparency

These factors raise serious questions about regulatory effectiveness and framework.

The most significant regulatory failure is that there is no oversight of shooter activities in the field including at the point of kill.

This means that DELWP is not able to either detect breaches of animal welfare standards or detect overshooting which could present a threat to the viability of local populations.

Failures in the operation and regulation of the ATCW permit system

We have identified the following specific failures in the operation and regulation of the ATCW permit system:

- The fundamental conflict of interest between DELWP's role as the agency responsible for both the protection of wildlife and the authorisation of lethal control of wildlife;
- DELWP's reliance on justifications for lethal control that are not supported by current, objective and independent evidence-based science and research;
- The failure to require the provision of proper substantiation and corroboration of the nature and extent of wildlife damage claimed in applications for ATCW permits;
- The myriad qualifications and exemptions available to landowners to enable them to circumvent evidentiary and other requirements to obtain an ATCW permit;
- The failure to mandate any training or accuracy or competency testing for those applying for permits for lethal control;
- The absence of any system of oversight, monitoring or inspection of the killing that takes place under permits in the field including at the point of kill;
- The failure to require permit holders to keep proper records of all animals killed under permits via shooter returns
- The failure to require permit holders to account for the destruction of dependent orphaned pouch young and young at foot;
- The absence of any system of audits or evaluation to determine if the use of lethal control is actually achieving the stated objective of mitigating the claimed damage;
- The absence of any notice requirements to neighbours and others potentially affected by the granting of a permit;
- The absence of rights of objection and appeal for those affected by a decision to grant a permit.

Animal Welfare under the ATCW system

We know from repeated investigations by the RSPCA and other animal welfare organisations that there are much greater rates of wounding, cruelty and inhumane treatment of kangaroos in non-commercial shooting.

This is because there is no requirement for any competency or accuracy training or testing and because the non-commercial code of practice permits the use of shotguns instead of centrefire rifles which results in greater risks of wounding and poor animal welfare outcomes *(RSPCA 1985, 2000, 2002)*.

There is no oversight of shooter activities. There is therefore no way for DELWP to detect breaches of licence conditions or animal welfare standards or to deter wrongful behaviour.

These are significant regulatory gaps that need to be rectified via the incorporation of a general duty of care in the Wildlife Act that specifically addresses the use of lethal control, the provision of mandatory, legally enforceable codes of practice for lethal control and increased levels of oversight and enforcement.

Non-lethal methods

While there is a "requirement" that non-lethal efforts must be exhausted before an ATCW permit is issued, there are also a number of exemptions to this requirement including when non-lethal deterrence is too costly or time-consuming.

"Best Estimates" and evidence of damage

In the Senate Inquiry into kangaroos in 1988, the Committee's final report made it clear that the assessment of the impacts or potential impacts of kangaroos should not be left to the "perceptions of landholders" which it noted were often wrong.

Yet this is what occurs under the ATCW permit system. Applicants are only required to provide "best estimates" of the numbers of the species causing the "damage" and to be targeted for lethal control.

There is no requirement for any corroborating evidence for these claims, the nature and extent of the damage claimed or that it is in fact wildlife that are causing the damage.

Assessment of applications for permits

According to the Discussion Paper DELWP released under its review of the ATCW permit system in 2018, DELWP officers follow "internal guidelines that must be considered" in assessing ATCW permit applications.

These guidelines are not publicly available. Nor does DELWP report on or release any information about when and in what circumstances inspections are carried out, the nature and extent of any compliance or enforcement activities or in what circumstances, if ever, applications for ATCW permits are rejected or cancelled.

There is no reporting on offences detected, charges laid or penalties imposed for breach of licence conditions or animal welfare standards by ATCW permit holders.

Release of this information would improve transparency and accountability and enable the public to evaluate and determine the appropriateness or otherwise of the decision-making process and DELWP's performance in regulating and overseeing the ATCW permit system.

Notice to affected parties/neighbours

Disputes over shooting activities carried out under ATCW permits causes conflict within regional communities that impact both residents and local tourism and other businesses.

There is currently no obligation on an ATCW permit holder to give notice to neighbours or other affected parties of either the intention to apply for an ATCW permit or details of proposed shooting activities.

It is not unreasonable that neighbouring property owners should have the right to peaceful enjoyment of their properties, including the enjoyment of the wildlife on that property. It is not also unreasonable that neighbours should have the right to raise objections when the activities of an ATCW permit applicant are likely to interfere with that peaceful enjoyment.

That is not currently the case. This is yet another significant regulatory gap that needs to be addressed.

We have recommended that the Wildlife Act make provision for mandatory notice provisions, a process for lodging objections as well as rights of appeal similar to those available under the planning permit process to those adversely affected by potential or actual ATCW permitted activities.

Oversight and Enforcement – the need for it to be robust

Inspections play a major role in detection of offences involving animals because in the absence of whistle-blowers or reports from the public, the victims are unable to report offences or cruelty to the regulatory authorities *(Boom, Ben-Ami, Boronyak 2012).*

Proper oversight is critical for DELWP to be satisfied that the conditions under which an ATCW permit are issued are being complied with and that breaches including cruelty, overshooting and other practices which threaten kangaroo populations are detected.

The absence of any minimum, consistent or uniform system inspections or other monitoring of the activities undertaken in relation to ATCW permits presents the most significant gap in the regulation of ATCW permits. This is a matter that requires urgent investigation and review.

Accountability - No requirement for record-keeping ("shooters returns")

Under the wildlife shelter licencing system, licenced wildlife shelters are required to keep extensive and detailed records of each animal that comes into care as per the conditions of the Shelter Authorisation Guide.

Other categories of licence and permit holders under the Wildlife Act have similar record keeping requirements.

There is no such requirement for ATCW permit holders. ATCW permit holders are not required to submit returns or record or report on the details and outcomes of their shooting activities. This requirement was removed some years ago it seems to "reduce the administrative burden" on applicants.
Not requiring permit holders to account for their activities undertaken under an ATCW permit is yet another significant gap in the regulatory system which could easily be remedied by restoring the requirement for shooter returns.

Licence fees

Landowners who are the sole beneficiaries of the ATCW permit system do not pay fees for ATCW permits or bear any of the costs of the administration of the ATCW permit system.

Instead, the costs of administering the ATCW permit system are borne by Victorian taxpayers. These costs are significant.

Based on figures provided by the Victorian Farmers Federation to the state government in a submission to the Victorian Competition and Efficiency Commission's Inquiry into regulatory reform in 2011, adjusting for inflation and taking into account the huge increase in the number of permits being processed, we estimate the current cost to the Victorian community of subsidizing the administration and regulation of the ATCW system is around $2mil to $2.5 mil per year.

There is no possible justification for not charging landowners fees for these permits. The permits are not for a public good but result in a direct financial benefit to them and their typically for-profit businesses.

As well, so long as ATCW permits are a free service to landowners, there is limited motivation or incentive to develop or use non-lethal (and potentially more expensive) deterrence or other methods to resolve human wildlife conflicts.

Accountability - Auditing, evaluation and reporting

The proper administration of a government funded program such as the ATCW permit system requires that there is a system of auditing, evaluation and reporting to establish whether the program is actually achieving its stated objectives.

It is our understanding that at no time in the 45 years the Wildlife Act has been in operation has DELWP or its predecessors ever conducted any such evaluation process of the ATCW permit system to determine if in fact it is reducing damage to farming or other properties.

Appeal rights

Currently, S86C of the Wildlife Act contains provision for some limited appeal rights to those directly affected by DELWP decisions to refuse or cancel licences.

We have recommended these rights be expanded to include those whose interests are affected by DELWP decisions to grant ATCW permits.

We believe that establishing these rights of appeal would be an important mechanism for ensuring decision-makers are held accountable for decision-making under the ATCW permit system.

(y) REFORM OF THE ATCW PERMIT SYSTEM

The ATCW permit system requires urgent major reform.

At a minimum, landowners should be required to bear the costs of administering the ATCW permit system. There also needs to be major changes to the levels of oversight and enforcement in the permit system.

We recommend the following fundamental reforms. We believe these reforms should be specifically incorporated in the Wildlife Act or regulations to act as clear guidance as to what is expected and required to justify killing native wildlife in the name of damage mitigation.

These reforms should include:

- Requiring that landowners are provided with education and technical assistance available in relation to suitable non-lethal methods of control;
- Requiring proof that non-lethal methods have been **exhausted;**
- Eliminating the exceptions available to applicants to having to demonstrate non-lethal methods have been exhausted;
- Requiring substantiation of the wildlife damage caused and that the damage was caused by the species targeted in the application;
- Requiring mandatory competency and accuracy assessments and accreditation for all permit applicants and holders;
- Requiring mandatory training and competency requirements and accreditation in the methods for killing dependent orphaned young under the Code of Practice as specified in the AVMA Guidelines for Euthanasia 2016;
- Requiring notice be given to neighbours of the intention to apply for an ATCW permit, along with rights of objection and access to alternative dispute resolution options;
- Provision of appeal rights to challenge DELWP decisions granting ATCWs by those whose interests are affected by those decisions;
- Limiting the length of time permits are issued for to a maximum of 12 months;
- Requiring that all ATCW permit renewals be subject to further application and assessment with an immediate end to the practice of automatic renewals of permits;
- Requiring that applicants seeking more than two consecutive 12-month permits develop and submit a wildlife management plan;
- Establishing of a public register of ATCW permits issued providing minimum details of which council area, and the number and species of wildlife subject to lethal control;
- Legally enforceable mandatory Code of Practice for kangaroos and for the lethal control of other wildlife species;
- Reinstatement of the requirement for returns and other reporting requirements under ATCW permits;
- Provision for transparent inspections and monitoring systems and the quantitative reporting of animal welfare outcomes;
- Provision for audits and evaluation of program objectives;
- The introduction of harsher penalties including higher fines, imprisonment and the strengthening of licence suspensions and revocations to ensure that those penalties act as a sufficient deterrent for wrongful behaviour.

(z) VICTORIAN KANGAROO HARVEST MANAGEMENT PLAN (KMP)

Background

The development and implementation of the Victorian Kangaroo Management Plan is the clearest example of the extent to which industry capture influences and shapes policy and decision-making under the Wildlife Act.

The process under which it was developed reflects the absence of requirements for public participation, transparency and accountability measures in the Act.

Development of the Plan

The commercial slaughter of kangaroos is the largest slaughter of terrestrial wildlife in the world. Each year between 2-3 million adult kangaroos are killed for meat and skins in Australia. Another unknown but estimated 300,000 dependent young are killed and discarded as "by catch". There are also major issues relating to the humaneness of methods used to kill both the adults and the dependent young.

A previous disastrous attempt at establishing a commercial kangaroo industry in Victoria in the 1980s had resulted in kangaroos being reduced to quasi-extinction levels below 1 per square kilometre across 85% of Victoria *(Short, Grigg 1982)*.

Following a 20-year pressure campaign by the VFF the state government established a Kangaroo Pet Food "Trial" in 2014 in which commercial shooters were permitted to shoot and sell the carcasses of kangaroos they shot on private property.

In 2017, an evaluation of the KPFT found evidence of widespread corruption, fraud and overshooting under the KPFT that had resulted in a 250% increase in the numbers of kangaroos killed and which posed a threat to the long-term viability of kangaroo populations in Victoria.

Despite this evidence, DELWP proceeded with the development of a kangaroo management plan in consultation with the commercial kangaroo industry, the VFF and landowners to establish a commercial kangaroo meat and skins industry in Victoria.

Despite an undertaking by the Minister in March 2019 there was no public consultation during the development of the KMP and it was announced the day it was due to commence into operation on 1/10/19.

We also note that there has been no public consultation in relation to the subsequent reviews of the KMP that took place in December 2019 and again in December 2020.

Sustainable Use under the Wildlife Act

DELWP assert that the KMP represents a sustainable use of wildlife under the Wildlife Act.

We dispute this assertion, relying on scientific research and reports from well-respected non-government ecologists that have suggested that large-scale removal of kangaroos from the landscape presents a serious risk to kangaroo populations *(Boom, Ben-Ami 2012).*

There have been a number of reports from non-government ecologists that suggest that kangaroo populations are at risk largely due to the mismanagement of state kill quotas.

These reports confirm that the way in which the quota is set does not provide a reliable tool for managing the sustainability of the killing *(Boom, Ben-Ami 2012).*

Why the Victorian community should be concerned about the KMP

The inability for the Victorian community to have a formal opportunity to have a say in the development of the KMP should be of significant concern to the community because the KMP:

- Does not acknowledge shifts in public sentiment or attempt to balance stakeholder interests;
- Only benefits the commercial kangaroo industry whose only objective is consistent supply and maximisation of profits *(McLeod 2019, 2020)*;
- Is heavily subsidised by Victorian taxpayers;
- Raises significant animal welfare concerns which we have already highlighted elsewhere in this submission, noting the high rates of killing of both females and juveniles;
- Raises serious questions about the sustainability and long-term impacts of large scale killing on kangaroo populations and the ecosystems they inhabit.

Uncertainties-Impacts on ecosystem function

The government's own scientists have also expressed concerns about the significant ecological, economic and social uncertainties regarding the long-term impacts of killing large numbers of kangaroos.

These concerns centre around the fact that this form of commercial exploitation or sustainable use is based on a “maximum sustainable yield” model that completely ignores the complexity of the environments in which the killing takes place *(McLeod 2019)*.

Recommendations

While it is outside the scope of the current Review, for all the reasons we have provided in this submission, we believe that there should be an independent inquiry into the development and operation of the KMP to examine the serious ethical, economic and ecological questions raised by the commodification and large scale commercial killing of kangaroos in Victoria.

SECTION 8: WILDLIFE MANAGEMENT PLANS

(aa) WILDLIFE MANAGEMENT PLANS

Wildlife Management Plans under the Wildlife Act

Currently there is no mechanism in the Wildlife Act to provide an overarching strategy for wildlife management or guidance or criteria setting out the procedure and requirements for developing and publishing Wildlife Management Plans.

We make the following suggestions for the Review's consideration.

India's approach to wildlife management

Like Australia, India is a Mega-diverse country. In order to manage the many complex challenges it faces in managing its wildlife populations and biodiversity, the national government in India has developed a National Wildlife Action Plan 2017-2031 (NWAP).

The Plan is an over-arching strategy for wildlife and biodiversity management designed to comply with India's obligations under the Convention on Biological Diversity (CBD).

The NWAP is a comprehensive "roadmap" for the protection and conservation of wildlife in India and is designed to provide guidance to state wildlife authorities in relation to wildlife management and conservation efforts.

The plan focuses on the intrinsic value of wildlife and the importance of ecosystems and prioritises a range of issues including employing a landscape level approach to wildlife conservation, integrating climate change into wildlife planning, prioritising the conservation of threatened species and habitat, wildlife health management, the mitigation of human wildlife conflict, strengthening research and monitoring and improving compliance.

The NWAP has five major components. Those five components are:

- Strengthening and promoting the integrated management of wildlife and their habitats;
- Adaptation to climate change and promoting integrated sustainable management;
- Strengthening wildlife research and monitoring of the development of human resources in wildlife conservation;
- Enabling policies and resources for conservation of wildlife including mainstreaming wildlife conservation in development planning processes;
- Promoting eco-tourism, nature education and participatory management.

We consider this could be a useful template for the development of a State Wildlife Action Plan for Victoria which would, as it does in India, act as a foundation for wildlife protection and conservation efforts and guidance for the development of wildlife management plans under the Wildlife Act.

State Wildlife Action Plan

Part 4, Division 1 of the FFGA sets out in detail the requirements for the preparation, development and publication of a state Biodiversity Strategy including a requirement for broad public consultation.

We believe these provisions provide template for how a State Wildlife Action Plan (SWAP) could be incorporated into the Wildlife Act.

The SWAP could then act as a roadmap for the responsible wildlife management and conservation efforts in Victoria. The SWAP would also provide the foundation and guidance for the development of wildlife management plans under the Act.

Management Plan processes for the Wildlife Act

Division 3-Sections 21-24 of the FFGA contains provisions relating to the procedure, contents, publication and review of Flora and Fauna Management Plans.

We believe these provisions could easily be adapted for the purposes of standardising wildlife management planning and wildlife management plans under the Wildlife Act.

Prescribed Burns Wildlife Management Plans

Wildlife Management Plans are prepared for suburban and other developments and submitted along with subdivision applications containing ecological assessments to both DELWP and local councils under local planning schemes.

DELWP also require blue gum plantation companies to submit ATCW permits along with a Koala Management Plan containing annual koala population assessments which include on ground field double count surveys by trained observers (spotters) and comply with mandatory minimum requirements for koala management in blue gum plantations.

There is currently no requirement for fire agencies that carry out prescribed fuel reduction burns to undertake ecological or wildlife population assessments or prepare a wildlife management plan prior to undertaking these burns.

We believe that consideration should be given to making this a requirement along with mandatory minimum standards for wildlife management in prescribed burn areas.

Public participation, Transparency and Accountability

We believe that a public and easily accessible register of all wildlife management plans would help to ensure there is proper public participation and consultation during the development of wildlife management plans.

These measures would go a long way to ensuring that Victorians are informed about government actions which are likely to have a widespread and enduring impact on wildlife populations and to avoid the lack of public consultation and lack of transparency associated with the development of the Kangaroo Management Plan (KMP).

SECTION 9: PROPER ADMINISTRATION OF THE ACT

- Independent Expert Advice
- Public Participation
- Balancing Interests and Resolving Conflicts

(bb) INDEPENDENT EXPERT ADVICE

Currently, there is no provision in the Act that establishes any advisory bodies or expert panels.

Currently DELWP appoints expert panels on an ad hoc basis to deal with specific issues. It does not disclose the identity of the members of these panels, the method of their appointment, their qualifications and expertise or their role and functions.

This means there is no way to verify the qualifications and expertise of these expert panel members or the independence and credibility of the advice provided. There is also no way to determine if there are actual or potential conflicts of interest that should be disclosed or addressed.

We provide the following recent examples:

- DELWP appointed Kangaroo Impacts Management Advice Group (KIMAG) in 2016 to provide it with "independent, evidence-based advice" on kangaroo management. None of the panel members were identified. This panel provided a report to DELWP in 2017 entitled *"Managing Kangaroo Impacts in Victoria: Report of the Kangaroo Impacts Management Advisory Group (KIMAG) to DELWP"* which is cited extensively in the DELWP Translocation policy document but which has never been publicly released.

- In 2018, DELWP released a document entitled the "Living with Wildlife Action Plan". In her foreword to the Plan, the Minister for the Environment referred to having sought "advice from experts in wildlife ecology, animal welfare wildlife behaviour and veterinary science" in developing the Plan. None of these experts nor the organisations they represented were named or identified.

- DELWP has appointed a Translocation Evaluation Panel (TEP) in 2018 which meets 4 times a year and provides expert advice on proposals to translocate threatened wildlife. There is no publicly available information regarding the membership or qualifications of panel members nor any published minutes or reports of these meetings.

The failure to identify and provide details about the qualifications and expertise of the experts DELWP relies on is of particular concern not just because of the lack of transparency and accountability involved but because it raises questions about the independence, validity and credibility of the advice and evidence being provided and is important from a public trust perspective.

The manner in which DELWP use expert panels under the Wildlife Act is in stark contrast to S8 of the FFGA which sets out in some detail:

- The role and function of the Scientific Advisory Committee in providing advice and evidence;
- The method of appointment of the experts;
- The requirement that a majority of members be non-government employed scientists, re-enforcing its independence from government and political influence;
- The requirement for disclosures of conflicts of interest.

The incorporation of a similar provision in the Wildlife Act would promote public confidence in the independence and validity of the expert advice and evidence provided as well as much needed transparency and accountability of processes.

It is also worth considering whether such a provision could be made more flexible by allowing for the creation of subject matter expert sub-committees that could be appointed from a pool of suitably qualified experts to provide advice on particular species or issues.

We also advocate for the establishment of a non-expert Wildlife Advisory Council under the Act to provide stakeholder and community feedback directly to the regulator and Minister on wildlife management policy and other issues of concern to the community.

We have described how a body such as this would have an important role in promoting public participation and public confidence in decision making under the Act below.

(cc) PUBLIC PARTICIPATION

In line with the public interest principle, community engagement and participation should be at the centre of the new Wildlife Act.

To promote public confidence, any new Wildlife act must include a range of measures to ensure there is effective public participation, transparency and access to justice under the Act including:

- Strong public participation provisions;
- Timely and easily accessible public information on actions and decisions;
- Merits review for key decisions;
- Open standing to review legal errors and enforce breaches of the Act.

Public Participation

In Australia and overseas, there is growing recognition of the value of public participation and consultation in the development of policy and decision-making.

Increasingly, governments are recognising the contribution the public can make in helping them to understand problems and risks, to craft solutions that are more likely to work and that decisions made in open and collaborative processes have more credibility and acceptance in the community *(OECD 2012)*.

DELWP and public participation

Public consultation is one of the key regulatory tools that can be employed to improve transparency, efficiency and effectiveness of regulation.

In 2017, the Victorian Auditor-General's Office noted that while all state government agencies have engagement policies, the real question is whether these are adequate and **effective** processes and methodologies to ensure that participation was meaningful, noting that incomplete public consultation had had a negative impact on public participation outcomes *(VAGO 2017)*.

That report found that while DELWP had established public participation as a priority, it did not have an overarching framework or guidance for public participation that had led to a "consistently poor performance" in this area.

The following year DELWP established a review of the ATCW permit system. This review was conducted via a survey on Engage Victoria. Early consultation was confined to landowners and economic interests. The discussion paper was designed predominately around the "streamlining" of the ATCW permit system to reduce the administrative burden in applying for and obtaining ATCW permits.

Importantly, there was no satisfactory conclusion to the consultation and no report or outcome has ever been released or published. The lack of any public consultation in

relation to the development of the Kangaroo Management Plan is another example of an unrealised opportunity.

There is substantive opportunity for improvement and uplift in community input and consultation in relation to wildlife management in Victoria.

The incorporation of a public trust/public interest principle in the Act would create obligations to provide proper and effective public participation and consultation in the setting of policy and decision-making under the Act.

The establishment of a non-expert advisory body would provide an effective mechanism for broad public participation on matters of importance to the community.

Wildlife Advisory Council

Many countries use advisory councils to inform and advise regulators. Advisory bodies are involved at all stages of the regulatory process but are most commonly used early in the process to assist in defining positions and options. Depending on their status, authority, and position in the decision process, they can give participating parties great influence on final decisions, or they can be one of many information sources *(OECD 2012)*.

For this reason, in addition to incorporating strong public participation provisions, we believe that the Wildlife Act should establish a Wildlife Advisory Council comprised of not just institutional stakeholders but also a range of community groups and members of the public (perhaps on a rotational basis) to ensure wildlife management policy and decision-making is informed by the broader community.

Transparency

Trust in governments has been in decline over the past few decades *(OECD 2018).*

Transparency is a key component in reversing that decline by improving government decision-making, improving public accountability and deterring corruption *(Keefer at al 2020)*.

Both transparency and accountability encompass timely, reliable, clear and relevant public reporting on the regulator's activities, operations and performance.

These characteristics increase public confidence in the effectiveness and independence of the regulator and strengthen the credibility of the regulator *(OECD 2017)*.

Incorporating a guiding principle that requires decision-makers under the Wildlife Act to be transparent and to provide prompt access to important information about wildlife management would go some way towards dealing with the failures we have identified.

Accountability

The broad discretions conferred on the Secretary and his/her delegates and the lack of any third-party access to merits review mean that it is almost impossible for members of the community to challenge DELWP decisions or hold decision-makers accountable.

We believe the measures and mechanisms we have recommended in this submission, including the establishment of an independent regulator, the incorporation a public interest principle and creating access to justice mechanisms would go a long way towards improving the accountability of decision-makers under the Act.

(dd) BALANCING INTERESTS AND RESOLVING CONFLICTS

The objective of laws and regulations that establish a conservation and co-existence model of wildlife management is to reduce the incidence of human wildlife conflicts (HWCs).

We believe that greater public participation and representation in the development of wildlife policy and in the decision-making process will help in balancing conflicting interests.

However, when disputes over wildlife arise, it is in the community's interests that these disputes are resolved in a way that protects wildlife and does not cause social disruption between neighbours or within communities.

We offer the following suggestions for resolving conflicts in relation to wildlife and wildlife management.

Resolving Human-Wildlife Conflicts

The challenges associated with managing human-wildlife conflicts are not confined to Australia. Human-wildlife impacts (and conflicts stemming from them) are one of the biggest threats to wildlife conservation across the world *(Dickman 2010).*

Human-wildlife conflict also has significant consequences for human health, safety, and welfare, as well as biodiversity and ecosystem health *(Nyhus 2016)*.

The combination of the increasing populations and the increasing impacts of climate change is likely to result in major increases in these kinds of conflicts in Australia and across the world *(Konig 2020)*.

Invariably, it is the large and highly visible species that tend to generate disproportionate hostility and become sources of resentment and scapegoats for poor land management practices. As a result, there is often a mismatch between the perceptions of damage these species do, the actual degree of damage they do and the proportionality of the response by landholders *(Nyhus 2016)*.

All human-wildlife conflicts are complex, but some are more complex than others. Efforts to address the immediate problem without fully considering the underlying socio-political conflicts fuelling the situation often result in only temporary fixes, or worse, exacerbating these pre-existing tensions *(Dickman 2010).*
New conceptual approaches are needed to resolve these conflicts. In order to successfully resolve these conflicts, there is a need to understand the factors in play and match protection or conservation efforts accordingly.

In a broad ranging literature review and analysis *Zimmermann et al (2020)* identified 3 different levels of human wildlife conflict. This research proposed that these different levels of human wildlife conflict required very different approaches.

The Zimmermann report identified Level 1 conflicts as involving disputes over crop and livestock losses where there is a high tolerance for the species involved and where the affected farmers were willing to work with government agencies to resolve issues through negotiation and compromise and mitigated damage and threats using practical or community-based solutions like fences and deterrents. The researchers cited the example of the conflict between farmers and elephants in India.

The researchers note that Level 2 conflicts involved underlying conflict and losses that were a recurring issue that had not been resolved in a satisfactory way and this has resulted in resentment of the species involved creating an "us v them" approach. They found that the affected farmers in these conflicts were less willing to be guided by government agencies. These conflicts required conflict resolution approaches to address the history of disputes as well as the immediate problems of crop damage. An example of this is the conflict between orchard owners and threatened species of flying foxes.

The final group of conflicts were Level 3 conflicts. The researchers found that these conflicts were deep-rooted identity-based conflict involving losses that were recurring and where social identity and values were threatened. In these situations, the researchers found that these conflicts were no longer just about wildlife causing damage but involved grievances over social identities and beliefs. Affected farmers in this group resented outsider involvement which they regarded as "meddling". This is the sort of conflict we have here in Australia when it comes to landowner hostility towards kangaroos.

The researchers noted that level 3 conflicts were characterised by strong negative perceptions of the species involved that were disproportionate to the damage the species actually caused. This hostility is often accompanied by vilification of the species and exaggeration of events ("plague proportions") that they claimed had led to threats to their way of life. They also found high levels of resistance to efforts to make reasonable modifications to try and reduce damage.

According to the researchers these conflicts cannot be resolved through practical or financial means alone but required the help of a third-party conflict mediator, using strategies comparable to multitrack diplomacy, where either official third-party neutrals or unofficial inside impartial facilitators are sent to assist, or other options and combinations of these *(Zimmermann et al 2020)*.

The International Union for Conservation of Nature (IUCN) HWC task force has developed a range of resources available to parties seeking to resolve HWC.

The IUCN is also currently developing policy and guidelines for good practice in human-wildlife conflict, which address the three levels of conflict outlined above.

Although it is outside the scope of the current Review, we suggest that there be a review of the available literature and research in an effort to develop a "tool box" of non-lethal dispute resolution or mediated approaches to wildlife management before lethal control is considered.

We believe that emphasising these non-lethal approaches when combined with education, technical assistance and the financial incentives we have described in the submission would assist in reducing disputes over wildlife management and the use of lethal control to resolve HWCs.

Resolving human-human conflicts

The use of lethal control in wildlife management causes significant conflicts and disputes within the community. It can also cause distress for those people affected by landowner or commercial shooting operations.

Recent community protests in relation to the killing of kangaroos at Epping, Mernda, Kinley and the Heritage Golf Club are just some examples of this kind of conflict.

There is currently no process in the Wildlife Act which enables these disputes to be resolved. We review examples from overseas jurisdictions that could provide a template for such a process in the Wildlife Act.

Alternative Dispute resolution

In South Africa, the National Environmental Management Act 1998 (NEMA) contains a commitment to fair decision-making and conflict management in environmental issues.

In order to achieve this, NEMA provides a number of Alternative Dispute Resolution (ADR) options.

Where disputes over wildlife management arise, NEMA provides for the relevant Minister to convene a panel to investigate an issue or to refer a dispute to conciliation or arbitration.

Members of the public or community groups can also request that the Minister or other decision-makers under NEMA appoint a facilitator or mediator to meet with affected parties to attempt to resolve disputes or at least, narrow down the issues in dispute before the matter is referred to formal conciliation.

ADR processes align with the public trust/interest principle and promote broad public participation, transparency and accountability.

We recommend that consideration be given to incorporating ADR processes into the Wildlife Act to resolve community conflicts over the management of wildlife.

Appeal rights

The Wildlife Act should provide access to justice mechanisms for members of the community and community groups to seek review of decisions that adversely affect or impact their interests or that breach the Act.

We do not believe making provision for these sorts of rights would “open the floodgates” to litigation because litigants would still need to establish “standing” in order to maintain a legal proceeding.

Incorporating appeal rights into the Act would, in itself, improve decision-making by ensuring that decision-makers are on notice that they are required to make proper and timely evidence-based decisions.

We suggest the new Wildlife Act could provide three forms of appeal rights.

The first is provision of appeal rights for neighbours and those directly affected by decisions to grant ATCW permits to challenge that decision (which we have discussed elsewhere in this submission).

The second is provision of access to merits review of other significant decisions made under the Wildlife Act to members of the community or community groups.

The third would allow members of the community and community groups to seek injunctive relief or enforcement for breaches of the Act.

Open standing

Members of the Victorian community should be entitled to seek appropriate relief in respect of any breach or threatened breach of the Wildlife Act (known as 'open standing').

Such third-party civil enforcement is a standard component of environmental law in other jurisdictions, including in Australia.

For example NSW planning laws provide 'open standing' for any person to seek judicial review, and limited standing for 'third party objectors' to seek merits review in that persons interests, in the interest of or on behalf of a group or class of persons whose interests are affected or in the public interest *(EDO 2010)*.

Costs protections

One of the major barriers to community members and groups seeking relief through judicial review is the risk that an adverse costs order could be made against them if the action is not successful.

The Civil Procedure Act (2010) S65 (2A) makes provision for Courts to cap recoverable costs in advance, subject to consideration of a range of factors including the public interest and the significance and potential impact of the issues on the broader community.

The Victorian Court of Appeal has endorsed the making of protective costs orders in exceptional cases and where the public interest and other factors can be established.

We believe that the Wildlife Act should specifically incorporate costs protections to remove these barriers to public interest proceedings concerning wildlife.

We suggest the Wildlife Act be amended to:

- Provide for protective costs orders in public interest proceedings where that person or group can establish he/she/it is acting reasonably out of concern for the public interest or in the interest of protecting specific wildlife or biodiversity more broadly;
- Prohibit the making of "security for costs" orders in public interest proceedings under the Act;
- Prohibit the requirement that public interest applicants provide an "undertaking as to damages" in applications for interim injunctions, where the action is urgent.

SECTION 10: TOWARDS A NEW MODEL

(ee) TOWARDS A NEW MODEL OF ECOSYSTEM LEVEL CONSERVATION AND CO-EXISTENCE

The challenge facing every country in tackling the urgent and increasing threats to wildlife and biodiversity is how to balance diverse interests in wildlife in order to protect and conserve species and ecological integrity.

There is an urgent need for the Victorian government to re-assess its entire approach to wildlife management and in particular, its prioritisation of control and exploitation over protection and conservation of wildlife populations and their habitats.

We examine how that could occur.

Co-existence

Coexistence has been defined as a dynamic but sustainable state in which humans and wildlife co-adapt to living in shared landscapes and where human interactions with wildlife are governed by effective institutions that ensure long-term wildlife population persistence, social legitimacy, and tolerable levels of risk *(Carter & Linnell 2016)*.

There has been a huge increase in global academic and practical research into how to the transition from control and exploitation models of wildlife management to compassionate conservation and sustainable co-existence over the last 20 years.

What is clear from that research is that there no single management strategy that can prevent or address all conflicts *(Mekonen 2020)*.

Instead, the research suggests that the goal of management should not only be to reduce the levels of conflict but also raise the social acceptance and tolerance of wildlife by lessening its impact on landholders *(Dudley, Stolton 2021)*.

Shared responsibility

Recognising that government, industry, private landowners and members of the community all have a role to play in the protection and conservation of wildlife and biodiversity is an important first step in developing and participating in new approaches to wildlife management.

Government leadership

The Victorian government has a critical role in leading the development of a state-wide landscape level approach to the protection and conservation of wildlife by:

- Prioritising the broader public interest over the economic interests of a few;
- Putting an end to the pest control narrative that drives landholder antagonism towards wildlife and which encourages contempt and cruelty towards these animals;
- Developing a range of alternative programs that encourage the use of non-lethal methods of wildlife management and co-existence;
- Supporting phasing out the ATCW permit system and the commercial exploitation of wildlife in Victoria;
- Re-allocating the resources it currently expends on supporting lethal wildlife management to support the transition to alternative mitigation strategies and broad scale conservation efforts.

Public policy and strategies can be used to promote coexistence. Those policy responses need to include comprehensive and effective wildlife and biodiversity strategies and wildlife friendly economic and agricultural policies as well as the development of programs and public education designed to promote co-existence and tolerance of wildlife.

Landholder involvement

The participation of the agricultural sector, as the largest land user in Victoria, will be crucial in driving the change.

Phasing out the widespread use of lethal control will require addressing and overcoming the cultural bias, ingrained beliefs, hostility and resentment many landholders have towards kangaroos and other wildlife.

It will also require the use of market-based mechanisms to promote conservation on private land.

The past decade has seen government support for a range of stewardship programs and payments as well as the use of incentives (including tax incentives) to encourage landowner conservation efforts. We describe some of these below.

Public Education

Public education is a critical tool in both raising awareness about wildlife and biodiversity and the importance of them as well as encouraging public participation in local conservation programs and efforts.

Even seemingly small efforts to enhance biodiversity can make a significant contribution because the benefits of many small local biodiversity measures accumulate at the global level to help meet global objectives and targets *(IPCC/IPBES Co-Sponsored Workshop 2020)*.

The government has supported extensive public information campaigns in relation to road safety, gambling and health. Similar campaigns can and should be developed to raise awareness about issues relating to the need to protect and conserve wildlife.

Integrated market-based mechanisms to promote and encourage

Encouraging landowners to move towards a conservation and co-existence model of wildlife management will require the development of a range of government funded supports and incentives.

We do not provide a detailed assessment of those programs and measures in this submission but note some of the schemes operating in many other countries including the USA, Canada, Italy and others include the following:

(a) Prevention programs

Government funded damage prevention and mitigation grants and other programs which emphasise the use of non-lethal methods of deterrence and control and other effective damage prevention tools have been established in at least 12 states in the USA and in Canada.

This sort of grants scheme could easily be established in Victoria.

(b) Compensation schemes

Wildlife damage compensation schemes which compensate landowners for damage done by predators and other wildlife operate in many parts of the world and could easily be adapted for use in Victoria.

(c) Financial incentives for conservation and co-existence

There are many ways of incentivising landholder collaboration and co-operation in conservation efforts.

These include performance payments such as stewardship payments and financial and tax incentives and concessions as well as government funded education and technical assistance to improve land and farm management practices.

Wildlife Corridors and connectivity

There is overwhelming scientific evidence to support the use of interconnected areas rather than isolated protected areas in a fragmented landscape to protect and conserve wildlife, landscapes and ecological processes.

The IUCN released its *"Guidelines for Conserving Connectivity through Ecological Networks and Corridors"* in 2020.

The guidelines were designed to assist countries in developing practices that conserve the movement ecology of species across landscapes.

Australia already has a strategy for preserving and connecting habitat at a continental scale in the form of the *"National Wildlife Corridors Plan: A Framework for Landscape-scale Conservation"* which was developed and adopted by the Commonwealth government in 2012 but has yet to be implemented *(Debus 2020)*.

Victoria's Biodiversity Strategy already acknowledges the need for broad scale biodiversity planning and protection. This framework and other planning tools could be used to develop a state-wide wildlife protected areas and corridors connectivity strategy.

Ecotourism

Recent studies have shown that pre-pandemic at least 70% per cent of international visitors were attracted to Australia because of our unique native animals and that nature-based day-tripping visitors soared by 62% in the five years up until 2020.

Tourism is an important economic driver for Victoria. In 2019 Victorian tourism was estimated to be worth $23.4 billion in Gross State Product and generated 232,000 jobs. In regional Victoria, tourism generated $9.4 billion and created 110,000 jobs.

There is significant potential to further increase the economic value of nature based and ecotourism in Victoria.

While ecotourism may not be a management solution for all kangaroos or other wildlife, given the popularity and high profile of the kangaroo as a draw card for tourism, it is an option that should be considered as an economically viable alternative land use where lethal control currently occurs *(Higginbottom 2014).*

SECTION 11: REFERENCES

References relied on in this submission

Australian Panel of Experts on Environmental Law, Blueprint for the Next Generation of Australian Environmental Law (2017)

Agrifutures Australia, National Code of Practice for Shooting Kangaroos and Wallabies for Commercial Purposes (2020) Available online

Ampt, P. & Owen, K. (2008) Consumer Attitudes to Kangaroo Meat Products RIRDC Publication No. 08/026, Project No. UNS-19A. Rural Industries Research and Development Corporation, Canberra, ACT)

Arnold GW, Grassia A, Steven DE, Weeldenburg JR 1991 Population ecology of western grey kangaroos in a remnant of Wandoo Woodland at Bakers Hill, southern Western Australia Wildlife Research 18(5) 561-575, CSIRO Publishing, Melbourne

Aslin, HJ and Norton, TW, 'No One Answer – Sustainable Use of Wildlife in a Multicultural Society' in G Grigg, H Hale and D Lunney (eds), Conservation Through Sustainable Use of Wildlife (1995)

Auty, J (Red Plague, Grey Plague" in Kangaroo Myths and Realities (2005)

Baker and MacKenzie (2016) Review of the Flora and Fauna Guarantee Act 1988

Ben-Ami, D. (2005). Kangaroo Conundrums: Kangaroo Management in the Peri-Urban Environment. In 'Kangaroos Myths and Realities'. Eds: D. B. Croft and M. Wilson. (Australian Wildlife Protection Council: Sydney).

Ben-Ami, D (2009) A Shot in the Dark-A report on Kangaroo Harvesting (Technical Report) UTS-available online

Bergstrom, D et al (2021) Combatting ecosystem Collapse from the Tropics to Antarctica-Global Change Biology-Published 25/2/21

Blackmore, A (2017) Public Trust Doctrine, research and responsible wildlife management in South Africa Bothalia Vol 47 No 1

Blackmore, A (2017) Coming to Grips with the Public Trust Doctrine in South Africa-Bothalia Vol 48 (1)

Bonhady, T (2000) An Australian Public trust in Dover S "Environmental history and policy" OUP pp258-272

Boom, Keely and Ellis, Elizabeth, 'Enforcing animal welfare law: the NSW experience' (2009) 3 Australasian Animal Protection Law Journal 6

Boom, K. and Ben-Ami, D. (2011) 'Shooting our wildlife: An Analysis of the law and its animal welfare outcomes for kangaroos & wallabies' 5 Australian Animal Protection Law Journal 44. (courtesy of the Australian Animal Protection Law Journal)

Boom, K., Ben-Ami, D., Croft, D. B., Cushing, N., Ramp, D., and Boronyak, L. (2012) 'Pest' and Resource: A legal history of Australia's kangaroos. Animal Studies 1:15-40.

Boom, K, Ben-Ami, D, Boronyak, L (2012) Kangaroo Court: Enforcement of the Law governing Commercial Kangaroo Killing THINKK UTS Available online

Boom, K., Ben-Ami, D., Boronyak, L., Riley, S. (2013) The role of inspections in the commercial kangaroo industry. International Journal of Rural Law and Policy

Boom, K., and Ben-Ami, D. (2013) Kangaroos at a Crossroads: Environmental Law and the Kangaroo Industry. Environmental and Planning Law Journal Volume 30 Part 2

Boronyak, L Ben-Ami, D Croft, D Ramp, D (2013) Kanganomics: A socio-economic assessment of the commercial kangaroo industry. Report of the Centre for Compassionate Conservation at the UTS, Sydney

Boyd, D (2011) The Environmental Rights Revolution: A global study of Constitutions, Human Rights and the Environment" UBC Press

Bradshaw, C (2019) Overabundant Wildlife-Usually Isn't-Conservation Bytes 12/7/19-Available online

Brooker, MG and Ridpath, MG (1980). The diet of the Wedge-tailed Eagle, Aquila Audax, in Western Australia. Australian Wildlife Research 7, 433–452.

Butcher, D.R., 'Animal welfare aspects of kangaroo management' (1988) 24 Australian Zoologist 164

Carpenter, D, Moss D (2014) Preventing Regulatory Capture: Special Interest Capture and how to Prevent it -Cambridge University Press

Caulfield, Malcolm, Handbook of Australian Animal Cruelty Law (2008)

Ceballos, Paul R. Ehrlich, and Rodolfo Dirzo (2016) Biological annihilation via the ongoing sixth mass extinction signalled by vertebrate population losses and declines PNAS July 25, 2017 114 (30) E6089-E6096; first published July 10, 2016

Ceballos, Paul R. Ehrlich, Peter H. Raven (2020) Vertebrates on the brink as indicators of biological annihilation and the sixth mass extinction Proceedings of the National Academy of Sciences Jun 2020, 117 (24) 13596-13602; DOI:10.1073/pnas.192268611

Cherriman, S (2018) Mass Slaughter of Wedge-Tailed Eagles could have Australia –wide consequences" the Conversation-Article available online

Commonwealth, House of Representatives Select Committee, Wildlife Conservation, Parl Paper No 284 (1972) 10

Croft, D.B. (2001). Rangeland Kangaroos: A World Class Wildlife Experience. Wildlife Tourism Report Series: No. 16. (Cooperative Research Centre for Sustainable Tourism, Gold Coast).

Croft, D.B. (2005). The future of kangaroos – going, going, gone? In, Wilson, M. and Croft, D.B. (eds.), 'Kangaroos: Myths and Realities', pp. 223-243. (The Australian Wildlife Protection Council, Melbourne).

Darrow, C (1902) On Crime and Criminals-Charles H Kerr Publisher

Debus, S. J. S. and Rose, A. B. (1999). Notes on the diet of the Wedge-tailed Eagle Aquila audax. Australian Bird Watcher *18, 38–41.*

Debus, S (2012) Birds of Prey Australia: A Field Guide

Decker, D, Smith, C et al (2015) Governance Principles for Wildlife Conservation in the 21st Century-Conservation Letters Vol 9 Issue 4 290-295

Department of the Environment and Energy, Australia State of the Environment 2016, Overview, p. 27, https://soe.environment.gov.au/theme/overview (accessed 28 February 2019).

Department of the Environment Water Heritage and the Arts, National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes (2008) <http://www.environment.gov.au/biodiversity/trade-use/wild-harvest/kangaroo/pubs/code-of-conduct-commercial.pdf>

DELWP-ATCW permit guidance 2021

DELWP-ATCW data-2009-2019.

DELWP-ATCW permit system review- Consultation Paper 2018

DELWP-Protecting Victoria's Biodiversity 2037 (2017)

DELWP–Living with Wildlife Action plan (2018)

DELWP-Victorian Kangaroo Pet Food Trial Summary Evaluation (2017)

DELWP-Victorian Kangaroo Harvest Management Plan (2019) (2020-2023)

DELWP-Kangaroo Harvest Program reports (2019) (2020)

DELWP-Kangaroo Pet Food Trial-Summary Evaluation report Undated but likely 2017

Dickman AJ (2010) Complexities of Conflict: The Importance of Considering Social Factors for Effectively Resolving Human-Wildlife Conflict Animal Conservation Vol 13, Issue 5 458-466

Dickman, C et al (2020) Impacts of the Unprecedented 2019-2020 Bushfires on Australian Animals0report prepared for WWF 2020

Domenici, P and Seebacher, F (2020) The impact of climate change on the biomechanics of animals0Conservation Physiology Vol 8 Issue 1:102

Downes, L (2018) "A very good livelihood: The Native animal fur trade in Victoria" History Australia Volume 15 2018 pp 89-112. Published online 5/2/18

Dunlop, M and Brown, PR (2008) Implications of Climate Change for Australia's National Reserve System: A Preliminary Assessment. Report to the Department of Climate Change and the Department of Environment, Water, Heritage and the Arts. CSIRO Sustainable Ecosystems, Canberra.

Environmental Rule of Law Report UN 24/1/19

EDO (NSW) (2018) Next Generation Biodiversity Laws-Best Practice Elements for a new Cth Environment Act-Available online

EDO (NSW) (2003) Can we better use private rights to protect public commons? Coastal Solutions Forum 15/11/03

EDO (Vic) (2010) Costing the Earth –The case for public interests costs protections in environmental litigation-Available online

EDO (Vic) (2008) Land and Biodiversity at a time of climate change" Submission in response to Vic Government Green Paper-July 2008

Englefield, B., Blackman, S.A., Starling M. & McGreevy, P.D. (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

Englefield, B., Starling M. & McGreevy, P. (2018). A review of roadkill rescue: who cares for the mental, physical and financial welfare of Australian wildlife carers? Wildlife Research, 45:103-118

Environmental Justice Victoria (2020) Failing our wildlife-Why Victoria's wildlife laws need to be modernised-EJA/HIS-Available online

Fey, s. et al (2015) Recent Shifts in the Occurrence, Cause and Magnitude of animal Mass Mortality Events –National Library of Medicine PNAS 27:112(4): 1083-8

Fensham RJ (2011) Plant Species Richness and Responses to Grazing Protection and Degradation History in a Low Productivity Landscape Journal of Vegetation Science 22 (6) 997-1008

Francione, G, Animals, Property and the Law (1995)

Frith and Calaby (1969) ***Kangaroos****. Hurst, London, and Humanities Press, New York, 1969*

Game Management Authority (2016) An Audit of Victoria's State Game Reserves

Game Management Authority 2019-2020 Annual Report

Gaston K, Fuller, R (2007) Biodiversity and Extinction: Losing the common and the Widespread –Progress in Physical Geography 2007:31:213

Gaston K (2008) Biodiversity and Extinction: The Importance of Being Common- Progress in Physical Geography 32 (1) 73-79

Gaston K (2010) Ecology: Valuing Common Species-Science 2010 327 (5962) 154-5

Gaston K (2011) Common Ecology -Bioscience Volume 61 Issue 5, 354-362

Gill JCH (1966) Genesis of the Australian Whaling Industry (Read at a Meeting of the Society on 24 March 1966)

Gill JCH (1967) Notes on the Sealing Industry in Early Australia (Read at a Meeting of the Society on 23 February 1967)

Global Biodiversity (2020) Outlook 5 Secretariat of the Convention on Biological Diversity. Montreal.

Goodfellow J (2016) Regulatory Capture and the Welfare of Farm Animals in Australia. Animal Law and Welfare-International perspectives pp195-235

Grigg GC, 2002 Conservation Benefit from harvesting kangaroos; status report at the start of a new millennium, a paper to stimulate discussion and research in Lunney D, Dickman C (Eds) A Zoological Revolution – Using native fauna to assist in its own survival

Hacker, R and McLeod, S (2003) Living with kangaroos: a guide to kangaroos and their management in the Murray-Darling Basin, New South Wales Department of Agriculture, Orange.

Hampton, J et al (2020) Social Licence and Animal Welfare: Developments in the Last Decade in Australia-Animals 28/11/20

Hawke, T, Kingsford, R (2019) "A silent demise: Historical Insights into Population Changes of the Iconic Platypus Vol 20 Global Ecology and Conservation

Hetem et al (2014) responses of large mammals to climate change-Temperature Vol 1 Issue 2

Hillbrecht, A (20170 "Disrobing Rights: The Privilege of being human in the Rights of National Discourse" 6 Rachel Carson Perspectives 15

House of Representatives Select Committee (1972), Wildlife Conservation

Hrdina, F, 'Marsupial destruction in Queensland 1877-1930' (1997) 30 Australian Zoologist 272

Hoyte, JA (1996) Animals in Peril-How 'sustainable use' is wiping out the World's Wildlife (HIS (USA) Washington) Research Paper-available online

Hulley, NJ (2018) New Zealand's Public Trust Doctrine-Faculty of Law Wellington University-LLM

Ilie, B (2016) The Right to a Healthy Environment-between a basic human right and a Policy of Form over substance 52 (1) Revista de Strite Politice 14

Independent review of the EPBC Act-Interim report July 2020

Independent review of the EPBC Act- Final report October 2020

IPBES. 2019. Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. S. Díaz, J. Settele, E. S. Brondizio E.S., H. T. Ngo, M. Guèze, J. Agard, A. Arneth, P. Balvanera, K. A. Brauman, S. H. M. Butchart, K. M. A. Chan, L. A. Garibaldi, K. Ichii, J. Liu, S. M. Subramanian, G. F. Midgley, P. Miloslavich, Z. Molnár, D. Obura, A. Pfaff, S. Polasky, A. Purvis, J. Razzaque, B. Reyers, R. Roy Chowdhury, Y. J. Shin, I. J. Visseren-Hamakers, K. J. Willis, and C. N. Zayas (eds.). IPBES secretariat, Bonn, Germany. XX pages.

IPCC, 2018: Summary for Policymakers. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. World Meteorological Organization, Geneva, Switzerland, 32 pp.

IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. XXX pages.

IUCN (2021) Building on Nature: Area based conservation as a tool for delivering SDGs-Available Online

IUCN (2020) Guidelines for conserving connectivity through ecological networks and corridors

IUNC (2019) Species and Climate Change-Issues Paper-Available Online

Johnson, C, (2006) Australia's Mammal Extinctions: a 50 000 Year History

Keefer et al (2020) "Trust to advance inclusive growth" In Nugent, Powell (Eds) inclusiveness in Times of Covid 19. Inter-American Development Bank pp 41-52

Kempling (2014) "Regulatory Capture: Sources and Solutions" 1 Emory Corp Government and Accountability Review 23

Konig et al (2020) Human-Wildlife Co-existence in a changing world-Conservation Biology Vol 34, No.4 786-794

Kotzmann J (2020) "Recognising the Sentience of Animals in Law: A justification and Framework for Australian States and Territories" Sydney Law review 13:281

Kock, R et al (2018) Saigas on the Brink: Multidisciplinary Analysis of the Factors Influencing Mass Mortality Events- Sciences Advances 4(1) 2314

Lande, R Engen, S and Saether, B-E (1995) 'Optimal harvesting of fluctuating populations with a risk of extinction'. American Naturalist 145, pp. 728-745.

Lande, R Saether, B-E and Engen, S (1997) 'Threshold harvesting for sustainability of fluctuating resources'. Ecology 78, pp.1341-1350.

Lee M. 2020. Australia's bushfires could drive more than 700 animal species to extinction. Check the numbers for yourself. The Conversation 14 January 2020

Leopold, A. S. and Wolfe, T. O. (1970). Food habits of nesting Wedge-tailed Eagles, Aquila audax, in south-eastern Australia. CSIRO Wildlife Research *15, 1–17.*

Lucas and Soeuf (1909) Animals of Australia-available online

McKay 2017-The Myth of Hyper-abundance (Animal Alliance Canada) Available online

McLeod, SR and Sharp TM (2014) Improving the humaneness of commercial kangaroo harvesting. Final report for RIRDC Project No PRJ004103. Rural Industries Research and Development Corporation, Canberra ACT. Available at: https://rirdc.infoservices.com.au/items/13- 116

McLeod, S and Sharp, T (2020) "The Australian kangaroo industry: male-only harvesting, sustainability and an assessment of animal welfare impacts" Agrifutures-available online

McLeod, SR, Hacker RB (2020) Balancing stakeholder interests in kangaroo management – historical perspectives and future prospects The Rangeland Journal 2020

Marks (1998) Review of the Humanness of Control Techniques for the common Wombat in Victoria-Available Online

Manfredo M et al (2011) Why are Public Values towards Wildlife Changing? Human Dimensions of Wildlife Vol 8-Available online

Manfredo, M (2019) For US Wildlife management social science is needed more than ever" Bioscience 69:960-961

Manfredo, M Teel, T et al (2020) The changing Socio-culture context of Wildlife Conservation-Conservation Biology Vol 34 No 6 1549-1559

Matzek, V, Wilson, K (2019) Mainstreaming of Ecosystem Services as a Rationale for Ecological Restoration in Australia-Ecosystem Services Volume 35: 79-86

Maxwell et al (2019) Retention and restoration priorities for Climate Adaption in a multi-use landscape" Global Ecology and Conservation Vol 18, e 00649

Mekonen, S. Coexistence between human and wildlife: the nature, causes and mitigations of human wildlife conflict around Bale Mountains National Park, Southeast Ethiopia. BMC Ecol ***20,*** *51 (2020).*

Mella et al (2019) Needing a Drink: Rainfall and Temperature drive the use of free Water by a Threatened arboreal foliovore" PLoS ONE 14(5): e0216964.

Menkhorst, P (1995) Mammals of Victoria Oxford University Press

Montague-Drake, R. and Croft, D.B. (2004). Do kangaroos exhibit water-focussed grazing patterns in arid New South Wales? A case study in Sturt National Park. Australian Mammalogy 26: 87-100.

Montague-Drake (2004) Strategic Management of Artificial Watering Points for Biodiversity Conservation (Thesis submitted to UNSW

Montgomery, J, 'Is it too late to save the Big Red?' (1969) 12 Animals 226

Munn, A.J., Dawson, T.J., McLeod, S.R., Croft, D.B., Thompson, M.B. and Dickman, C.R. (2008) Field metabolic rate and water turnover of red kangaroos and sheep in an arid rangeland: an empirically derived dry-sheep-equivalent for kangaroos. Australian Journal of Zoology 57: 22-28.

Musiker, France, Hallenbeck (1995) "Public Trust Doctrine and Parens Patriae: Protecting wildlife in uncertain times" 16 Pub. Land L, Rev 87

National Environmental Management Act No 107 of 1998 South Africa

Nyhus (2016) Human-Wildlife Conflict and Co-existence-Annual Review of Environment and Resources Vol 41:143-171

Office of the Conservation Regulator-2020 Annual Report-Available Online

Office of Environment and Heritage (NSW)(2016) Discussion Paper-'Towards risk-based approach to wildlife licences"-Available Online

OECD (2012) Background Document on Public Consultation-Public Governance and Territorial Development Directorate-Available Online

OECD (2014) Decision-making and governing body structure for independent regulators" Governance of Regulators ECD Publishing Paris

OECD (2017) Trust and Public Policy-How better government can help rebuild public trust (1st Ed) OECD Publishing, Paris

OECD Organisation for Economic Co-operation and Development (2019) Environmental Performance Review: Australia

Office of the Information Commissioner (Qld) (2012) "Transparency and Public Sector Performance"

Office of Parliamentary Counsel Qld (2013) Principles of Good Legislation-Clear Meaning" OQPC

Pecl et al (2017) Biodiversity Redistribution under Climate Change Impacts on Ecosystems and Human Well-being" Science Volume 355 Issue 6332

Peterson, K (1979) The Formation of Policy for the Control of Vermin in NSW and Victoria 1880-1930 –Thesis (ANU) Available online

Pickrell, J., 2020. Australian fires have imperilled up to 100 species. Available at: https://www.sciencenewsforstudents.org/article/australian-fires-have-imperiled-up-to-100-species

Pointon, R Bell-James J (2019) "Legal Analysis: The Right to a Healthy Environment in Australia" Griffith Journal of Law and Human Dignity Vol 7 Issue 2:12-19

Porter R.T. Kingsford and K. Brandis (2018) Aerial Survey of Wetland Birds in Eastern Australia - October 2018 Annual Summary Report Centre for Ecosystem Science, School of Biological, Earth and Environmental Sciences, UNSW Sydney Office of Environment & Heritage NSW

Porter, R.T. Kingsford and K. Brandis (2019) Aerial Survey of Wetland Birds in Eastern Australia - October 2019 Annual Summary Report. Department of Planning Industry & Environment Centre for Ecosystem Science, School of Biological, Earth and Environmental Sciences, UNSW Sydney

Porter, R.T. Kingsford , R. Francis and K. Brandis (2020) Aerial Survey of Wetland Birds in Eastern Australia - October 2020 Annual Summary Report Department of Planning Industry & Environment Centre for Ecosystem Science, School of Biological, Earth and Environmental Sciences, UNSW Sydney

Ramp, D., Ben-Ami, D., Boom K., and Croft B. D. (2013) Compassionate conservation: A paradigm shift for wildlife management in Australasia. In Bekoff, M. (Ed) Ignoring nature no more: the case for compassionate conservation. University of Chicago Press, Chicago.

Ramsey, D.S.L. and Scroggie, M.P. (2020). Kangaroo harvest quotas for Victoria, 2021. Arthur Rylah Institute for Environmental Research Technical Report Series No. 323. Department of Environment, Land, Water and Planning, Heidelberg, Victoria.

Rawlinson, Peter, 'Kangaroo conservation and kangaroo harvesting: Intrinsic value versus instrumental value of wildlife' (1988) 24 Australian Zoologist 129

Ritchie, EG and Bolitho, EE (2008) 'Australia's Savannah herbivores: bioclimatic distributions and an assessment of the potential impact of regional climatic change'. Physiological and Biochemical Zoology. 81, pp.880-890

Robertson, G (1986) 'The mortality of kangaroos in drought' Australian Wildlife Research 13, pp. 349-354

Roger Beale, Department of Environment Sport and Territories, Submission to the Senate References Committee Rural and Regional Affairs on the Inquiry into Commercialisation of Australian Native Wildlife (1997)

Rothstein t al (2007) The risks of risk-based regulation-Insights from the Environmental Domain-Environment International 32(8):1056-65

RSPCA Australia, The Kangaroo Code Compliance Report: A survey of the extent of compliance with the requirements of the Code of Practice for the Humane Shooting of Kangaroos, prepared for Environment Australia, July 2002 <http://www.deh.gov.au/biodiversity/trade-use/publications/kangaroo-report/summary.html#71>

RSPCA, National Statistics 2008-2009 at <http://www.rspca.org.au/assets/files/Resources/RSPCAAnnualStats2008-2009.pdf>

Sagarin, R Turnipseed M (2012) The PTD: Where Ecology meets Natural Resources" ARNR Volume 37:473-496

Scroggie, M.P. and Ramsey, D.S.L. (2019). Kangaroo harvest quotas for Victoria, 2020. Arthur Rylah Institute for Environmental Research Technical Report Series No. 308. Department of Environment, Land, Water and Planning, Heidelberg, Victoria.

Senate Select Committee on Animal Welfare, Parliament of the Commonwealth of Australia, Kangaroos (1988) [8.2] Cruelty to Kangaroos

Senate Rural and Regional Affairs and Transport Committee, 'Commercial Utilisation of Australian Native Wildlife, Executive Summary' (Parliament of Australia, Senate, 1998)

Senate Interim Report-Australia's Faunal Extinction Crisis 3 April 2019

Short J (1987) Factors affecting food intake of rangelands herbivores. In 'Kangaroos: there ecology and management in the sheep rangelands of Australia.' (Eds G Caughley, N Shepherd and J Short) pp. 84-99. (Cambridge university press, Cambridge, UK)

Snape, M, Caley,P, Baines, G (2018) Kangaroos and Conservation-Assessing the Effects of Kangaroo Grazing in Lowland Grassy Systems. ACT Government Technical Report 3/18

State of the Environment Advisory Council, State of the Environment Report Victoria (2018)

Taylor, M (2021) Injustice-An Investigation and Cultural History Independent Ink

Trigg, B (2009) "Wombats" CSIRO Publishing

Trisos, CH, Merow, C, and Pigot, A (2020) The Projected Timing of Abrupt Ecological Disruption from Climate Change-Nature 580 496-502 Published 8/4/ 20

Uhrig (2003) Review of Corporate Governance of Statutory Authorities and office Holders-Australian Government

Victorian Competition and Efficiency Commission 2011, Securing Victoria's Future Prosperity: A Reform Agenda, draft report, November.

Vincent (2014) Reforming Wildlife Law: Proposals by the Law Commission for England and Wales-International Journal for Crime, Justice and Social Democracy Vol 3 No 2:67-80

White, S (2007) The regulation of Animal Welfare in Australia and the Emergent Commonwealth" Federal Law review (200&) 35 (3) 347

Webb, Grahame, 'Sustainable use of wildlife' (1997) 10(1) Australian Biologist 3

Wheeler, C (2016) What is the public interest? Government Solicitors Conference 6/9/16

Wildlife Health Australia (2016) Mortality Events of large Macropods in Australia-Available online

Wilson, A (2019) "South Africa's fallen pride: How Law and Government fail to protect Lions" Revelator 23/5/19-Available online

Woinarski, J and Fisher, A (2003). Conservation and the maintenance of biodiversity in the rangelands. Rangelands Journal. 25, pp. 157– 171.

Woinarski, Burbidge, Harrison (2015) "Ongoing unraveling of a continental fauna: Decline and extinction of Australian mammals since European Settlement" PNAS Vol 112. No 15 4531-454

WWF. (2018). Living Planet Report - 2018: Aiming Higher. Grooten, M. and Almond, REA.(Eds). WWF, Gland, Switzerland

WWF. (2020). Living Planet Report-Bending the Curve of Biodiversity Loss -Almond, REA and Petersen, T (Eds) WWF Gland Switzerland

WWF-Australia's 2019-2020 Bushfires-Interim Report (see final report-Dickman, C (2020)) Yanner V Eaton (1999) 201 CLR 351 [10-31]

Zimmermann et al (2020) Levels of Conflict over Wildlife: Understanding and addressing the right problem" Conservation Science and Practice Vol 2 Issue 10 e259

(ff) Acknowledgements

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INDEPENDENT REVIEW OF THE WILDLIFE ACT 1975

Wildlife Victoria Submission: PART B

SUMMARY

Part B of our submission is specifically structured around the April 2021 issues paper, entitled *Independent Review of the Wildlife Act 1975* (**Issues Paper**).[1]

Part B of our submission **addresses sections 1.3 and 5.1 to 5.8** and the numbering used throughout Part B corresponds to the numbering in the Issues Paper.

[1] Available at: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/7116/1957/0183/Panels-Issues-Paper-2021.pdf

1.3: The Act doesn't appear to appropriately recognise the rights and interests of Traditional Owners and Aboriginal Victorians

Introduction

1. Given that Wildlife Victoria is not in a position to comment on many of the questions set out in section 1.3, we instead deal with this section generally, rather than by responding to each specific question.

2. Section 1.3 of the Issues Paper raises a number of issues regarding the extent to which the Act appropriately recognises the rights and interests of Traditional Owners and Aboriginal Victorians (shortened below to **Traditional Owners**), to which Wildlife Victoria responds as follows.

Wildlife Victoria's general position

3. Wildlife Victoria strongly believes that wildlife 'belongs' to the community as a whole, not to special interest groups or the government. The community, including but not limited to, Traditional Owners, must be appropriately consulted on wildlife matters.

4. Wildlife Victoria acknowledges that it is not an Indigenous led organisation. Therefore, save for certain baseline requirements which it considers must apply to all interactions with wildlife (as addressed below), it has limited its submission to comment on what the role of Traditional Owners should look like in the amended legislation, and otherwise acknowledges that the views of Traditional Owners should be prioritised in relation to the conservation and protection of wildlife.

5. Wildlife Victoria strongly endorses article 29(1) of the *United Nations Declaration on the Rights of Indigenous Peoples* which declares that:
"*Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories or resources. States should establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination*."

6. The current Wildlife Act 1975 merely recognises Traditional Owners insofar as their cultural rights to take or kill wildlife without penalties. The Wildlife Act 1975 fails to acknowledge the crucial role of Traditional Owners in the conservation and protection of the environment and of wildlife. This is unacceptable on two accounts. It means that the Wildlife Act 1975 fails to achieve its purpose of promoting "*the protection and conservation of wildlife*".[2] It also means that the Wildlife Act 1975 fails to fulfil the rights of Traditional Owners under international law.

[2] Wildlife Act 1975 s 1A.

7. The Wildlife Act 1975 is out of step with other jurisdictions in Australia and overseas which acknowledge the role of Indigenous peoples – see **Annexure A** to this submission for tables comparing the Wildlife Act 1975 to other Australian States/Territories, as well as the Commonwealth, Scotland and New Zealand.

8. Wildlife Victoria is supportive of a range of possible ways in which the views, opinions and expertise of Traditional Owners could be recognised, utilised and included in an amended Wildlife Act, including, but not limited to, the following.

   (a) Acknowledging that the preservation and protection of biodiversity is of cultural value to Traditional Owners. Giving effect to this acknowledgement may be achieved by expressly including it as an objective of the Wildlife Act.

   (b) Creating an advisory committee which:
      (i) is constituted wholly of Traditional Owners;
      (ii) includes Traditional Owners as members; or
      (iii) has Traditional Owners in a stewardship or leadership role.

   (c) Declaring that the Wildlife Act aims to facilitate gathering of information from and community education by Traditional Owners.

   (d) Promoting involvement and cooperation in the Wildlife Act between Traditional Owners, landholders and other community members.

   (e) Recognising the role of Traditional Owners in, and knowledge of, the conservation and ecologically sustainable use of wildlife for non-commercial purposes.

9. Wildlife Victoria is also supportive of:

   (a) any proposed amendments to the Wildlife Act 1975 which allow for the inclusion of indigenous ecological knowledge when making decisions as to planned burns and land management; and

   (b) the establishment of a Traditional Owner's stewardship body that monitors protected species.

10. Broader consultation and engagement with Traditional Owners should lead to better outcomes for wildlife in Victoria as Wildlife Victoria has found Traditional Owners to often be supportive of Wildlife Victoria's wildlife protection and advocacy efforts.

Hunting and killing of wildlife

11. Wildlife Victoria is vehemently against the hunting and killing of native animals. Therefore, its support for the recognition of Traditional Owners' cultural rights is limited in this respect.

12. Wildlife Victoria is supportive of the ways in which the following jurisdictions place some reasonable limits the rights of Traditional Owners to hunt and kill wildlife.

    (a) **Tasmania** – *Nature Conservation Act 2002* (TAS) s 73(2) – "*Nothing in this Act precludes an Aboriginal cultural activity by an Aboriginal person on Aboriginal land, so long as that activity is not likely, in the opinion of the Minister, to have a detrimental effect on fauna and flora and is consistent with this Act.*"

    (b) **Northern Territory** – *Territory Parks and Wildlife Conservation Act 1976* (NT) s 25AJ – "*The joint management plan for a joint management park or reserve may limit the right of Aboriginals to use the park or reserve (whether for hunting, food gathering or ceremonial or religious purposes) as properly recognised by section 122, but only to the extent necessary and reasonable for environmental or safety reasons*."

13. Where the Wildlife Act allows for the exercise of Traditional Owners' cultural rights to hunt and kill wildlife, we submit that it should require that the method or manner in which animals are killed is in accordance with the *Prevention of Cruelty to Animals Act 1986* (Vic). Wildlife Victoria's strong view is that conduct which involves animal cruelty simply cannot be acceptable in today's society, even if such conduct is a custom of cultural significance.

14. Further, Wildlife Victoria submits that the scope of Traditional Owners' cultural rights to hunt and kill wildlife under the Wildlife Act must be informed by the sentience of animals, the impact of killing on family group structures and social dynamics of species.

Part 5: Are current enforcement and compliance mechanisms adequate?

(gg) 5.1: It's not clear whether the Wildlife Act 1975 creates the appropriate offences

Should the Act include other offences?

15. Wildlife Victoria strongly believes that the current offences under the Wildlife Act 1975 do not cover a wide enough range of conduct. Offences need to be more wide ranging and extensive to cover the full spectrum of crimes against wildlife.

The current position

16. Whilst the Wildlife Act 1975 contains numerous offences, approximately half of them relate to administrative offences (e.g. breach of condition of a permit or approaching a hunter) and significantly less to direct protection of wildlife – see **Annexure B** to this submission for a table setting out the offences. The Wildlife Act 1975 also does not deal with the destruction of natural habitat of wildlife. Considering the destruction of wildlife habitat has clear and direct negative consequences for wildlife, it is conspicuous that this type of offence(s) are not included.

17. Currently, the Wildlife Act 1975 prohibits the hunting, taking or destroying of:
    (a) "*threatened wildlife*";[3]
    (b) "*protected wildlife*";[4] and
    (c) "*game*".[5]

18. Wildlife Victoria considers that the Wildlife Act 1975's protection of all wildlife should be maintained. However, there are two definitional limitations in the way wildlife is protected under the current Wildlife Act 1975 which undermines the efficacy of this protection. First, the Wildlife Act 1975 permits the Government via the mechanism of a Governor in Council order, to effectively render a taxon or kind of wildlife unprotected. The removal of protected status occurs via mere publication of the order in the Government Gazette without the need for public consultation.[6] This process lacks transparency and completely undermines the objective of the Wildlife Act 1975, being to protect and conserve wildlife.[7] Second, wildlife which is a pest animal within the meaning of the *Catchment and Land Protection Act 1994* (Vic) is not included within the

[3] Wildlife Act 1975 ss 3(1) and 41: "threatened wildlife" is protected wildlife that is specified in the Threatened List under s 10(1) *Flora and Fauna Guarantee Act 1988* (Vic).
[4] Wildlife Act 1975 s 43: "protected wildlife" is all wildlife other than those kinds of taxon which is a pest animal within the meaning of the *Catchment and Land Protection Act 1994* (Vic) or deemed to be unprotected wildlife by an Order by the Governor in Council.
[5] Wildlife Act 1975 s 44: "game" is any kind or taxon of wildlife declared by Order of the Governor in Council.
[6] Wildlife Act 1975 ss 3(1)(b), (c).
[7] Wildlife Act 1975 s 1A(a)(i).

definition of "protected wildlife" under the Wildlife Act 1975. This means that the scope of protected wildlife can be expanded or contracted through the process prescribed by the act for naming 'pests', which again does not require public consultation.[8] Part A of Wildlife Victoria's submission also explores this issue.

19. In addition to the Wildlife Act 1975, protection of wild animals and birds is scattered across many overlapping Victorian legal instruments. This includes, but is not limited to, the following legal instruments:

    (a) *Wildlife Regulations 2013* (Vic);

    (b) *Wildlife (State Game Reserves) Regulations 2014* (Vic);

    (c) *Prevention of Cruelty to Animals Regulations 2019* (Vic);

    (d) *Prevention of Cruelty to Animals Act 1986* (Vic);

    (e) *Wildlife (Game) Regulations 2012* (Vic);

    (f) *Wildlife (Marine Mammals) Regulations 2019* (Vic);

    (g) *Fisheries Act 1995* (Vic);

    (h) *Fisheries Regulations 2019* (Vic);

    (i) *Catchment and Land Protection Act 1994* (Vic); and

    (j) *Flora and Fauna Guarantee Act 1988* (Vic).

20. Wildlife Victoria's view is that the existence of these various legislative instruments makes education, compliance and enforcement in relation to offences harder, as it requires the government, community organisations and the public to refer to and understand the interactions between the instruments.

<u>Comparison with other jurisdictions</u>

21. **Wildlife Victoria submits that the Wildlife Act 1975's current offences are alarmingly narrow in range compared to those in other jurisdictions.** To demonstrate this, Wildlife Victoria has prepared a table showing the range of types of offences covered by other domestic jurisdictions, as well as some key international jurisdictions – see **Annexure C**.

22. Domestically, the *Biodiversity Conservation Act 2016* (WA) appears to cover the broadest range of offences within Australia in relation to protecting wildlife. It notably deals with feeding fauna (see s 155) and processing fauna (see s 158). Significantly, the *Nature Conservation Act 1992* (QLD) restricts the breeding of hybrids of protected animals (see s 92). The noticeable absence of such offences under the Wildlife Act 1975 are indicative

[8] *Catchment and Land Protection Act 1994* (Vic) s 58.

of how outdated Victorian wildlife protections are in comparison to Victoria's domestic peers.

23. Victoria also lags behind more progressive international jurisdictions. For example, under s 3(1) of the *Wildlife Area Regulations 1609* (Canada), no person shall do any of the following in any wildlife area except in accordance with a permit issued:

Subsection 3(1)	Offence
(a)	introduce any living organism whose presence is likely to result in harm to any wildlife or the degradation of any wildlife residence or wildlife habitat;
(b)	hunt, fish or trap;
(c)	have in their possession any equipment that could be used for hunting, fishing or trapping
(d)	have in their possession, while fishing, any lead sinkers or lead jigs;
(e)	have in their possession any wildlife, carcass, nest, egg or a part of any of those things;
(f)	carry on any agricultural activity, graze livestock or harvest any natural or cultivated crop;
(g)	bring a domestic animal with hooves into the wildlife area;
(h)	allow any domestic animal to run at large or keep any domestic animal on a leash that is longer than three metres;
(i)	carry on any recreational activities, including swimming, camping, hiking, wildlife viewing, snowshoeing, cross-country skiing and skating;
(j)	carry on any recreational activities, including swimming, camping, hiking, wildlife viewing, snowshoeing, cross-country skiing and skating;
(k)	light or maintain a fire;
(l)	operate a conveyance — including a conveyance without a driver on board — other than an aircraft;
(m)	conduct a take-off or landing of an aircraft, including a remotely piloted aircraft;
(n)	operate on land or in the water a remotely controlled self-propelled device or set in motion on land or in the water an autonomous self-propelled device;
(o)	remove, damage or destroy any poster or sign or any fence, building or other structure;
(p)	sell, or offer for sale, any goods or services;
(q)	carry on any industrial activity;
(r)	disturb or remove any soil, sand, gravel or other material;
(s)	dump or deposit any waste material, or any substance that would degrade or alter the quality of the environment;
(t)	remove, damage or destroy any artifact or natural object; or
(u)	carry out any other activity that is likely to disturb, damage, destroy or remove from the wildlife area any wildlife — whether alive or dead — wildlife residence or wildlife habitat.

24. Under s 3.1(1) *Wildlife Area Regulations 1609* (Canada), Schedule I.1 prescribes a list of activities which may be carried out in a wildlife area subject to any specified conditions. As an example, at the Estuary Islands National Wildlife Area, the only permitted activity is non-commercial non-motorised boating, from sunset to sunrise. This greatly differs from the current approach under the Wildlife Act 1975. Under the Wildlife Act 1975, all actions are permissible in wildlife areas provided they are not offences. The *Wildlife Area Regulations 1609* (Canada) take the opposite approach, in that all actions are not permissible in a wildlife area, unless they are provided for under Schedule I.1. Cumulatively, this "by prescribed exception" approach provides limited scope for human interference with wildlife and wildlife areas, and accordingly is much more protective of wildlife than the approach adopted in the Wildlife Act 1975.

Changes required to the Wildlife Act 1975

25. Wildlife Victoria believes the classification of wildlife as threatened, protected or pests should require public consultation and not simply be changeable by the government of the day through the Governor in Council order mechanism.

26. Wildlife Victoria strongly urges the inclusion of a wider range of wildlife offences. As a minimum, it seeks the inclusion of offences covering feeding fauna and processing fauna.

27. It is noted that destruction of natural habitat of wildlife is prohibited under r 42 *Wildlife Regulations 2013* (Vic). However, given habitat destruction has a substantial and directly negative impact on wildlife, it speaks to the disorganisation of the current wildlife protective framework in Victoria. This leads into our next proposal, being to urge that the arrangements for the protection of native wildlife be consolidated into one act. As noted above, Wildlife Victoria has serious concerns that, with so many legal instruments in place, it is difficult for people to determine whether they are committing wildlife offences. Furthermore, this places an incredibly onerous task on not-for-profit organisations such as Wildlife Victoria to conduct widespread public education. With the consolidation of legal instruments, perpetrators will be unable to rely on ignorance for leniency.

28. Wildlife Victoria strongly endorses the approach taken in Canada, to reverse the onus onto those wanting to undertake activity impacting wildlife to provide the appropriate proof that they should be permitted to undertake such activities on the basis that it falls within one of the prescribed exceptions. This recognises that wildlife areas belong to the wildlife, and that only in exceptional circumstances should it be trespassed upon. Furthermore, this framework is legislatively efficient, as the Wildlife Act 1975 will not need to be continuously updated to address new harmful actions against wildlife.

Should any offences be repealed?

29. Wildlife Victoria maintains that the Wildlife Act 1975 does not provide offences for a wide enough range of detrimental conduct to wildlife. Accordingly, Wildlife Victoria does not believe the focus should be on repealing offences.

30. Wildlife Victoria's view is that, on their face, most of the current offences are appropriate to retain. However, the lack of proper enforcement or convictions in relation to the current offences makes it difficult to identify if there are any provisions which present any particular difficulties warranting their repeal.

(hh) 5.2: Do maximum penalties deter or sufficiently reflect the seriousness of offences?

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

31. **The maximum penalties in the Wildlife Act 1975 are woefully inadequate and altogether fail to reflect the gravity of the offences committed**. Wildlife Victoria's experience is that wildlife crime in Victoria is not decreasing, and while this may be partly a consequence of poor enforcement, it is hard to see how the comparatively low penalties applicable in Victoria are helping in the situation. Rather, low levels of enforcement activity combined with the paltry maximum penalties applicable in the event of enforcement, leaves Victoria's wildlife essentially unprotected and exposed.

32. Wildlife Victoria has significant concerns about the disparity in maximum penalties between hunting, taking or destroying 'threatened wildlife' (being wildlife specified in the Threatened List under the *Flora and Fauna Guarantee Act 1988* (Vic)) in comparison to "protected wildlife" (see below).

Current offence under the Wildlife Act 1975	Section	Maximum Penalty
Hunting, taking or destroying threatened wildlife	41	240 penalty units or 24 months imprisonment or both the fine and imprisonment and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.
Hunting, taking or destroying protected wildlife	43	50 penalty units or 6 months imprisonment or both the fine and imprisonment and an additional penalty of 5 penalty units for every head of game in respect of which an offence has been committed.

33. Crimes against wildlife are unacceptable, irrespective of species status. Wildlife Victoria is supportive of higher penalties for prescribed threatened species provided that the maximum penalties for offences against non-prescribed species are also adequate. Under the current Wildlife Act 1975, this is not the case.

Comparison with other jurisdictions

34. Victoria is again out of step with other Australian States/Territories and key international jurisdictions with respect to maximum penalties under the Wildlife Act 1975.

35. By way of illustration, the *Biodiversity Conservation Act 2016* (WA) imposes maximum penalties of $500,000 for individuals and $2.5M for corporations for taking, possessing or disturbing threatened fauna.[9] Similarly, the *Biodiversity Conservation Act 2016* (NSW) provides for maximum penalties of up to $330,000 for individuals and $1.65M for body corporates in relation to a similar wildlife offence.[10] This is in stark contrast to the maximum penalty for hunting, taking or destroying threatened wildlife under the Wildlife Act 1975, being 240 penalty units ($39,652.80) or 24 months imprisonment.[11] This is approximately 12% and 8% of the maximum penalty provided for individual offenders in New South Wales and Western Australia respectively.

36. Even if the Victorian maximum penalties were in line with that seen in New South Wales and Western Australia, the fact that the Wildlife Act 1975 does not discriminate between individual and corporate perpetrators means that the maximum penalties under the Wildlife Act 1975 have virtually no prospect of adequately punishing and deterring offenders. In the case of a corporation committing wildlife offences, the maximum penalties for hunting threatened or protected wildlife are simply not high enough and could easily be absorbed by corporations as a 'cost of doing business'. Indeed, the same could be said of individuals.

37. Looking internationally, substantive wildlife offences under the UK act are triable summarily in the Magistrates' court with maximum penalties of: [12]

    (a) six months' imprisonment; or

    (b) a fine not exceeding level 5 (£5,000) on the UK standard scale; or

    (c) six months imprisonment and a fine not exceeding level 5; or

    (d) six months imprisonment and an unlimited fine.[13]

38. Under s 21(5) *Wildlife & Countryside Act 1981* (UK), where an offence was committed in respect of more than one animal or plant, the maximum fine which may be imposed should be determined as if the person convicted had been convicted of a separate offence in respect of each animal or plant. This differs from the approach under the Wildlife Act 1975, which only provides for additional penalties for multiple offences which are substantially less than the base penalty rate for a single offence. As an

[9] *Biodiversity Conservation Act 2016* (WA) s 150.
[10] *Biodiversity Conservation Act 2016* (NSW) s 13.1.
[11] *Wildlife Act 1975* (Vic) s 41.
[12] *Wildlife and Countryside Act 1981* (UK), s 21(1).
[13] By virtue of s 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (UK), offences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.

example, s 41 the Wildlife Act 1975 has a base penalty rate of 240 penalty units, with an additional 20 penalty units for each subsequent head of wildlife that the offence is perpetrated against. The lower penalties yielded by this "course of conduct" approach fails to adequately deter individuals from engaging in multiple offences and fails to appropriately punish offenders who do so.[14]

39. As a further point of contrast, substantive wildlife offences under the *Canada Wildlife Act 1985* have the following maximum penalties:

Section	Entity	Maximum Penalty
13.01(2)	Individual	on conviction on indictment, for a first offence, to a fine of not more than $100,000; and for a second or subsequent offence, to a fine of not more than $200,000; or on summary conviction, for a first offence, to a fine of not more than $25,000; and for a second of subsequent offence, to a fine of not more than $50,000.
13.01(3)	Corporation	on conviction on indictment, for a first offence, to a fine of not more than $500,000, and for a second or subsequent offence, to a fine of not more than $1,000,000; or on summary conviction, for a first offence, to a fine of not more than $250,000, and for a second or subsequent offence, to a fine of not more than $500,000.
13.01(4)	Small revenue corporation	on conviction on indictment, for a first offence, to a fine of not more than $250,000, and for a second or subsequent offence, to a fine of not more than $500,000; or on summary conviction, for a first offence, to a fine of not more than $50,000, and for a second or subsequent offence, to a fine of not more than $100,000.

<u>Changes required to the Wildlife Act 1975</u>

40. Wildlife Victoria strongly endorses an increase of maximum penalties under the Wildlife Act. In comparison to both domestic and international jurisdictions, it is acutely evident that the maximum penalties under the Wildlife Act 1975 are severely deficient. Furthermore, Wildlife Victoria believes that the maximum penalties for offences against protected wildlife should be significantly increased to be more consistent with the

[14] In relation to the UK Act, it has been argued that, since substantive wildlife offences already have an unlimited maximum penalty, s 21(5) is no longer useful as the "sentence multiplier" is based on the number of specimens that were affected by the prohibited activity. Rather, it has been suggested that the impact of a certain activity on the conservation status of the relevant species is a more useful consideration to base the "sentence multiplier" on – see UK Law Reform Commission, *Wildlife Law*, Report (Volume 1), 2015, 416 at 10.163

maximum penalties for offences against threatened wildlife. We reiterate that cruelty and crime against any type of wildlife is unacceptable.

41. The maximum penalties also need to distinguish individual and corporate perpetrators and recognise that wildlife offences are committed by corporations too and must be appropriately deterred and penalised.

42. Wildlife Victoria notes that while the increase of maximum penalties would be beneficial, enforcement and imposition of such penalties are just as important in order to adequately deter and punish wildlife offenders. We address these issues in Part A of our paper with recommendation of a new independent regulator.

(ii) 5.3: Continuing offences and additional penalties could be strengthened

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

43. Wildlife Victoria is extremely supportive of the inclusion of general provisions creating continuing offences[15] and additional penalties[16] under the Wildlife Act.

44. Currently, the Wildlife Act 1975 does not provide for continuing offences in any form. It does however include additional penalties for certain offences. These offences include the following:

(a) s 41 – hunting, taking or destroying threatened wildlife;

(b) s 43 – hunting, taking or destroying protected wildlife;

(c) s 44 – hunting, taking or destroying game;

(d) s 45 – acquiring threatened wildlife; and

(e) s 47 – acquiring protected wildlife.

<u>Comparison with other jurisdictions</u>

45. Wildlife Victoria has prepared a table setting out examples of domestic and international jurisdictions that include general provisions for additional penalties and continuing offences – see **Annexure D**. This again exposes how far Victoria lags behind its peers.

[15] A continuing offence is a single ongoing failure to perform a duty imposed by law, with a penalty that can be imposed for each day the offence continues after a conviction or notice of contravention.
[16] Additional penalties in a wildlife protection context often exist to attempt to provide protection to particular types of wildlife.

46. New South Wales provides an example of what continuing offences could look like. Under s 13.11 *Biodiversity Conservation Act 2016* (NSW), a person who is guilty of an offence because the person contravenes a requirement made by or under the Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):

    (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and

    (b) is guilty of a continuing offence for **each day** the contravention continues.

47. South Australia provides an example of a strong additional penalties model, with the *National Parks and Wildlife Act 1972* (SA) imposing additional penalties of $1,000 per animal if it is an endangered species, $750 for a vulnerable species, $500 for a rare species and $250 for other animals.[17]

48. As noted at paragraph 38 above, s 21(5) of the *Wildlife & Countryside Act 1981* (UK) provides for an "*additional penalty*" where an offence was committed in respect of more than one animal or plant. The maximum fine which may be imposed should be determined as if the person convicted had been convicted of a separate offence in respect of each animal or plant (described as a "*sentencing multiplier*").

49. Canada also contains general provisions for both continuing offences and additional penalties:

    (a) Under s 13.02 *Canada Wildlife Act 1985,* a person who commits or continues an offence under on more than one day is liable to be convicted for a separate offence for **each day** on which the offence is committed or continued.
    (b) Under s 13.04 *Canada Wildlife Act 1985*, the court can impose an additional penalty if a person is convicted of an offence where the person acquired any property, benefit or advantage as a result of the commission of the offence.

50. Section 13.12 *Wildlife Act 1985* (Canada) also provides for a "*sentencing multiplier*" like s 21(5) *Wildlife & Countryside Act 1981* (UK). Furthermore, the court may increase the amount of a fine for every aggravating factor associated with the offence (this is discussed more under Issue 5.4.2). This increase should reflect the gravity of each aggravating factor associated with the offence (see paragraphs 66 and 67 for more information).[18]

<u>Changes required to the Wildlife Act 1975</u>

51. Wildlife crime and cruelty can often be systemic and ongoing with multiple individual creatures impacted (e.g. mass poisoning of birds, mass shooting of wildlife). There is

[17] *National Parks and Wildlife Act 1972* (SA) s 74.
[18] *Canada Wildlife Act* ss 13.09(1)(a), (b).

also a need to recognise systemic and ongoing crime impacting not just individual creatures themselves but also their habitat (e.g. illegal destruction of habitat, illegal poisoning of waterways, illegal logging, illegal baits etc).

52. Wildlife Victoria urges the inclusion of general provisions for continuing offences and additional penalties akin to those found in ss 13.02 and 13.04 of the *Canada Wildlife Act 1985*.

53. Wildlife Victoria's position is that any wildlife offence can vary in degree and thus must be able to be penalised accordingly. Additional penalties across all offence types (not just confined to specific offences) would enable this.

54. Furthermore, wildlife offences are not necessarily discrete and confined to a single instance in time. Destruction of natural habitat can occur over several days, as can possessing a weapon for hunting (without a permit). The inclusion of continuing offences under the Wildlife Act will recognise this issue and ensure that offenders are able to be penalised appropriately.

(jj) 5.4: The sentencing process does not provide sufficient guidance for judges

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

55. To properly inform the magistrate or judge of the effect of the crime, some jurisdictions have introduced community impact statements which function similarly to victim impact statements used in criminal proceedings. Wildlife Victoria considers this practice is appropriate, given that wildlife 'belong' to the community at large and not to government or special interest groups such as commercial shooters or specific businesses.

56. Wildlife Victoria also has concerns that it is difficult for judicial officers to determine the gravity of harm of wildlife offences if they are not familiar with the nature or the context in which offences may occur. Wildlife Victoria is accordingly supportive of the introduction of community impact statements.

<u>Other jurisdictions</u>

57. In South Australia, under s 15(2) *Sentencing Act 2017* (SA), the prosecutor or the Commissioner for Victim's Rights may provide the sentencing court with:

    (a) a written statement about the effect of the offence, or of offences of the same kind, on people living or working in the location in which the offence was committed (referred to as a "neighbourhood impact statement"); or

(b) a written statement about the effect of the offence, or of offences of the same kind, on the community generally or on any sections of the community (referred to as a "social impact statement").

58. While we do not understand the above provisions to have been used yet in relation to wildlife offences in South Australia, Wildlife Victoria believes that the model of providing for both neighbourhood impact statements and social impact statements is a good one.

59. Community impact statements are used in Scotland at present in relation to wildlife offences and the Scottish Committee recently recommended that they should be used as a matter of standard practice.[19]

Changes required to the Wildlife Act 1975

60. Community members are substantially impacted when faced with wildlife crime and/or cruelty, with even lawful killing of wildlife causing trauma. Recent examples relate to plans to kill kangaroos at the Kinley Estate development in Lilydale and the Heritage Golf and Country Club in Chirnside Park. Wildlife Victoria is aware of anecdotal reports of a spike in requests for mental health support amongst local community members as a result of the proposed killings.

61. Wildlife Victoria firmly supports community impact statements being legislatively mandated as part of wildlife offence sentencing. Accordingly, Wildlife Victoria's view is that both neighbourhood impact statements and social impact statements should be specifically referred to in the Wildlife Act and not just in the *Sentencing Act 1991* (Vic). Wildlife Victoria believes that the introduction of the statements would provide greater context to the court in understanding the severity of the wildlife offences.

5.4.2 Should the Act contain specific provisions to guide sentencing of offenders convicted under the Act?

62. Wildlife Victoria strongly advocates for specific provisions to guide sentencing of offenders convicted under the Wildlife Act. Offenders should be sentenced based on the understanding that wildlife are sentient. Commercial gain or not, it is fundamentally not acceptable to cause pain and suffering in species. Many examples exist of torture and other horrific instances of pain and suffering to wildlife by human perpetrators – even inflicting this in one animal should come with significant penalty. Regrettably, in Wildlife Victoria's experience, the regulator only tends to consider wildlife crime involving multiple animals as serious and warranting investigative and enforcement action.

63. Currently, the Wildlife Act 1975 does not provide for sentencing guidelines for offenders.

Comparison with other jurisdictions

[19] Stage 1 Report on the Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Bill, 11 (44).

64. In contrast to Victoria, other jurisdictions provide the courts with more direction as to how wildlife offences should be dealt with.

65. Domestically, section 13.12(1) *Biodiversity Conservation Act 2016* (NSW) expressly provides for matters to be considered by the court in sentencing for offences against that act. These matters include:

    (a) the extent of the harm caused or likely to be caused by the commission of the offence;

    (b) the practical measures that may be taken to prevent, control, abate or mitigate that harm;

    (c) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused by the commission of the offence;

    (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence;

    (e) whether, in committing the offence, the person was complying with orders from an employer or supervising employee;

    (f) whether the offence was committed for commercial gain; and

    (g) any other matters the court considers relevant.[20]

66. In Canada, s 13.09(1) *Canada Wildlife Act 1895* provides that, in addition to the general sentencing principles under the Canadian *Criminal Code*, the court shall consider the following aggravating factors when sentencing a person who is convicted of an offence:

    (a) the amount of the fine should be increased to account for every "*aggravating factor*" associated with the offence; and

    (b) the amount of the fine should reflect the gravity of each "*aggravating factor*" associated with the offence.

67. The "*aggravating factors*" are as follows:[21]

    (a) the offence caused damage or risk of damage to wildlife or wildlife habitat;

    (b) the offence caused damage or risk of damage to any unique, rare, particularly important or vulnerable wildlife or wildlife habitat;

    (c) the damage caused by the offence is extensive, persistent or irreparable;

[20] *Biodiversity Conservation Act 2016* (NSW) s 13.12(2).
[21] *Wildlife Act* (CA) s 13.09(2).

(d) the offender committed the offence intentionally or recklessly;

(e) the offender failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;

(f) by committing the offence or failing to take action to prevent its commission, the offender increased revenue or decreased costs or intended to increase revenue or decrease costs;

(g) the offender committed the offence despite having been warned by a wildlife officer of the circumstances that subsequently became the subject of the offence;

(h) the offender has a history of non-compliance with federal or provincial legislation that relates to environmental or wildlife conservation or protection; and

(i) after the commission of the offence, the offender;

(i) attempted to conceal its commission;

(ii) failed to take prompt action to prevent, mitigate or remediate its effects; or

(iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

68. In Canada, the absence of an aggravating factor is not a mitigating factor.[22] Further, if the court is satisfied of the existence of one or more of the aggravating factors but decides not to increase the amount of the fine because of that factor, the court must give reasons for that decision.[23]

<u>Changes required to the Wildlife Act 1975</u>

69. Wildlife Victoria strongly supports adoption of sentencing guidelines such as those provided for under s 13.09(1) *Canada Wildlife Act 1895.* While the *Biodiversity Act 2016* (NSW) provides a starting point for introducing sentencing guidelines for wildlife offences in the Australian context, the prescribed principles do not appear to be specifically tailored to deal with substantive wildlife offences, but rather reflect general sentencing principles. Furthermore, *Canada Wildlife Act 1895* applies a compounding effect, where multiple aggravating factors may be found to be present, and places the onus on judges to provide reasons for not increasing penalties where an aggravating factor exists. This is the type of approach Victoria should take.

[22] *Wildlife Act* (CA) s 13.09(3).
[23] *Wildlife Act* (CA) s 13.09(5).

(kk) 5.5: The Act could also contain a number of other sanctions and remedies to help achieve its objectives

70. Wildlife Victoria's general position is that more enforcement options are better than less, as long as the availability of additional sanctions or remedies do not become a way for offenders to escape without adequate punishment.

71. The critical objective is to avoid recidivism and Wildlife Victoria believes that those enforcing the Wildlife Act should have a range of measures at their disposal to deploy to achieve this objective.

72. To assist the Panel, Wildlife Victoria has prepared a comparative table of other sanctions and remedies used by other domestic jurisdictions as well as a comparative table of other sanctions and remedies used by international jurisdictions – see **Annexure E**

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?

73. The 2015 Scottish Wildlife Crimes Penalties Review Group Report concluded that civil penalties[24] are not seen as appropriate for wildlife crimes because they are designed to deal with technical regulatory breaches not cases where actual harm is caused, as is the case with almost all wildlife crimes offences. Wildlife Victoria agrees that civil penalty provisions are not appropriate in relation to serious wildlife offences.

74. Civil penalty provisions are not widely used by other comparable jurisdictions, and for the reasons above, are not supported by Wildlife Victoria for any serious wildlife crimes. See **Annexure F.** However, Wildlife Victoria would not necessarily oppose the introduction of civil penalty provisions where it comes to actions (particularly of corporate entities) which have had an incidental/accidental but potentially still serious impact on wildlife. For example, these provisions may be appropriate if there are a broader range of offences introduced into the Wildlife Act which could lead to liability arising from agricultural practices that temporarily alter landscape topography that cause species impacts, as an example.

5.5.2 Should the Wildlife Act 1975 allow for infringement notices for minor offences? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

75. Wildlife Victoria considers that infringement notices[25] can be an effective mechanism in dispensing immediate and certain punishments for minor summary offences. They save time and money for the authorities issuing them and for the courts by ensuring they avoid dealing with minor offences. Likewise, they benefit recipients who do not have to deal the time and cost associated with a court proceeding. The time taken to complete a prosecution weighs in favour of infringement notices as a legitimate compliance mechanism, given that increased time between the commission of an offence and the imposition of the sanction lessens its deterrent value. However, the circumstances in which infringement notices can be issued are generally fixed and therefore they cannot be tailored to the circumstances of the recipient.

76. Wildlife Victoria notes that an analysis of comparable jurisdictions shows that infringement notices are not widely used – see **Annexure E**. However, they have been introduced under s 76A of the *Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020.* That legislation allows for the creation of flexible new powers to

[24] Civil penalties are sanctions that are imposed by courts in non-criminal proceedings, often in proceedings brought by regulators. They differ from criminal penalties in that a prison sentence cannot be imposed in the event of a breach, a criminal conviction is not recorded, and the quantum of proof required for conviction is less (balance of probabilities) than that for a criminal offence (proof beyond reasonable doubt). Civil penalties are primarily a deterrent, rather than a punitive measure.

[25] Infringement notices or 'on-the-spot' fines involve imposing a requirement to pay a monetary penalty to forestall prosecution for an alleged summary offence.

create various Fixed Penalty Notices (also called minor infringement notices) regimes to be developed for wildlife offences. This will be implemented through secondary legislation, which to date does not appear to have been enacted.

77. Wildlife Victoria is supportive of the introduction of infringement notices for minor offences, as long as, in determining whether an offence is "*minor*" or "*major*", sentience of animals is taken into account. We would not (for example) support an offence being classified as "*minor*" because it involved the torture and infliction of cruelty on one animal only. For a creature who has been tortured, the pain and suffering and fear is immense. The impact on humans who have had to deal with the animal (wildlife rescuers, veterinarians, members of the public, police etc) is also significant. Wildlife Victoria finds that currently only wildlife crime involving multiple animals is properly investigated – this is not acceptable, and facilitating the characterisation of single animal offences as "minor" offences would only serve to reinforce this attitude and perpetuate this approach. The "minor" offence category should only include offences which were unintentional and lead to things like dislocation (rather than death) of wildlife. An example of a minor offence that it might be appropriate to receive an infringement notice for could be, for example, failure to check a tree for a wildlife nest prior to cutting it down and subsequently failing to construct an artificial nest in a nearby tree for the displaced creature.

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?

78. Wildlife Victoria considers that the availability of enforceable undertakings[26] could be a constructive alternative to prosecution which could implement systemic change by preventing future breaches of the law. Unlike prosecutions, enforceable undertakings

[26] An enforceable undertaking is a court-enforceable commitment by an individual or a company which seeks to have the respondent voluntarily agree to certain actions (or to cease certain actions), as an alternative to a court-imposed sanction, such as a fine, for alleged unlawful conduct. It is a relatively quick compliance solution and can be an important enforcement tool for use in situations where there has been or appears to have been unlawful conduct and the regulator considers an agreed change to future behaviour offers the most appropriate regulatory outcome in the particular circumstances.

An enforceable undertaking may (for example) require a person to comply with the terms of the undertaking, which may require it to:

(a) modify its acts, practices, procedures or behaviour to ensure it complies with the law (e.g. ceasing the practice that led to the unlawful conduct);
(b) pay compensation for any harm or damage caused by the unlawful conduct;
(c) publish an apology;
(d) cease the offending conduct;
(e) commit to and establish compliance programs (for example, conducting reviews and audits, providing training for managers and staff and implementing a compliance monitoring and reporting framework); or
(f) perform community services.

A failure to comply with an enforceable undertaking is enforced by application to a court for orders such as directing the respondent to comply with the undertaking, directing the respondent to pay compensation or any other kind of order the court thinks appropriate.

could deliver timely and cost-effective responses to wildlife offences in non-serious situations.

79. Provided that enforceable undertakings are administered by an independent and appropriately resourced regulator, Wildlife Victoria believes enforceable undertakings could be an effective sanction/remedy in certain situations. For example, enforceable undertakings could be used to remove wildlife traps and illegal netting from properties.

Use of enforceable undertakings

80. There are limited jurisdictions that currently allow for enforceable undertakings in the context of wildlife offences – see **Annexure G** for a table setting out the jurisdictions where enforceable undertakings are currently used.

81. Section 13.27 of the *Biodiversity Conservation Act 2016* (NSW) provides broad powers to accept written undertakings, which may be enforced by the court.

82. Enforceable undertakings are also currently used by the Environment Protection Authority Victoria (**EPA**). The relevant guidelines provide the following framework:

    (a) EPA will only accept an enforceable undertaking where:

        (i) the person or organisation takes active responsibility for the offence and its impacts; and

        (ii) it is the most appropriate form of enforcement response and will achieve a more effective and long-term environmental outcome than prosecution.

    (b) EPA considers that enforceable undertakings are not appropriate where any of the following circumstances exist:

        (i) serious breaches involving high or serious levels of culpability;

        (ii) multiple serious breaches or systemic failures;

        (iii) significant incidents involving considerable public interest requiring a transparent hearing in court;

        (iv) applicants have been the subject of previous prosecutions of a serious nature; and

        (v) EPA cannot be satisfied of ongoing compliance.

83. Wildlife Victoria considers that similar guidelines to those created by the EPA above should be used to inform the use of enforceable undertakings under the Wildlife Act

Changes required to the Wildlife Act 1975

84. Wildlife Victoria supports the insertion of provisions enabling regulators to enter into enforceable undertakings, as long as there are accompanying provisions which require the undertakings to only be used in appropriate cases. There should also be ancillary provisions requiring regulators to monitor compliance with and enforce the undertakings once they are in place.

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?

85. Compensation orders, mandated bonds and financial assurances could be effective means of transferring the costs of wildlife offences from the victims (which includes the community at large) to the perpetrators. For example, a compensation order requiring at offender to pay money to another party could be made where community members have been adversely affected by wildlife offences. Similarly, a regulator could impose mandated bonds/financial assurances to secure the costs and expenses of caring for wildlife while the finalisation of a prosecution is pending (which may take considerable time).

86. Assuming they were appropriately used by courts/regulators, compensation orders, mandated bonds or financial assurances may assist in ensuring that the costs of wildlife offences are not borne by the community, including by not-for-profit organisations such as Wildlife Victoria. Those causing the damage and harm to the wildlife may also be deterred if there were a real possibility that they would need to pay for remedying their wrong.

87. Offenders could be forced to make payment to a wildlife welfare organisation, pay compensation to a human victim of their crime (e.g. make payment to a wildlife shelter where the offender has deliberately killed or tortured wildlife that the wildlife shelter has raised, make payment to a human who has experienced significant trauma and mental suffering etc) or make payment to an environmental 'Friends Of' group to purchase and plant and look after native vegetation that has been deliberately destroyed. Where wildlife crime occurs, there is often an expense associated with ensuring it does not happen again and/or repairing the situation (where possible) and Wildlife Victoria strongly believes that cost should be carried by offenders.

88. Compensation orders, mandated bonds or financial assurances in relation to wildlife offences are common practice in many jurisdictions, particularly in Australia – see **Annexure I**. Accordingly, Wildlife Victoria believes is would be appropriate to also include them in Victoria.

89. Wildlife Victoria would support the Wildlife Act using broad wording such as that used in s 168 of the *Nature Conservation Act 1992* (QLD), which provides with respect to compensation, that "*on a conviction of a person for an offence against this Act, the court*

may order the person to pay to the State such amount as it considers appropriate for, or towards, the cost of rehabilitation or restoration of a critical habitat, cultural or natural resource or protected area".

90. Similarly to the above, Wildlife Victoria believes regulators should have broad powers to impose mandated bonds or financial assurances where the regulator considers this appropriate while prosecutions are finalised.

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?

91. As the Issues Paper notes, the costs of prosecution may be considerable and, in some cases, exceed the amounts received via financial sanctions. This is because investigating wildlife crime often requires experts to be involved (e.g. species experts, ecologists etc).

92. Other than government bodies, the main 'users' of environmental law are not-for-profit organisations. These organisations often lack the financial or legal resources to pursue cases and need to raise funds from the public and/or rely on pro bono legal support to pursue environmental justice.

93. While limited jurisdictions currently provide for the capacity to make costs orders, such orders are available in New South Wales and Canada – see **Annexure J** for a table setting out the jurisdictions where costs orders are available and the relevant provisions for New South Wales and Canada.

94. Protecting wildlife is in the public's interest. Wildlife Victoria's view is that those who investigate and prosecute such matters should not be burdened or precluded from doing so because the costs are too high. It should therefore assist with protection of wildlife if the costs of prosecution could be recovered from the offender, particularly in circumstances where third parties, rather than the regulator, are taking enforcement action. Wildlife Victoria is accordingly supportive of changes to the Wildlife Act 1975 which would enable costs orders to be made against those found to have contravened the Wildlife Act.

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?

95. In some circumstances (such as illegal trade in wildlife) an offender may profit from the offending. Some legislation permits a court to order the offender to pay an amount estimated to be the gross benefit gained by the person by committing the offence.

96. The use of monetary penalty orders can work as a deterrent by removing any financial benefit gained from committing the offence.

97. Monetary penalty orders are used in a number of other jurisdictions – see **Annexure K** for a table setting out jurisdictions where monetary penalty orders are available and the relevant provisions.

98. The use of monetary penalty orders can work as a deterrent by removing any financial benefit gained from committing the offence and Wildlife Victoria strongly supports inserting provisions in the Wildlife Act allowing for the making of monetary penalty orders.

99. Wildlife Victoria recommends using the wording of s 13.24 of the *Biodiversity Conservation Act 2016* (NSW). This allows of the court to *"order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence."*

5.5.7 Should the Wildlife Act 1975 contain specific provisions to allow for the forfeiture of property used in the commission of an offence under the Vic Act? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

100. Provisions providing for forfeiture of property are common practice and such provisions exist in many jurisdictions – see **Annexure L** for a table setting out the jurisdictions where forfeiture is used and the relevant legislative provisions.

101. Often wildlife crime involves the use of equipment in the commission of the offence, particularly to kill or maim. This includes firearms, crossbows, 4WD vehicles, metal traps and cages. Wildlife Victoria sees three clear benefits in forfeiture provisions. First, the offender is deprived of the property used to commit the offence. Second, proceeds from the sale of the forfeited property can be reinvested into protecting and caring for wildlife. Third, if limits are not placed on the value of the property which may be forfeited, such measures can also act a strong deterrent from committing the offence.

102. Wildlife Victoria strongly supports the insertion of forfeiture of property provisions into the Wildlife Act without limits on the value of the property which may be forfeited. Wildlife Victoria submits that using the wording of ss 342 and 354 of the *Nature Conservation Act 2014* (ACT) would be appropriate. These provisions provide conservation officers broad powers to seize items and have them forfeited in a timely and efficient manner.

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?

103. As noted above in relation to Issues 5.5.1 to 5.5.7, the Wildlife Act 1975 is significantly behind other jurisdictions when it comes to the availability of other sanctions and remedies to help achieve its objectives. Wildlife Victoria supports any and all changes which would help protect wildlife.

104. In addition to the measures already explored, Wildlife Victoria draws the Panel's attention to s 13 of Singapore's *Wildlife Act*, which provides the court may direct any fine or any portion of any fine imposed or levied under the act to be paid to the informer. This could be a useful tool to encourage people to report wildlife offences in Victoria.

(ll) 5.6: Authorised officers may not have the necessary powers to enforce the Act

Does the Act contain the necessary powers and provisions to enable authorised officers to enforce the Act?

105. The Wildlife Act 1975 does not contain the necessary powers and provisions.

106. The following powers of Victorian authorised officers under the Wildlife Act 1975 are consistent with the scope of the equivalent power in other jurisdictions in Australia:

    (a) power to enter and search premises and vehicles;

    (b) power of to inspect, photograph and film, take copies, take samples of specimens and seize property pursuant to a search;

    (c) power to call for a person to produce a licence, permit or other authority under the Vic Act; and

    (d) power to destroy or dismantle unsafe things that may be used to contravene the Vic Act.

107. However, as set out below, Victorian authorised officers lack many other powers available to authorised officers in other jurisdictions.

What powers and provisions should be available to authorised officers? Are there examples from other jurisdictions (both in Australia and internationally) that could apply in Victoria?

108. Authorised officers should have the power of arrest if they believe a person has committed or is committing an offence under the Wildlife Act. For example, a form based on one of the following powers should be provided:

(a) *Territory Parks and Wildlife Conservation Act 1976* (NT) s 95 – a conservation officer has all the powers and duties, and the same protection at law, as a member of the police force with the rank of constable.

(b) *National Parks and Wildlife Act 1972* (SA) s 25 – a warden may arrest a person who fails to comply with a direction, requirement or order of a warden.

(c) *Wildlife Act* (SG) s 12(1) – any police officer, officer of customs or authorised officer may stop and arrest without warrant any person who within his view commits an offence.

109. The Wildlife Act 1975 does not specifically list "*vehicles*" or *"boats"* as equipment that may be seized by an authorised officer. While it is possible that an authorised officer's power to seize anything which the authorised officer reasonably believes has been or is likely to be used in or to assist in the offence (s 60(1)(a)(ii)) may capture vehicles, it is not clear that vehicles may be seized by authorised officers.

110. Therefore, we submit that section 59B, which lists an authorised officer's powers to search vehicles and boats, be amended to specifically state that authorised officers have the power to seize *"anything found during the course of the search, <u>including the vehicle or boat itself</u>, if the authorised officer or police officer believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating an offence against the Wildlife Act."*

111. Alternatively, the amended Wildlife Act could give authorised officers the power to seize vehicles and boats through a separate section that mirrors the *Territory Parks and Wildlife Conservation Act 1976* (NT), but which also includes reference to boats. For example, the *Territory Parks and Wildlife Conservation Act 1976* (NT) section 96(5)(f) provides that a conservation officer who enters a premises may, if the premises entered are a vehicle, seize the vehicle. This is subject to the requirement that a conservation officer may only exercise the power if they have reasonable grounds for believing that the vehicle, substance or thing is connected with an offence against the act or the seizure is necessary to prevent the vehicle from being concealed, lost, damaged or destroyed, or used to commit the offence.

112. Authorised officers should have the power to suspend a firearms licence if the authorised officer is satisfied, on reasonable grounds, that the holder of the licence has breached a condition of the licence or that the holder of the licence is in breach of the Wildlife Act. This could operate as an expansion to an authorised officer's power to require the production of a firearms licence,[27] and would enable authorised officers to limit the risk of further harm being caused to wildlife.

113. Currently, the Secretary holds the power to suspend a wildlife licence (other than a wildlife licence in respect of specified birds) and the Game Management Authority holds the power to suspend a wildlife licence in respect of specified birds or a game

[27] *Wildlife Act 1975* (Vic), s 60A.

licence.[28] We submit that authorised officers ought to hold this power simultaneously with the powers of the Secretary and the Game Management Authority in respect of suspending wildlife and game licences.

114. Specifically, we submit that authorised officers should have the power to suspend a firearms licence and a wildlife licence, including a wildlife licence in respect of specified birds, or a game licence if the authorised officer is satisfied, on reasonable grounds, that the holder of the licence has breached a condition of the licence. Authorised officers should have the power to suspend such licences for an interim period, at least 60 days, and then the ability to apply for the suspension to be extended. Authorised officers are often the first to become aware of a breach of a licence or a breach of the Wildlife Act so are well placed to promptly prevent further harm to wildlife by suspending the relevant licence.

115. Currently, aside from the general powers of the court following a conviction,[29] the Wildlife Act 1975 only allows:

    (a) an authorised officer to require production of a firearms licence;[30]

    (b) the Secretary to refuse to grant any application for a licence (i.e. wildlife licence or game licence) or to renew any such licence if the Secretary is satisfied that the applicant is not a fit and proper person to hold the licence applied for,[31] or the premises specified in the application for grant or renewal to house the wildlife are not suitable,[32] or the issuing of the licence would be deleterious to the welfare or conservation of any wildlife.[33] This is insufficient as it merely requires that a person is fit and proper to hold a licence at the time of application. The Secretary does not have an ongoing power to monitor whether a person is fit and proper. It is for authorised officers to monitor that a person remains compliant with a licence and does not breach the Wildlife Act 1975 in any other way;

    (c) the Secretary to suspend a wildlife licence (other than a wildlife licence in respect of specified birds) if the Secretary is satisfied, on reasonable grounds, that the holder of the licence has been found guilty of an offence against the Wildlife Act 1975 or the holder of the licence has breached a condition of the licence.[34] In such circumstances. the Secretary may suspend a wildlife licence for a period not exceeding 90 days.[35] This is insufficient as it requires the licence holder to be found guilty of an offence, or for the licence holder to have breached a condition of the licence. This means that if a licence holder has engaged in conduct (e.g.

[28] *Wildlife Act 1975* (Vic), ss 26B, 25BA.
[29] Which enable the court to cancel or suspend a licence, permit or authority where the holder of the licence, permit or authority is convicted of an offence (s 70); or to make an order excluding a person from a specified hunting area if the person is convicted of an offence and the Court is satisfied that the order may be an effective and reasonable means of preventing the person committing a further specified offence (s 58M).
[30] *Wildlife Act 1975* (Vic), s 60A.
[31] *Wildlife Act 1975* (Vic), s 23(1)(a).
[32] *Wildlife Act 1975* (Vic), s 23(1)(b).
[33] *Wildlife Act 1975* (Vic), s 23(1)(c).
[34] *Wildlife Act 1975* (Vic), s 25B(1).
[35] *Wildlife Act 1975* (Vic), s 25B(2)(b).

kangaroo shooting) which an authorised officer is reasonably satisfied is an offence, but which is not considered in their licence (e.g. snake catching and removal), it will likely take 18 months before the licence holder is convicted. In the period before conviction, the licence holder is free to interfere with wildlife pursuant to the privileges conferred by their licence under the Wildlife Act 1975, despite there being reasonable grounds for a belief the licence holder has breached the Wildlife Act 1975;

(d) the Game Management Authority to suspend a wildlife licence in respect of specified birds or a game licence if the Authority is satisfied, on reasonable grounds, that the holder of the licence has been found guilty of an offence against the Wildlife Act 1975 or the holder of the licence has breached a condition of the licence.[36] In such circumstances, the Authority may suspend a wildlife licence for a period not exceeding 90 days.[37] Again, this is insufficient and inappropriate as it allows the licence holder to interfere with wildlife pursuant to the privileges conferred by their licence under the Wildlife Act 1975, in circumstances where they are being prosecuted for non-compliance with the Wildlife Act 1975, right up until the date of conviction (which will likely take 18 months). Further, the Authority is an inappropriate body to be tasked with the suspension of such licences as its purpose is incongruent with the protection and conservation of wildlife;

(e) the Secretary to cancel a wildlife licence (other than a wildlife licence in respect of specified birds) if the Secretary is satisfied, on reasonable grounds that holder of the licence has been found guilty of an offence against the Wildlife Act 1975 or the holder of the licence has breached a condition of the licence.[38] Again, this is insufficient as there may be time delays between an authorised officer investigating a suspected breach and the breach coming to the attending of the Secretary. During the period before the breach comes to the Secretary's attention, a person can continue to harm wildlife;

(f) the Game Management Authority to cancel a wildlife licence in respect of specified birds or a game licence if the Authority is satisfied that the holder of the licence has been found guilty of an offence against the Wildlife Act 1975 or the holder of the licence has breached a condition of the licence.[39] As mentioned above, the Authority is an inappropriate body to be tasked with determining whether a licence holder has breached their licence or the Wildlife Act 1975 as the Authority's purpose is incongruent with the protection and conservation of wildlife;

(g) the Secretary or the Game Management Authority to suspend an authorisation under the Wildlife Act 1975 for a period not exceeding 90 days if they are satisfied that there are reasonable grounds to do so.[40];

[36] *Wildlife Act 1975* (Vic), s 25BA(1).
[37] *Wildlife Act 1975* (Vic), s 25(2)(b).
[38] *Wildlife Act 1975* (Vic), s 25D.
[39] *Wildlife Act 1975* (Vic), s 25DA(1).
[40] *Wildlife Act 1975* (Vic), ss 28D(1) and 28D(1A).

(h) the Secretary or the Game Management Authority to cancel an authorisation under the Wildlife Act 1975 that they have given if they are satisfied that there are reasonable grounds to do so;[41]

(i) an authorised officer or a police officer who suspects on reasonable grounds that a person has committed or is committing a specified offence may give the person a notice banning the person from any or all specified hunting areas for a period not exceeding the remaining period of the open season for duck hunting.[42] This power is extremely limited as it only pertains to hunting of game birds.[43] It does not empower authorised officers or police officers to issue a banning notice in respect of other areas and therefore only assists authorised officers in the protection and conservation of wildlife than in this very limited way;

(j) a land manager to suspend a tour operator licence for a period not exceeding 90 days or to cancel a tour operator licence if the land manager is satisfied that there are reasonable grounds to do so;[44]

(k) the Secretary to suspend a permit in respect of interfering with whales, using dead whales, possessing whales or whale watching, for a period not exceeding 90 days or cancel a permit if the Secretary is satisfied there are grounds to do so;[45] and

(l) the Secretary to suspend a seal tour permit for a period not exceeding 90 days or cancel a permit if the Secretary is satisfied there are grounds to do so.[46]

116. Authorised officers should be provided with a general power to direct a person to assist in a search or investigation. For example, the *Wildlife Act 1953* (UK) s 39(1)(d) provides that every ranger may, in the exercise of his duty within the district or area for which he is appointed, call on any person for assistance, and the person is authorised to assist the ranger in the exercise of a search power or in the exercise of any other power if the person acts under the direction and supervision of the ranger. In stark contrast, the Wildlife Act 1975 merely makes it an offence for an offender to refuse to give their name and address to an authorised officer on request,[47] or to obstruct an authorised officer.[48]

117. Authorised officers should have power to make reasonable use of any equipment, facilities, services or vehicle in order to carry out an inspection and for that purpose operate the equipment or facilities. For example, the *Biodiversity Conservation Act 2016* (WA) s 203(a) provides that for inspection purposes a wildlife officer may make reasonable use of any equipment, facilities or services on or in a place or vehicle in

[41] *Wildlife Act 1975* (Vic), ss 28F(1) and 28F(1A).
[42] *Wildlife Act 1975* (Vic), s 58G(1).
[43] *Wildlife Act 1975* (Vic), s 58F.
[44] *Wildlife Act 1975* (Vic), ss 21 and 21J.
[45] *Wildlife Act 1975* (Vic), ss 81B, 81D and 83B.
[46] *Wildlife Act 1975* (Vic), ss 85K and 85M.
[47] *Wildlife Act 1975* (Vic), s 61.
[48] *Wildlife Act 1975* (Vic), s 62.

order to carry out an inspection and for that purpose operate the equipment or facilities.

118. Authorised officers should have power to direct a person to assist them to obtain records or evidence of offending. This includes a power to operate a computer or other thing on which a record is or may be stored. For example, *Biodiversity Conservation Act 2016* (WA) ss 204(b) and (d) provide that for inspection purposes a wildlife officer may:

    (a) direct a person who has the custody or control of a record to give the wildlife officer the record or a copy of it;

    (b) direct a person who has the custody or control of a record, computer or thing to make or print out a copy of the record or to operate the computer or thing;

    (c) operate a computer or other thing on which a record is or may be stored; and/or

    (d) direct a person who is or appears to be in control of a record that the wildlife officer reasonably suspects is a relevant record to give the wildlife officer a translation, code, password or other information necessary to gain access to or interpret and understand the record.

119. Authorised officers should have power to stop a person engaging in an activity that is likely to harm or is harming wildlife protected by the Wildlife Act. For example, the following powers should be provided in the Wildlife Act:

    (a) *Biodiversity Conservation Act 2016* (NSW) s 11.31(1) – an authorised officer may give a direction to a person to stop an activity that is causing or likely to cause distress to protected animals.

    (b) *Wildlife Act 1963* (NZ) s 39D – a ranger who believes on reasonable grounds that a person is committing or is about to commit an offence may intervene, in a manner that is reasonable in the circumstances, to prevent the offence.

120. Authorised officers should have power to direct a person keeping a native animal to provide food, water, shelter and medical treatment to the animal. For example, the following powers should be provided:

    (a) *Nature Conservation Act* (ACT) s 333(2) – The conservator may direct the keeper of the native animal to carry out a stated treatment on the animal.

    (b) *National Parks and Wildlife Act 1974* (NSW) s 164(3) – the authorised officer may direct the occupier of the premises where, or owner of the vehicle on or in which, the animal is seized to feed, house, and maintain (as appropriate) the animal.

    (c) *Biodiversity Conservation Act 2016* (NSW) s 11.32 – An authorised officer may give a direction to a person who keeps protected animals in confinement or in a

domesticated state to take such action with respect to the feeding, shelter or other welfare of the protected animals as the authorised officer considers appropriate.

(d) *Nature Conservation Act 1992* (QLD) s 152A(1)(d) – if an animal is left at the place of seizure, the officer may give the person from whom it was seized a direction to look after, or continue to look after, the wildlife.

121. Currently, the Wildlife Act 1975 does not state that authorised officers are themselves exempt from offences under the Wildlife Act 1975 while carrying out their duties. This means that if an authorised officer euthanises threatened wildlife, protected wildlife or game, then the authorised officer is likely guilty of an offence under the Wildlife Act.[49]

122. The *Wildlife Regulations 2002* (Vic) provide that a registered veterinary practitioner who destroys wildlife in accordance with the *Prevention of Cruelty to Animals Act 1986* (Vic) is exempt from the operation of sections 41, 43 and 44 of the Wildlife Act, to the extent that those sections relate to the destruction of wildlife. This unnecessarily prolongs the suffering of the wildlife until such a time when a registered veterinary practitioner is available to travel to the injured wildlife or when the wildlife can be transported to a registered veterinary practitioner.

123. We submit that authorised officers should have the power to decide to euthanise an animal that has been seized under the Wildlife Act 1975 in accordance with *Prevention of Cruelty to Animals Act 1986* (Vic) if a veterinary surgeon certifies that the destruction of the animal is appropriate. For example, s 19 of *Animals and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020* provides where a protected animal has been taken into possession, an authorised person may, without the consent of the owner and without having obtained a court order, destroy the animal if a veterinary surgeon certifies that destruction of the animal is appropriate.

124. Wildlife Victoria's view is that the best enforcement models give authorised officers the powers of police constables, including the power to arrest without a warrant. The best legislation in this respect is the *Territory Parks and Wildlife Conservation Act 1976* (NT), the *National Parks and Wildlife Act 1972* (SA) and the *Wildlife Act* (SG) and these provisions must be introduced into the Wildlife Act. Given that authorised officers have the power to use reasonable force in arresting public transport users for failure to produce a valid ticket or proof of identity, it is staggering that authorised officers do not have the ability to arrest persons reasonably believed to be involved in the commission of an offence against wildlife.

<u>Who should hold the expanded powers that should be provided to authorised officers?</u>

125. As will be clear from the above, Wildlife Victoria's view is that powers of authorised officers need to be significantly expanded. However, Wildlife Victoria believes the

[49] *Wildlife Act 1975* (Vic), ss 41, 43 and 44.

question of “who” an authorised officer is and what departmental construct they sit within is also very important.

126. Wildlife Victoria has reservations as to whether the provision of additional powers to current DELWP officers is an appropriate, let alone the best, approach. Wildlife Victoria articulates concerns with DELWP as a regulator in Part A of its submission. DELWP also is the government department accountable for issuing permits to kill wildlife – meaning there is an inherent conflict of interest in its accountability for enforcing the Wildlife Act 1975 and protecting and conserving wildlife. In light of this conflict, Wildlife Victoria considers that the provision of expanded powers to authorised officers may render them nugatory.

127. As Wildlife Victoria submits that authorised officers should largely have the same powers as police, Wildlife Victoria believes it would make sense if police were made accountable for enforcing the Wildlife Act, and not DELWP.

128. As noted elsewhere in its submission, Wildlife Victoria seeks the establishment of an independent regulator to oversee the Wildlife Act and suggests a well-resourced Wildlife Crime Investigation and Enforcement Unit to investigate and enforce the Wildlife Act. This Wildlife Crime Investigation and Enforcement Unit should be a specialist unit within Victoria Police, where it can operate without bias, with existing skills in crime investigation and enforcement and without influence from government policies and lobbying of interest groups such as farmer and shooter groups who have a traditional bias towards the killing and destruction of wildlife.

129. If stronger powers were to be provided to DELWP authorised officers, we believe it would be necessary to have an appeals mechanism and whistleblower capability established. For example, Victoria Police has avenues for the public to complain about the conduct of an individual police officer. There does not appear to be any such framework in place at DELWP. Wildlife Victoria's view is that expanded powers for DELWP officers in the current construct would be unacceptable and certainly ineffective.

130. Further, rather than all powers sitting with DELWP authorised officers, Wildlife Victoria believes controls such as mandated 'hand off' to Victoria Police at certain trigger points should be considered.

(mm) 5.7: Are appeal and review provisions sufficient?

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

<u>Current state of the law</u>

131. The Wildlife Act 1975 provides for administrative review (judicial review and merits review) to the Victorian Civil and Administrative Tribunal.[50] The scope of review is limited to the Minister's decision to grant licences. As the Wildlife Act 1975 does not provide for third party or community appeals of penalties, the review and appeal provisions are inadequate to capture community sentiment or ensure a broad range of community views are taken into account when considering or enforcing penalties.

132. Similarly, all other states in Australia provide for administrative review to their respective state Tribunal but only in respect of the granting of licences, permits or authorities to. At the Commonwealth level, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) provides for administrative review to the Administrate Appeals Tribunal of "decisions about permits". The Commonwealth Act does not provide for review of a decision relating to penalties imposed for breach of the Vic Act, nor does any other State act in Australia – see **Annexure N**

133. Accordingly, no jurisdiction in Australia provides any mechanism for a third-party interest group such as Wildlife Victoria, or any other community-based or environment/wildlife group, to have any say on penalties imposed for wildlife crimes. This is not best practice, but it presents an opportunity for Victoria to lead the other Australian states and territories in introducing appropriate review and appeal mechanisms, as set out in our proposal below.

United Nations recommendations

134. The United Nations General Assembly established the United Nationals Environment Programme (UNEP) for coordinating responses to environmental issues.[51] UNEP is the peak body in international law that assesses, develops and strengthens environmental policy. UNEP provides authoritative guidance on environmental policy. Therefore, recommendations of UNEP should be considered during the process of drafting amendments to the Vic Act.

135. The UNEP Governing Council recognises that environmental policy must facilitate broad access to information, public participation and access to justice in environmental matters in order to serve its purpose of assuring a healthy planet for all. UNEP published the Bali Guidelines in 2010 as a tool to assist nations to improve their national legislation. The Guidelines should be used to inform the establishment of a mechanism for public interest bodies, such as Wildlife Victoria, to appeal/review decisions made by the Minister under the Wildlife Act.

136. The United Nations Environmental Programme published "*Putting Rio Principle 10 Into Action: An Implantation Guide" a*s a guide to understanding and implementing the Bali Guidelines.

137. The Guidelines relevantly include the following:

[50] *Wildlife Act 1975* (Vic) s 86C.
[51] See the United Nations System chart, available at: https://www.un.org/en/pdfs/un_system_chart.pdf

(a) *Guideline 1*: Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request without having to prove a legal or other interest.

(b) *Guideline 4*: States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment. This includes information related to: protected areas and biodiversity information, including forests; licenses and permits including planning decisions; enforcement and compliance data sets; and environmental impact assessments.

(c) *Guideline 7*: States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

(d) *Guideline 8*: States should ensure opportunities for early and effective public participation in decision making related to the environment. To that end, members of the public concerned should be informed of their opportunities to participate at an early stage in the decision-making process.

(e) *Guideline 9*: States should, as far as possible, make efforts to seek proactively public participation in a transparent and consultative manner, including efforts to ensure that members of the public concerned are given an adequate opportunity to express their views.

(f) *Guideline 10*: States should ensure that all information relevant for decision-making related to the environment is made available, in an objective, understandable, timely and effective manner, to the members of the public concerned.

(g) *Guideline 11*: States should ensure that due account is taken of the comments of the public in the decision-making process and that the decisions are made public.

(h) *Guideline 12*: States should ensure that when a review process is carried out where previously unconsidered environmentally significant issues or circumstances have arisen, the public should be able to participate in any such review process to the extent that circumstances permit.

(i) *Guideline 13*: States should consider appropriate ways of ensuring, at an appropriate stage, public input into the preparation of legally binding rules that might have a significant effect on the environment and into the preparation of policies, plans and programmes relating to the environment.

(j) *Guideline 14*: States should provide means for capacity-building, including environmental education and awareness-raising, to promote public participation in decision-making related to the environment.

Changes required to the Wildlife Act 1975

138. Victoria has the opportunity to become the leading jurisdiction in Australia in respect of establishing a progressive and practical framework for ensuring community participation and access to justice in environmental matters. To achieve this outcome, we submit that the amended Wildlife Act 1975 establish a "*Community Review Committee*" to advise the Minister on his/her decisions under the Vic Act. This would include all decisions under the Wildlife Act, not just decisions relating to licenses or permits. Specifically, the Community Review Committee (as envisaged by Wildlife Victoria) would have authority to review decisions made by regulators and courts in respect of penalties issued to offenders and provide advice to the Minister as to appropriate future enforcement policy or appeals of court decisions.

139. The establishment of a Community Review Committee would give effect to UNEP's Bali Guidelines by facilitating community participation in decision-making related to the environment, specifically, decisions relating to the protection and conservation of wildlife.

140. Victoria may look to Tasmanian legislation for an example of a Community Review Committee.[52] While we do not endorse the constitution of the Tasmanian Community Review Committee (as it disproportionately promotes the interests of agricultural and farming associations, economists, representatives from rural industry, representatives from forest industry and representatives from fishing industry, over wildlife protection), the model itself is sound and could be adopted in Victoria. However, it is critical that the Committee be constituted from a more balanced group of community representatives. In particular, the Victorian Community Review Committee should include representatives, such as Wildlife Victoria, with a strong commitment to wildlife conservation and protection. Traditional Owners could also be represented on the Community Review Committee.

141. We submit that the Victorian Community Review Committee should be constituted from a group of representatives that is similar to the representatives on the South Australian "*Parks and Wilderness Council*".[53]

142. While the South Australian Parks and Wilderness Council does not carry out review of penalties, the composition of the Parks and Wilderness Council would be suitable to follow in constituting a Community Review Committee under Victorian legislation as its advice is informed by those with knowledge and skills in conservation and wildlife protection. Wildlife Victoria submits that it would be an appropriate member of the Community Review Committee. For the Panel's convenience, we have extracted from

[52] *Threatened Species Protection Act 1995* (TAS) s 9
[53] *National Parks and Wildlife Act 1972* (SA) s 15

the South Australian legislation the relevant section establishing the Parks and Wilderness Council under the *National Parks and Wildlife Act 1972* (SA).

15—Establishment and membership of Council

(1) The Parks and Wilderness Council is established.

(2) The Council consists of the Director and 8 other members appointed by the Minister being persons who collectively have, in the opinion of the Minister, the knowledge, skills and experience in the following areas necessary to enable the Council to carry out its functions effectively:
(a) the establishment and management of reserves, wilderness protection areas and wilderness protection zones;

(b) the conservation of animals, plants and ecosystems;

(c) the conservation of the marine environment;

(d) a scientific field relevant to the conservation of ecosystems and the relationship of wildlife with its environment;

(e) Aboriginal culture and traditional associations with land;

(f) community engagement and community partnerships;

(g) tourism and recreational use of reserves.

(3) At least 2 of the members of the Council must be men and 2 must be women.

(4) 1 of the members of the Council appointed by the Minister will be appointed as the presiding member of the Council.

(nn) 5.8: Should the Act provide for third-party civil enforcement?

5.8.1 Should the Wildlife Act 1975 provide for third-party civil enforcement under the Vic Act? How might this make a difference in achieving the intended outcomes of the Vic Act?

143. Sometimes public enforcement authorities fail to act even when there may be a public interest in taking enforcement action. To address this problem, third-party enforcement is used in a number of other jurisdictions, particularly international jurisdictions – see **Annexure O** for a table setting out jurisdictions where third-party enforcement is available and the relevant provisions. For example, Under the *Biodiversity Conservation Act 2016* (NSW), civil proceedings may be brought by a person under the specified division whether or not any right of the person has been or may be infringed by or as a consequence of the breach concerned.

144. Resources to investigate and enforce wildlife crime are substantially lacking today. The ability for enforcement across a broader range of agencies/third parties would provide greater support for wildlife and strengthen enforcement.

145. Wildlife Victoria's view is that the provision of third-party civil enforcement options would be a welcome initiative (where appropriate). It would allow organisations, such as Wildlife Victoria, and victims of wildlife offences to initiate proceedings, rather than rely on relevant authorities to do so. This mechanism may also assist with mitigating and protecting against conflict of interest – for example, Wildlife Victoria is aware that some persons in authority in regional Victoria may engage in hunting activities out of hours as a recreational activity or come from farming backgrounds and, if provided enforcement powers, may not always be well-placed to take action due to their personal feelings about wildlife protection. Third party enforcement would provide a check/balance which may assist with this type of issue.

146. Despite the above, Wildlife Victoria believes third-party enforcement should be a last resort. This is because Wildlife Victoria believes that most wildlife offences should be criminal offences, and these are more appropriately prosecuted by the state rather than third parties.[54] The costs of investigation and litigation may also preclude third parties from taking action and therefore enforcement by an independent and properly funded government authority is always preferable. To that end, if third-party enforcement mechanisms are introduced into the Wildlife Act, Wildlife Victoria submits that there should also be a legislative requirement that in deciding whether to commence investigative or enforcement action, the regulatory authority must not have regard to the availability of any third-party enforcement rights.

Acknowledgements

Prepared for and on behalf of Wildlife Victoria by Lander & Rogers Lawyers

[54] See section 5.5.1 above for Wildlife Victoria's views in relation to the appropriate role for civil penalty provisions under the act.

ANNEXURES

ANNEXURE A: COMPARISON TABLE FOR SECTION 1.3 OF ISSUES PAPER – DOMESTIC TRADITIONAL OWNERS LEGISLATION – ACT, NSW AND NT

	***Wildlife Act 1975* (Vic)**	***Nature Conservation Act 2014* (ACT)**	***National Parks and Wildlife Act 1974* (NSW)**	***Biodiversity Conservation Act 2016* (NSW)**	***Territory Parks and Wildlife Conservation Act 1976* (NT)**
Cultural Value: Conservation of biological diversity of cultural value to Aboriginal people			2A(1) The objects of this Act are… (bi) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to— places, objects and features of significance to Aboriginal people.	1.3 Purpose of the Act is (c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation.	Yes - joint management - 25AA, 25AB, 25AC.
Advisory: Creates an Aboriginal Cultural Heritage Advisory Committee OR appoints members to an advisory committee			27 Creates Committee 28 the Committee is to advise the Minister and the Chief Executive on any matter relating to the identification, assessment and management of Aboriginal cultural heritage, including providing strategic advice on the plan of management and the heritage impact permit process, whether or not the matter has been referred to the Committee by the Minister or the Chief Executive. 29(3)(h) Constitutes the Karst Management Advisory Committee with one person nominated by the NSW Aboriginal Land Council.		Yes - joint management. 92 Appointment of conservation officer or honorary conservation officer (1) The Commission may, by writing under its seal, appoint the following as a conservation officer (b) an Aboriginal ranger.
Education: Promote educational activities in respect of Aboriginal objects and places			8(4) The Chief Executive may promote such educational activities, and undertake such scientific research, in respect of Aboriginal objects and Aboriginal places as the Chief Executive thinks fit, either separately or in conjunction with other persons or bodies.		Yes - joint management.
Involvement & Cooperation: Promoting involvement and cooperation between Aboriginal and Torres Strait Islander		6(1) The main object of this Act is to protect, conserve and enhance the biodiversity of the ACT.	8(4A) The Chief Executive is to promote opportunities for partnerships and agreements between Aboriginal people and land owners and managers in relation to places, objects and features of significance to Aboriginal	5.5 (1) The Minister may enter into an agreement relating to land with all the owners of the land for the purpose of establishing a biodiversity stewardship site (a ***biodiversity stewardship agreement***).	25AC objective of joint management is (a) recognising, valuing and incorporating Aboriginal culture, knowledge and decision-making processes.

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
peoples, landholders and other community members and government		& 6(2)(c) This is achieved by promoting the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity.	people (whether on land reserved or acquired under this Act or not).	5.9 (1) The Minister must not enter into a biodiversity stewardship agreement relating to land unless— (g) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement. 5.28 (1) The Biodiversity Conservation Trust is not to enter into a wildlife refuge agreement relating to land unless— (e) where the land is owned by a Local Aboriginal Land Council, the New South Wales Aboriginal Land Council has consented in writing to the agreement.	In respect of a park or reserve for which a joint management agreement has been executed and the parks and reserves set out in schedule 2 and 3 of the Framework Act - 25AO The following functions are conferred on a Land Council (a) to ascertain and express the wishes and the opinion of Aboriginals living in its area as to the management of the parks and reserves in that area and as to appropriate legislation concerning those parks and reserves; (b) to protect the interests of the traditional Aboriginal owners of, and other Aboriginals interested in, those parks and reserves; (c) to consult with the traditional Aboriginal owners of, and other Aboriginals interested in, those parks and reserves about the use of those parks and reserves; (d) to negotiate with persons desiring to obtain an estate or interest (including a licence) in any of those parks or reserves on behalf of the traditional Aboriginal owners of that park or reserve and any other Aboriginals interested in that park or reserve; (e) to supervise, and provide administrative and other assistance to, the Park Land Trusts holding, or established.
Knowledge: Recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity		6(1) & 6(2)(e) The main object of this Act is achieved by… recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically	71BH Regard to be had to interests of Aboriginal owners The Chief Executive and the National Parks and Wildlife Service must, when exercising any power, authority, duty or function conferred or imposed on them under this Act in relation to management of the lands to which this Part applies (lands of cultural significance to Aboriginal persons or	1.3 Purpose of the Act is (c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation.	24 Minister may execute a joint management agreement for a park of reserve (joint management, of a park or reserve, means management of the park or reserve by the joint management partners.) 25AA The joint managers for a joint management park or reserve are the Territory or dominated representative

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
		sustainable use of biodiversity.	Aboriginal Land Rights Act lands) have regard to the interests of the Aboriginal owners of the lands concerned.		and the traditional Aboriginal owners of the park or reserve. 25AB the objective of joint management is to benefit both traditional Aboriginal owners of the park and the wider community, protect biological diversity, and serve visitor and community needs for education and enjoyment. 25AC objective of joint management (a) recognising, valuing and incorporating Aboriginal culture, knowledge and decision-making processes; (b) utilising the combined land management skills and expertise of both joint management partners. 93A Function of conservation officers and honorary conservation officers (2) Aboriginal rangers are recognised as being highly qualified for providing the functions of conservation officers because of their traditional, cultural and technical skills.
Cultural Rights: Authority to undertake conduct for aboriginal cultural purposes	28A(1)(e) The Secretary may give authorisation to take, hunt, buy, sell, control, breed, mark etc. wildlife for aboriginal cultural purposes. 28A(1AB)(e) The Game Management Authority may give written authorisation to take, hunt,	207(1) In this part: accessing biological resources— (a) means taking biological resources of native species for research and development on any genetic resources, or biochemical compounds, comprising or contained in the biological resources; but (b) does not include the following activities: (i) Aboriginal or Torres Strait Islander people taking biological resources—	45 A person shall not harm any animal within a national park or historic side or discharge a prohibited weapon - 45A(6) this does prevent an Aboriginal owner on whose behalf the lands of a national park or historic site are held by one or more Aboriginal Land Councils in accordance with Part 4A, or any other Aboriginal person who has the consent of the Aboriginal owner board members, from harming an animal within the park or site for domestic purposes or for ceremonial or cultural	2.8(1) it is a defence to a prosecution of harming animals, if a person charged establishes in relation to the act that constitutes the offence that, (k)(i) the act was harming, attempting to harm or possessing protected animals by an Aboriginal person for his or her own domestic purpose.	25AE contents of a draft plan of joint management for a park or reserve must contain (j) subject to section 25AJ, providing for hunting and the use of other resources in the park or reserve by the traditional Aboriginal owners in a manner consistent with the effective management of the park or reserve; 25AJ The joint management plan for a joint management park or reserve may limit the right of Aboriginals to use the park or reserve (whether for

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
	buy, sell, control, breed, mark etc. game for aboriginal cultural purposes. 28G(1) & 28G(2)(c) The Governor in Council, on recommendation of the Minister, may give authorisation to take, hunt, buy, sell, control, breed, mark etc. game for aboriginal cultural purposes.	(A) for a purpose other than a purpose mentioned in paragraph (a); and (B) in the exercise of their native title rights and interests	purposes (other than an animal of a threatened species or an animal protected by the plan of management for the park or site). 56 Provisions respecting animals in nature reserves A person shall not— harm any animal that is within a nature reserve, use any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of harming any animal that is within a nature reserve, carry, discharge or have in the person's possession any prohibited weapon in a nature reserve, carry or have in the person's possession any explosive, net, trap or hunting device in a nature reserve, or be accompanied by a dog in a nature reserve. (7) Without limiting subsection (6), this section does not prevent— an Aboriginal owner on whose behalf the lands of a nature reserve are held by one or more Aboriginal Land Councils in accordance with Part 4A, or any other Aboriginal person who has the consent of the Aboriginal owner board members, from harming an animal within the reserve for domestic purposes or for ceremonial or cultural purposes (other than an animal of a threatened species or an animal protected by the plan of management for the reserve - such as fauna in wildlife refuges and conservation areas see 70).		hunting, food gathering or ceremonial or religious purposes) as properly recognised by section 122, but only to the extent necessary and reasonable for environmental or safety reasons. 122 Traditional use of land and water by Aboriginals (1) Nothing in or under this Act limits the right of Aboriginals who have traditionally used an area of land or water from continuing to use that area in accordance with Aboriginal tradition for hunting, food gathering (otherwise than for the purpose of sale) and for ceremonial and religious purposes. (2) The operation and effect of this Act is subject to the Native Title Act 1993 of the Commonwealth. 73 Agreements regarding wildlife etc. on land occupied by Aboriginals (1) If Aboriginals occupy an area of land or take and use wildlife from an area of land in accordance with Aboriginal tradition, the Commission may: (a) assist or co-operate in; or (b) enter into negotiations and finalise agreements relating to, the management of the land to protect and conserve wildlife on the land and protect the natural features of the land … (1B) An agreement under subsection (1) may provide for the granting of permits in relation to the taking and using of wildlife in accordance with Aboriginal tradition on the land to which the agreement relates.

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
			57 Reflects s 45 but in respect of interfering with vegetation and plants in nature reserves 58Q - for karst conservation reserves Aboriginal heritage impact permits 0 The Chief Executive may issue an Aboriginal heritage impact permit. .. An Aboriginal heritage impact permit may be issued in relation to a specified Aboriginal object, Aboriginal place, land, activity or person or specified types or classes of Aboriginal objects, Aboriginal places, land, activities or persons.		
Benefit-sharing arrangement		210(1) An applicant for a nature conservation licence to access biological resources for commercial purposes in a reserve must enter into a benefit-sharing agreement with each access provider for the resources to enable the fair and equitable sharing of benefits derived from the use of the resources. 211(1) A benefit-sharing agreement must provide for reasonable benefit-sharing arrangements, including protection for, recognition of and valuing of any Aboriginal or Torres Strait Islander people's knowledge to be used.			

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
		212 (1) The conservator must not enter into a benefit-sharing agreement on behalf of the Territory concerning access to biological resources for which a native title holder is an access provider unless the conservator is satisfied on reasonable grounds that the access provider has given informed consent to the benefit-sharing agreement. (2) In considering whether an access provider has given informed consent to a benefit-sharing agreement, the conservator must consider the following matters: (c) whether the views of any representative Aboriginal body or any other body performing the functions of a representative body for the reserve have been sought.			
Reservation of certain land for a national park, nature reserve, Aboriginal area, conservation area etc			30A Governor may reserve certain land subject to some limitations under s 30C and D.		24 Minister may redeclare parks and reserves but cannot declare an Aboriginal community living area to be a park or reserve.
Conservation Agreements: Enter Conservation agreements in respect of Crown land with the consent of the NSW Aboriginal Land Council			69B Enter Conservation agreements in respect of Crown land with the consent of the NSW Aboriginal Land Council (69C) in relation to areas in which Aboriginal objects, or Aboriginal places, of special significance are situated (d), or the purpose of the study, preservation, protection, care or propagation of fauna or native plants or other flora (e).		

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
Leases: Negotiations for lease in respect of lands held by the Aboriginal Land Council or Aboriginal Land			Div 2 71D(1) Matters to be covered in lease between Aboriginal Land Council and Minister (i) an acknowledgement that the Aboriginal owners of the lands, and any other Aboriginal persons who have the consent of the Aboriginal owner board members, are entitled (subject to this and any other Act applying to the lands and any plan of management in force with respect to the lands) to enter and use the lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal owners		

ANNEXURE A: COMPARISON TABLE FOR SECTION 1.3 OF ISSUES PAPER – DOMESTIC TRADITIONAL OWNERS LEGISLATION – QLD, SA, TAS AND WA

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Cultural Value: Conservation of biological diversity of cultural value to Aboriginal people		4 The object of this Act is the conservation of nature while allowing for the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. Object achieved by 5 (a) Gathering of information and community education etc. (e.g. identifying areas of major interest)	37(1) The Minister, Chief Executive, Director of co-management board must have regard to the objective to (l) the preservation and protection of Aboriginal sites, features, objects and structures of spiritual or cultural significance within reserves.	Schedule 1 The purpose of a national park or state reserve status is: The protection and maintenance of the natural and cultural values of the area of land while providing for ecologically sustainable recreation consistent with conserving those values. The protection and maintenance of any one or more of the following: (a) the natural and cultural values of the area of land; (b) sites, objects or places of significance to Aboriginal people contained in that area of land; (c) use of the area of land by Aboriginal people – while providing for ecologically sustainable recreation consistent with conserving any of the things referred to in paragraphs (a), (b) and (c), as applicable.	
Advisory: Creates an Aboriginal Cultural Heritage Advisory Committee OR appoints members to an advisory committee			15 Establishes Parks and Wilderness Council which consists of members appointed by the Minister who collectively have knowledge, skills and experience of (e) Aboriginal culture and traditional associations with land.		
Education: Promote educational activities in respect of		Yes - s 4 Object			

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Aboriginal objects and places		Act aims to facilitate 5(a) gathering of information and community education			
Involvement & Cooperation: Promoting involvement and cooperation between Aboriginal and Torres Strait Islander peoples, landholders and other community members and government		Yes - s 4 Object Act aims to facilitate 5(f) recognition of interest of Aborigines and Torres Strait Islanders in nature and their cooperative involvement in its conservation	35 the Minister has control of all reserves, other than co-managed parks, constituted under this Act. 43D the Div 6A on co-managed parks applied to national parks or conservation parks that are constituted of Aboriginal-owned land or land which an Aboriginal community has a traditional association 43E Objective to provide for effective co-management of co-managed parks, including to (d) provide protection for the natural resources, wildlife, vegetation and other features of the parks.		
Knowledge: Recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity		Yes s 4 and s 5 (a) and (f)			
Cultural Rights: Authority to undertake conduct for aboriginal cultural purposes	28A(1)(e) The Secretary may give authorisation to take, hunt, buy, sell, control, breed, mark etc. wildlife for aboriginal cultural purposes.	16 - 21 Management principle of national parks/reserves/ conservation parks that are also an indigenous joint management area are to be managed, as far as practicable, in a way that is consistent with any Aboriginal or Torres Straight tradition applicable to the area, including	43F(3) a co-management agreement in relation to a co-managed park may provide for (m) the taking of plants and animals by members of the relevant Aboriginal group. 68C & 68D	73(2) Nothing in this Act precludes an Aboriginal cultural activity by an Aboriginal person on Aboriginal land, so long as that activity is not likely, in the opinion of the Minister, to have a detrimental effect on fauna and flora and is consistent with this Act.	182 Taking or disturbance for Aboriginal customary purposes (2) It is a defence to a charge of an offence It is a defence to a charge under this Act of taking fauna or flora to prove — (a) the accused is an Aboriginal person; and (b)

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
	28A(1AB)(e) The Game Management Authority may give written authorisation to take, hunt, buy, sell, control, breed, mark etc. game for aboriginal cultural purposes. 28G(1) & 28G(2)(c) The Governor in Council, on recommendation of the Minister, may give authorisation to take, hunt, buy, sell, control, breed, mark etc. game for aboriginal cultural purposes.	any tradition relating to activities in the area. 61 Property in cultural and natural resources (1) All cultural and natural resources of a national park (scientific), national park, conservation park or resources reserve are the property of the State, (3) subject to ownership of Aboriginal or Torres Strait cultural heritage 73 Protected wildlife is to be managed to—(b) ensure that any use of the wildlife(iii) by Aboriginal people under Aboriginal tradition or Torres Strait Islanders under Island custom is ecologically sustainable. 93 Aborigines' and Torres Strait Islanders' rights to take etc. protected wildlife (1)Despite any other Act, but subject to the Animal Care and Protection Act 2001, an Aborigine or Torres Strait Islander may take, use or keep protected wildlife under Aboriginal tradition or Island custom. (2)Subsection (1) applies subject to any provision of a conservation plan that expressly applies to the taking, using or keeping of protected wildlife under Aboriginal tradition or Island custom. (3)An Aborigine or Torres Strait Islander who takes, uses or keeps protected wildlife in contravention of a provision of a conservation plan that expressly prohibits the taking, using or keeping of protected wildlife under Aboriginal tradition or Island	In respect of reserved (non co-managed) any offences under the Act relating to taking or hunting animals do not apply to Aboriginal persons hunting or gathering food. 68E an Aboriginal person is not required to hold a permit to hunt animals as food or solely for cultural purposes of Aboriginal origin.		the accused took the fauna or flora for an Aboriginal customary purpose; and (c) in taking the fauna or flora the accused complied with — (i) section 156(1) or 175(1), as the case requires; and (ii) any regulations that restrict or exclude the operation of this subsection; 182(3) It is a defence to a charge of an offence under this Act of disturbing fauna to prove — (a) the accused is an Aboriginal person; and (b) the accused disturbed the fauna for an Aboriginal customary purpose; and Biodiversity Conservation Act 2016 Part 10 Fauna and flora Division 3 Taking or disturbance by Aboriginal people s. 183 page 110 Version 00-e0-00 As at 19 Nov 2020 Published on www.legislation.wa.gov.au (c) in disturbing the fauna the accused complied with — (i) section 156(1); and (ii) any regulations that restrict or exclude the operation of this subsection; and)

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
		custom commits an offence against this Act. Maximum penalty—3000 penalty units or imprisonment for 2 years. (4)Subsection (1) does not apply to the taking, using or keeping of protected wildlife in a protected area.			Possessing fauna taken for Aboriginal customary purposes If fauna is taken in circumstances giving rise to a defence under section 182(2), an Aboriginal person is authorised to possess the fauna for an Aboriginal customary purpose. 184. Selling fauna or flora taken for Aboriginal customary purposes An Aboriginal person who takes fauna or flora for an Aboriginal customary purpose must not sell the fauna or flora, or any part of it, unless, under the regulations, the sale is excepted or the person is authorised or licensed to do so. Penalty: a fine of $10 000. 156. Use of prohibited device or prohibited method when taking or disturbing fauna (1) A person must not use any prohibited device or prohibited method in the taking or disturbance of fauna.

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
					Penalty for this subsection: a fine of $50 000. Prohibited device/method not defined clearly
Benefit-sharing arrangement		Yes - contained in the recently amended *Biodiscovery Act 2004* (QLD).			
Reservation of certain land for a national park, nature reserve, Aboriginal area, conservation area etc			27 The Governor may declare an area to be a national park / change boundaries of a national park but must not make a declaration in relation to a national park constituted of Aboriginal-owned land except with agreement of the registered proprietor of the land.		
Conservation Agreements: Enter Conservation agreements in respect of Crown land with the consent of the NSW Aboriginal Land Council					
Leases: Negotiations for lease in respect of lands held by the Aboriginal Land		42AD lease.			

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 1992* (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Nature Conservation Act 2002* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Council or Aboriginal Land		42AE, 42AEA - Chief executive and the indigenous landholder of a national park may license park for a sustainable use			

ANNEXURE A: ACOMPARISON TABLE FOR SECTION 1.3 OF ISSUES PAPER – FEDERAL AND INTERNATIONAL TRADITIONAL OWNERS LEGISLATION – CTH, SCT AND NZ

	AUS CTH: ***Environment Protection and Biodiversity Conservation Act 1999***	**SCT:** ***The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020***	**NZ:** ***Wildlife Act 1953***
Cultural Value: Conservation of biological diversity of cultural value to Aboriginal people	8 The Act does not affect the operation of the Aboriginal Land Rights (Northern Territory) Act 1976 or the Native Title Act. 15C Offences relating to National Heritage Places (7) a person commits an offence if (a) a person takes an action; (b) the action results or will result in significant impact on heritage values, to the extent that they are indigenous heritage values, of a place; and (c) the heritage values are National Heritage values of the place; and the place is a National Heritage place.		New Zealand's laws also require that the principles of the Treaty of Waitangi be recognised and given effect in practical conservation management
Advisory: Creates an Aboriginal Cultural Heritage Advisory Committee OR appoints members to an advisory committee			
Involvement & Cooperation: Promoting involvement and cooperation between Aboriginal and Torres Strait Islander peoples, landholders and other community members and government	3 Object of the Act includes to (g) promote a partnership approach to environmental protection and biodiversity conservation through (ii) recognising and promoting indigenous peoples' roles in, and knowledge of, the conservation and ecologically sustainable use of biodiversity.		New Zealand's laws require that the principles of the Treaty of Waitangi be recognised and given effect in practical conservation management.

	AUS CTH: *Environment Protection and Biodiversity Conservation Act 1999*	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	NZ: *Wildlife Act 1953*
	49A.		14I Procedure for preparation and approval of population management plans Population management plans shall be prepared and approved as follows: (1) the Director-General shall prepare every population management plan in consultation with every Conservation Board affected by the proposal and with such persons as the Director-General considers are representative of those classes of persons interested in the plan, including such persons or organisations as the Director-General considers are representative of Maori, environmental interests, commercial interests, and recreational interests:
Knowledge: Recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity	49A The Minister may enter into a bilateral agreement (agreement b/n a state or territory and the Cth on biodiversity conservation) only if she/he has considered the role and interests of indigenous peoples in promoting the conservation and ecologically sustainable use of natural resources in the context of the proposed agreement, taking into account Australia's relevant obligations under the Biodiversity Convention.		

	AUS CTH: *Environment Protection and Biodiversity Conservation Act 1999*	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	NZ: *Wildlife Act 1953*
Cultural Rights: Authority to undertake conduct for aboriginal cultural purposes	201 Minister may issue permits to authorise a holder to take an action specific in the permit without breaching 196, 196A, 196B, 196C, 196D, 196E (taking, hunting etc. threatened species) or 207B (damaging critical habitats). 201(3) The Minister must not issue the permit unless satisfied that (c) the specific action is of particular significant to indigenous tradition and will not adversely affect the survival or recovery in nature of the listed threatened species of listed threatened ecological community concerned. 216 is equivalent of 201 - 216 pertains to migratory species 258 - equivalent but for marine species.		Treaty of Waitangi must be recognised and given effect in practical conservation management.

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – CURRENT OFFENCES UNDER THE ACT

No.	Current offence under the Act	Section	Maximum Penalty
Offences related hunting, taking or destroying wildlife			
1.	Hunting, taking or destroying threatened wildlife	41	240 penalty units or 24 months imprisonment or both the fine and imprisonment and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.
2.	Hunting, taking or destroying protected wildlife	43	50 penalty units or 6 months imprisonment or both the fine and imprisonment and an additional penalty of 5 penalty units for every head of game in respect of which an offence has been committed.
3.	Hunting, taking or destroying game	44	During close season: 50 penalty units or 6 months imprisonment or both the fine and imprisonment and an additional penalty of 5 penalty units for every head of game in respect of which an offence has been committed. During open season: 10 penalty units.
4.	Offence for dogs or cats to attack etc. wildlife	48	25 penalty units.
5.	Marking protected wildlife	51	100 penalty units.
Offences related to use and/or possession of hunting equipment			
6.	Use of prohibited equipment	53	25 penalty units.
7.	Killing wildlife by poison	54	100 penalty units.
8.	Using bird-lime etc.	55	20 penalty units.
9.	Punt guns	56	50 penalty units.
Offences related to disturbing or damaging wildlife			
10.	Molesting and disturbing etc. protected wildlife	58	20 penalty units.

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – CURRENT OFFENCES UNDER THE ACT

No.	Current offence under the Act	Section	Maximum Penalty
	Offences related to trading of wildlife		
11.	Acquiring etc. threatened wildlife	45	240 penalty units or 24 months imprisonment or both the fine and imprisonment and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.
12.	Acquiring etc. protected wildlife	47	50 penalty units or 6 months imprisonment or both the fine and imprisonment and an additional penalty of 5 penalty units for every head of wildlife in respect of which an offence has been committed.
13.	Wildlife unlawfully taken	47D	240 penalty units or 24 months imprisonment or both.
14.	Import and export permits	50	100 penalty units.
	Offences related to releasing wildlife from confinement		
15.	Release of birds and animals from captivity or confinement	52	50 penalty units.
	Offences related to marine mammals		
16.	Killing, taking whales etc. an offence	76	1000 penalty units
17.	Actions to be taken with respect to killing or taking of whale	77	50 penalty units
18.	Offence to approach whales	77A	20 penalty units
19.	Breach of condition (on a whale permit) an offence	80	100 penalty units or 6 months imprisonment or both the fine and imprisonment
20.	Offence to conduct whale watching tour	83	100 penalty units or 6 months imprisonment or both the fine and imprisonment.
21.	Offence to conduct whale swim tour	83C	100 penalty units or 6 months imprisonment or both the fine and imprisonment.

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – CURRENT OFFENCES UNDER THE ACT

No.	Current offence under the Act	Section	Maximum Penalty
22.	Breach of condition (on a whale watching and swim tour permit) an offence	83I	100 penalty units or 6 months imprisonment or both the fine and imprisonment.
23.	Offence to conduct seal tour	85B	100 penalty units.
24.	Breach of condition (on a seal tour permit) an offence	85I	100 penalty units.
	Administrative offences		
25.	Offence to take wildlife from State Wildlife Reserve	20	25 penalty units.
26.	Offence to construct, remove, alter, or carry out maintenance on, a levee within a State Wildlife Reserve or Nature Reserve	21AAA	Level 8 imprisonment (12 months maximum) or a level 8 fine (120 penalty units maximum) or both.
27.	Offence to cut or take away fallen or felled trees	21AA	2 cubic metres or less of fallen or felled trees: 20 penalty units More than 2 cubic metres of fallen or felled trees: 50 penalty units or imprisonment for 1 year or both
28.	Offence to conduct organised tour or recreational activity on State Wildlife Reserve if unlicensed	21A	In the case of a natural person, 20 penalty units; In the case of a body corporate, 100 penalty units.
29.	Contravention of condition (in a tour operator licence) an offence	21F	In the case of a natural person, 20 penalty units; In the case of a body corporate, 100 penalty units.
30.	Offence of failing to comply with conditions of authorisation	28B	50 penalty units.
31.	Offences in relation to wildlife sanctuaries	35	25 penalty units.

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – CURRENT OFFENCES UNDER THE ACT

No.	Current offence under the Act	Section	Maximum Penalty
32.	Power to make Order prohibiting possession etc. of certain wildlife	49	50 penalty units.
33.	Interference with signs etc.	57	50 penalty units.
34.	Keeping false records	58A	120 penalty units.
35.	Providing false information	58B	120 penalty units.
36.	Offence for certain persons to enter on or remain in specified hunting area	58C	60 penalty units.
37.	Offence to approach a person who is hunting	58D	60 penalty units.
38.	Hindering or obstructing hunting	58E	60 penalty units.
39.	Offence to contravene banning notice	58J	For a first offence, 20 penalty units; For a second or subsequent offence, 60 penalty units.
40.	Offence to refuse or fail to comply with direction to leave area to which banning notice applies	58L	For a first offence, 20 penalty units; For a second or subsequent offence, 60 penalty units.
41.	Offence to contravene exclusion order	58O	For a first offence, 60 penalty units; For a second or subsequent offence, 120 penalty units.
42.	Offence to refuse or fail to comply with direction to leave area to which exclusion order applies	58Q	For a first offence, 60 penalty units; For a second or subsequent offence, 120 penalty units.
43.	Offence to impersonate officer	62A	50 penalty units.

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – OFFENCE TYPES IN DOMESTIC & INTERNATIONAL LEGISLATION												
No.	**Types of Offences**	***Wildlife Act 1975 (Vic)***	***Nature Conservation Act 2014 (ACT)***	***Biodiversity Conservation Act 2016 (NSW)***	***National Parks and Wildlife Act 1974 (NSW)***	***Territory Parks and Wildlife Conservation Act 1976 (NT)***	***Nature Conservation Act 1992 (QLD)***	***National Parks and Wildlife Act 1972 (SA)***	***Biodiversity Conservation Act 2016 (WA)***	***Threatened Species Protection Act 1995* (Tas)**	***Wildlife & Countryside Act 1981* (UK)**	***Canada Wildlife Act 1985***
44.	Offences related to hunting, taking or destroying wildlife (will need to elaborate more on what kind of wildlife)	ss 20, 41, 43, 44, 51	ss 130, 132	s 2.1	s 70	ss 66, 67, 67A	s 88	s 51	ss 149, 150	s 51(1)(a)	ss 1, 9	s 3(1)(b)
45.	Offences related to use and/or possession of equipment for hunting	ss 53, 54, 55, 56			s 70			ss 65, 66, 67	s 156		ss 5, 11	s 3(1)(c)
46.	Offences related to disturbing or damaging wildlife	ss 52, 58	s 131	s 2.1		ss 66, 67, 67A		s 68	s 153	s 51(1)(b), (d)	ss 1(5), 9(4)	s 3(1)(v)
47.	Offences related to feeding native animals								s 155			s 3(1)(a)
48.	Offences related to disturbing or damaging of natural habitat of wildlife		ss 128, 129, Pt. 9.2, 9.4, 9.5	ss 2.3, 2.4		s 67C	s 88C (flying-foxes and flying-fox roosts)				s 3 (relates to wild birds)	s 3(1)(v)
49.	Offences relating to keeping/using wildlife					ss 66, 67, 67A		ss 58, 60	ss 152, 158	s 51(1)(a)	ss 1, 9	s 3(1)(f)
50.	Offences related to trading of wildlife	ss 45, 47, 47D, 50	ss 135, 136, 137	s 2.5		s 67B (does not refer to an offence for		s 58	ss 159, 160	s 51(1)(a)	s 6	s 3(1)(f)

ANNEXURE B: COMPARISON TABLE FOR SECTION 5.1.1 OF ISSUES PAPER – OFFENCE TYPES IN DOMESTIC & INTERNATIONAL LEGISLATION												
No.	**Types of Offences**	***Wildlife Act 1975 (Vic)***	***Nature Conservation Act 2014 (ACT)***	***Biodiversity Conservation Act 2016 (NSW)***	***National Parks and Wildlife Act 1974 (NSW)***	***Territory Parks and Wildlife Conservation Act 1976 (NT)***	***Nature Conservation Act 1992 (QLD)***	***National Parks and Wildlife Act 1972 (SA)***	***Biodiversity Conservation Act 2016 (WA)***	***Threatened Species Protection Act 1995* (Tas)**	***Wildlife & Countryside Act 1981* (UK)**	***Canada Wildlife Act 1985***
						exporting protected wildlife)						
51.	Offences related to releasing wildlife from confinement	s 52	s 138	s 2.6		ss 66, 67, 67A	s 91	s 55	s 162	s 51(1)(e)	s 14	s 3(1)(a)
52.	Protection of iconic animals	ss 76, 83, 83C (seals and whales)		s 2.7			s 88BA (dugongs and marine turtles)	s 68				
53.	Offences related to breeding						s 92 - restriction on breeding hybrids of protected animals				s 14AA(2)(b)	
54.	Administrative offences	Various	Various	Various	Various	Various	Various	Various	Various	Various	Various	Various

ANNEXURE C: COMPARISON TABLE FOR SECTION 5.2.1 OF THE ISSUES PAPER – MAXIMUM PENALTIES FOR HUNTING WILDLIFE IN OTHER JURISDICTIONS			
Legislation	**Section**	**Maximum Penalty**	**Converted Maximum Penalty**
Wildlife Act 1975 (Vic)	s 41	240 penalty units or 24 months imprisonment or both the fine and imprisonment and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.	240 x $165.22 = $39,652.80 20 x $165.22 = $3,304.40
Nature Conservation Act 2014 (ACT)	s 130	Native animal: 100 penalty units, imprisonment for 1 year or both Native animal and special protection status: 200 penalty units, imprisonment for 2 years or both.	100 x $160 = $16,000 200 x $160 = $32,000
Biodiversity Conservation Act 2016 (NSW)	ss 2.1, 13.1	Threatened species or threatened ecological community: Tier 1 monetary penalty or imprisonment for 2 years, or both Vulnerable species or vulnerable ecological community: Tier 3 monetary penalty Any other case: Tier 4 monetary penalty	Tier 1 monetary penalty: • Corporation: $1,650,000 (further $165,000 for each day the offence continues); • Individual: $330,000 (further $33,000 for each day the offence continues). Tier 3 monetary penalty: • Corporation: $440,000 (further $44,000 for each day the offence continues); • Individual: $88,000 (further $8,800 for each day the offence continues). Tier 4 monetary penalty • Corporation: $110,000 ($11,000 for each day the offence continues); Individual: $22,000 ($2,200 for each day the offence continues).

ANNEXURE C: COMPARISON TABLE FOR SECTION 5.2.1 OF THE ISSUES PAPER – MAXIMUM PENALTIES FOR HUNTING WILDLIFE IN OTHER JURISDICTIONS			
Legislation	**Section**	**Maximum Penalty**	**Converted Maximum Penalty**
National Parks and Wildlife Act 1974 (NSW)	ss 70, 175	Individual: 100 penalty units Corporation: 200 penalty units	100 x $110 = $11,000 200 x $110 = $22,000
Territory Parks and Wildlife Conservation Act 1976 (NT)	ss 66, 67, 68	Cases other than threatened wildlife: • Natural person: 500 penalty units or imprisonment for 5 years; • Body corporate: 2,500 penalty units Threatened wildlife: • Natural person: 1,000 penalty units or imprisonment for 10 years; • Body corporate: 5,000 penalty units	500 x $158 = $79,000 2,500 x $158 = $395,000 1,000 x $158 = $158,000 5,000 x $158 = $790,000
Nature Conservation Act 1992 (QLD)	s 88(2)	Class 1 offence: 3,000 penalty units or 2 years imprisonment; Class 2 offence: 1,000 penalty units or 1 year's imprisonment; or Class 3 offence: 225 penalty units; or Class 4 offence: 100 penalty units	3,000 x $133.45 = $400,350 1,000 x $133.45 = $133,450 225 x $133.45 = $30,026.25 100 x $133.45 = $13,345
National Parks and Wildlife Act 1972 (SA)	s 51(1)	Marine animals: $100,000 or imprisonment for 2 years Endangered non-marine animals, or the eggs of such: $10,000 or imprisonment for 2 years	

ANNEXURE C: COMPARISON TABLE FOR SECTION 5.2.1 OF THE ISSUES PAPER – MAXIMUM PENALTIES FOR HUNTING WILDLIFE IN OTHER JURISDICTIONS			
Legislation	**Section**	**Maximum Penalty**	**Converted Maximum Penalty**
		Vulnerable non-marine animal, or the eggs of such: $7,500 or imprisonment for 18 months Rare non-marine animal, or the eggs of such: $5,000 or imprisonment for 12 months Any other case: $2,500 or imprisonment for 6 months	
Threatened Species Protection Act 1995 (Tas)	s 51(1)	629 penalty units or imprisonment for a term not exceeding 12 months, or both, and a further fine not exceeding 126 penalty units for each day during which the offence continues after conviction.	629 × $172 = $108,188 126 × $172 = $21,672
Biodiversity Conservation Act 2016 (WA)	s 149	If the offence involves a cetacean: $500,000 If the offence involves specially protected fauna that is not a cetacean: $200,00 Any other case: $50,000	
Wildlife & Countryside Act 1981 (UK)	N/A	Maximum penalties of Level 5 on the Standard Scale (£5,000) on summary conviction and/or imprisonment of up to 6 months for the un-licensed killing of protected wild birds or animals. Theoretically unlimited now by virtue of s 85 *Legal Aid, Sentencing and Punishment of Offenders Act 2012. O*ffences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.	Theoretically unlimited
Conservation (Natural Habitats Regulations) 1994 (UK)	N/A	Maximum penalties of Level 5 on the Standard Scale (£5,000) on summary conviction and/or imprisonment of up to 6 months for the un-licensed killing of protected wild birds or animals.	Theoretically unlimited

ANNEXURE C: COMPARISON TABLE FOR SECTION 5.2.1 OF THE ISSUES PAPER – MAXIMUM PENALTIES FOR HUNTING WILDLIFE IN OTHER JURISDICTIONS			
Legislation	**Section**	**Maximum Penalty**	**Converted Maximum Penalty**
		Theoretically unlimited now by virtue of s 85 *Legal Aid, Sentencing and Punishment of Offenders Act 2012. O*ffences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.	
Wild Mammals (Protection) Act 1996 (UK)	N/A	Offences relating to the mutilation or beating of protected wild mammals are punishable on summary conviction only with the maximum set at Level 5 on the Standard Scale (£5,000) and/or 6 months imprisonment. Theoretically unlimited now by virtue of s 85 *Legal Aid, Sentencing and Punishment of Offenders Act 2012. O*ffences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.	Theoretically unlimited
Protection of Wild Mammals (Scotland) Act 2002	N/A	The maximum penalties on summary conviction only are a fine of up to Level 5 on the Standard Scale (£5,000) and/or 6 months imprisonment for offences relating to the deliberate hunting of a mammal with dogs. Theoretically unlimited now by virtue of s 85 *Legal Aid, Sentencing and Punishment of Offenders Act 2012. O*ffences punishable by a magistrates' court on summary conviction with a maximum fine at level 5 may now be punished with an unlimited fine.	Theoretically unlimited
Canada Wild Life Act 1985	13.01(2) & 13.01(3)	Individual (a) on conviction on indictment, (i) for a first offence, to a fine of not more than $100,000; and (ii) for a second or subsequent offence, to a fine of not more than $200,000; or (b) on summary conviction, (i) for a first offence, to a fine of not more than $250,000; and	

ANNEXURE C: COMPARISON TABLE FOR SECTION 5.2.1 OF THE ISSUES PAPER – MAXIMUM PENALTIES FOR HUNTING WILDLIFE IN OTHER JURISDICTIONS			
Legislation	**Section**	**Maximum Penalty**	**Converted Maximum Penalty**
		(ii) for a second of subsequent offence, to a fine of not more than $500,000. Corporations (c) on conviction on indictment, (i) for a first offence, to a fine of not more than $500,000, and (ii) for a second or subsequent offence, to a fine of not more than $1,000,000; or (d) on summary conviction, (i) for a first offence, to a fine of not more than $250,000, and (ii) for a second or subsequent offence, to a fine of not more than $500,000.	

ANNEXURE D: COMPARISON TABLE FOR SECTION 5.3.1 OF ISSUES PAPER – GENERAL PROVISIONS FOR CONTINUING OFFENCES AND ADDITIONAL PENALTIES BY ACT

Jurisdiction	Legislation	General provision for continuing offences		General provision for additional penalties	
		Y/N	Section	Y/N	Section
VIC	*Wildlife Act 1975*	No	N/A	Additional penalties for specific offences	ss 41, 43, 44, 45 & 47
ACT	*Nature Conservation Act 2014*	No	N/A	No	N/A
NSW	*National Parks and Wildlife Act 1974*	Yes	s 195	No	N/A
NSW	*Biodiversity Conservation Act 2016*	Yes	s 13.11	Additional penalties for specific offences	ss 2.1, 2.2 & 2.5
NT	*Territory Parks and Wildlife Conservation Act 1976*	Continuing offences penalties for specific offences	ss 49, 71(6)(b)	No	N/A
QLD	*Nature Conservation Act 1992*	No	N/A	Additional penalties for specific offences	s 169
SA	*National Parks and Wildlife Act 1972*	No	N/A	Yes	s 74
TAS	*Threatened Species Protection Act 1995*	Continuing offences penalties for specific offences	s 51(1)	Yes, but the additional penalties appear to be more like additional orders than penalties	s 53
WA	*Biodiversity Conservation Act 2016*	Yes	s 235	Additional penalties for specific offences	s 180
UK	*Wildlife & Countryside Act 1981*	Continuing offence penalties for specific offences	s 31	Yes (not called an additional penalty, but functions as one)	s 21(5)
CA	*Canada Wildlife Act*	Yes	s 13.11	Yes, but requires the offender to have acquired some benefit or advantage due to their contravention	ss 13.04, 13.12
IND	*The Wild Life (Protection) Act 1972*	No	N/A	No	N/A

ANNEXURE E: COMPARISON TABLE FOR SECTION 5.5 OF ISSUES PAPER – OVERVIEW OF USE OF OTHER SANCTIONS AND REMEDIES

Jurisdiction	Legislation	Civil Penalty Provisions	Minor Offences Infringement Notices	Enforceable Undertakings	Compensation Order/Mandated Bond/Financial Assurances	Costs Orders	Monetary Penalty Orders	Forfeiture of Property	Third Party Enforcement
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	✓	×	✓	✓	×	×	✓	×
	Great Barrier Reef Marine Park Act 1975	✓	×	✓	✓	×	×	✓×	✓×
ACT	*Nature Conservation Act 2014*	×	×	×	✓	×	×	✓	×
NSW	*National Parks and Wildlife Act 1974*	×	×	×	✓	✓	✓	×	×
	Biodiversity Conservation Act 2016	×	×	✓	✓	✓	✓	×	✓
NT	*Territory Parks and Wildlife Conservation Act 1976*	×	×	×	✓	×	×	✓	×
QLD	*Nature Conservation Act 1992*	×	×	×	✓	×	×	×	✓
SA	*National Parks and Wildlife Act 1972*	×	×	×	×	×	×	✓	×
TAS	*Threatened Species Protection Act 1995*	×	×	×	✓	×	×	✓	×

Jurisdiction	Legislation	Civil Penalty Provisions	Minor Offences Infringement Notices	Enforceable Undertakings	Compensation Order/Mandated Bond/Financial Assurances	Costs Orders	Monetary Penalty Orders	Forfeiture of Property	Third Party Enforcement
VIC	*Wildlife Act 1975*	×	×	×	×	×	×	✓×	×
WA	*Biodiversity Conservation Act 2016*	×	×	×	✓	×	×	✓	×
UK	*Wildlife & Countryside Act 1981*	×	×	×	✓	×	✓	✓	×
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	×	✓	×	✓×	×	×	×	×
SG	*Wildlife Act*	×	×	×	✓	×	×	✓	×
CA	*Canada Wildlife Act*	×	×	×	✓	✓	✓	✓	×
IND	*The Wild Life (Protection) Act 1972*	×	×	×	×	×	×	✓	×

ANNEXURE F: COMPARISON TABLE FOR SECTION 5.5.1 OF ISSUES PAPER – CIVIL PENALTIES

Jurisdiction	Legislation	Contains civil penalty provisions	Section
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	Yes	s 18
	Great Barrier Reef Marine Park Act 1975	Yes	Subdivision I
ACT	*Nature Conservation Act 2014*	No	
NSW	*National Parks and Wildlife Act 1974*	No	
	Biodiversity Conservation Act 2016	No	
NT	*Territory Parks and Wildlife Conservation Act 1976*	No	
QLD	*Nature Conservation Act 1992*	No	
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	No	
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	No	
UK	*Wildlife & Countryside Act 1981*	No	
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	No	
CA	*Canada Wildlife Act*	No	
IND	*The Wild Life (Protection) Act 1972*	No	

ANNEXURE G: GCOMPARISON TABLE FOR SECTION 5.5.3 OF ISSUES PAPER – ENFORCEABLE UNDERTAKINGS

Jurisdiction	Legislation	Capacity for enforceable undertakings	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	Yes	s 486DA; s 486DB.
	Great Barrier Reef Marine Park Act 1975	Yes	s 61ABA; s 61ABB
ACT	*Nature Conservation Act 2014*	No	
NSW	*National Parks and Wildlife Act 1974*	No	
	Biodiversity Conservation Act 2016	Yes	s 13.27
NT	*Territory Parks and Wildlife Conservation Act 1976*	No	
QLD	*Nature Conservation Act 1992*	No	
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	No	
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	No	
UK	*Wildlife & Countryside Act 1981*	No	
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	No	
CA	*Canada Wildlife Act*	No	
IND	*The Wild Life (Protection) Act 1972*	No	

ANNEXURE I: COMPARISON TABLE FOR SECTION 5.5.4 OF ISSUES PAPER – COMPENSATION ORDERS, MANDATED BONDS, FINANCIAL ASSURANCES

Jurisdiction	Legislation	Provides for compensation orders / mandated bonds / financial assurances	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	Yes	s 454
	Great Barrier Reef Marine Park Act 1975	Yes	s 61AHA;
ACT	*Nature Conservation Act 2014*	Yes	Part 11.4
NSW	*National Parks and Wildlife Act 1974*	Yes	s 201; s 202
	Biodiversity Conservation Act 2016	Yes	s 13.21; s 13.22; s 13.23
NT	*Territory Parks and Wildlife Conservation Act 1976*	Yes	s 118
QLD	*Nature Conservation Act 1992*	Yes	s 156; s 168
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	Yes	s 55
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	Yes	s 219; s 243.
UK	*Wildlife & Countryside Act 1981*	Yes	s 31
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	Limited	s 32G
SG	*Wildlife Act*	Yes	s 12F
CA	*Canada Wildlife Act*	Yes	s 16D
IND	*The Wild Life (Protection) Act 1972*	No	

ANNEXURE J: COMPARISON TABLE FOR SECTION 5.5.5 OF ISSUES PAPER – COSTS ORDERS

Jurisdiction	Legislation	Capacity for court to make costs orders	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	No	
	Great Barrier Reef Marine Park Act 1975	No	
ACT	*Nature Conservation Act 2014*	No	
NSW	*National Parks and Wildlife Act 1974*	Yes	s 203
	Biodiversity Conservation Act 2016	Yes	s 13.21; s 13.22; s 13.23
NT	*Territory Parks and Wildlife Conservation Act 1976*	No	
QLD	*Nature Conservation Act 1992*	No	
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	No	
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	No	
UK	*Wildlife & Countryside Act 1981*	No	
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	No	
CA	*Canada Wildlife Act*	Yes	s 11.93
IND	*The Wild Life (Protection) Act 1972*	No	

ANNEXURE K: COMPARISON TABLE FOR SECTION 5.5.6 OF ISSUES PAPER – MONETARY PENALTY ORDERS

Jurisdiction	Legislation	Provides for monetary penalty orders	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	No	
	Great Barrier Reef Marine Park Act 1975	No	
ACT	*Nature Conservation Act 2014*	No	
NSW	*National Parks and Wildlife Act 1974*	Yes	s 204
	Biodiversity Conservation Act 2016	Yes	s 13.24
NT	*Territory Parks and Wildlife Conservation Act 1976*	No	
QLD	*Nature Conservation Act 1992*	No	
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	No	
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	No	
UK	*Wildlife & Countryside Act 1981*	Yes	s 28P(9)
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	No	
CA	*Canada Wildlife Act*	Yes	s 13.04
IND	*The Wild Life (Protection) Act 1972*	No	

ANNEXURE L: COMPARISON TABLE FOR SECTION 5.5.7 OF ISSUES PAPER – FORFEITURE OF PROPERTY

Jurisdiction	Legislation	Provides for forfeiture of property	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	Yes	s 450; s 450A; s 450B
	Great Barrier Reef Marine Park Act 1975	Limited	s 61AMD
ACT	*Nature Conservation Act 2014*	Yes	s 354
NSW	*National Parks and Wildlife Act 1974*	No	
	Biodiversity Conservation Act 2016	No	
NT	*Territory Parks and Wildlife Conservation Act 1976*	Yes	s 98
QLD	*Nature Conservation Act 1992*	No	
SA	*National Parks and Wildlife Act 1972*	Yes	s 23
TAS	*Threatened Species Protection Act 1995*	Yes	s 53
VIC	*Wildlife Act 1975*	Limited	s 60
WA	*Biodiversity Conservation Act 2016*	Yes	s 230
UK	*Wildlife & Countryside Act 1981*	Yes	s 21
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	Yes	s 12C; s 12D
CA	*Canada Wildlife Act*	Yes	s 14(1)
IND	*The Wild Life (Protection) Act 1972*	Yes	s 51(2)

ANNEXURE M: COMPARISON TABLE FOR SECTION 5.6.1 OF ISSUES PAPER – POWERS OF AUTHORISED OFFICERS – ACT, NSW AND NT

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
Title	Authorised officers	Conservation officers	Authorised officers	Authorised officers	Conservation officers or honorary conservation officer
Power of constables / power of arrest					A conservation officer under this Act has all the powers and duties, and the same protection at law, as a member of the police force with the rank of constable.
Power to enter / Power to search	59(1) In administration of this Act, an authorised officer may enter upon any lands or waters or into any tent, or into any building or structure other than a dwelling-house or any vehicle or boat. S 59(1)(a) an authorised officer has a right to search lands, waters, tent, building or structure and anything found at those sites. S 59C(1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to a particular premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the premises a particular thing that may be evidence of the commission of an offence against this Act.	338 Power to enter the following premises: public premises, private premises with the occupier's consent, premises where animal is kept under a nature conservation licence. An officer may enter a premises if officer suspects that an animal that is not an exempt animal is kept on the premises, enter without a search warrant if the circs are so serious and urgent entry is required. (2) However, entry without a permit is prohibited if the premises are residential. 341 General powers on entry to premises.	164 officer may, if they suspect an offence is being committed, enter and search any premises. 164(2) officer is not authorised to enter a building that is used for residential purposes expect with the permission of the occupier or under the authority of a search warrant issued under this section.	12.11 - power to enter premises. (4) Entry may be affected to any premises with the authority of a search warrant under section 12.14. 12.12 Officer is not entitled to enter residential premises without permission of the occupant unless pursuant to a warrant under this Part.	96(3) officer has power to enter premise other than residential premise. Power to enter premises if officer has consent of the occupier. 96(5)(a) - (b).
Power to stop & search vehicle	S 59B An authorised officer or a police officer may, at any time, without warrant, stop and search any boat or vehicle which he or she reasonably	327 officer may make a direction to stop a vehicle containing an animal or plant.	164 officer may, if they suspect an offence is being committed,	12.13 power of authorised officer to inspect a vehicle at a	96(4) officer has power to enter a vehicle.

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
	believes has been used by persons committing an offence against this Act or which contains persons the authorised officer or police officer wants to question with respect to an offence against this Act…		stop a vehicles, enter and search vehicle.	premises - not a power to stop a vehicle.	
Inspecting & Photography	59(1)(b) AO have the right to enter sites listed in s 59(1)(a) for the purpose of inspecting and taking photographs (including video recordings).	341 General powers on entry to premises to: inspect or examine, take measurements or conduct tests, take sample, take photographs or films, require the occupier to give the officer reasonable help to exercise their powers under this part.	164 officer may make copies of documents	12.13(2)(d)	96(5)(d)
Inspecting/copying documents	59(1)(bc) inspecting and making copies of or taking extracts from any document kept at the lands, waters, tent, building or structure.	341	164 officer may make copies of documents	12.13(2)(e)-(g)	96(5)(h)
Taking samples / specimens	59(1)(ba) AO have right to enter sites to take samples of blood, bodily fluids or other matter from any wildlife.	342 Power to seize things in connection to an offence against this Act, an officer who enters premises under a warrant may seize anything at the premises that the officer is authorised to seize under the warrant.	164 - likely falls under this section.	12.13(2)(b)	96(5)(e)
Mark any wildlife	59(1)(bb) AO may mark any wildlife or thing found at the lands, waters, tent, building or structure for the purpose of later being able to identify it.				
Seize property	59 (1)(bd) & 59A(e) & 59B(e) authorised officer has power to seize anything found …in order to prevent— (i) its concealment, loss or destruction; or (ii) its use in committing, continuing or repeating an offence against this Act.	342 power to seize things.	164	12.13(2)(h)-(j) & 12.13(3)	96(5)(f) seize a vehicle 96(5)(g) seize a substance or thing

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
	60(2) power to seize any prohibited equipment including a net, trap, gun, substance, instrument or other device the use of which is prohibited by or under this Act.				
Seizing wildlife	59(1)(d) Searching for and seizing any wildlife which have been taken or are apparently being held or retained in contravention of this Act and any documents or records relating thereto	343 native birds. 345 forfeiture of seized things.	164(4)	12.13(3)(a) Power to seize a thing with respect to which the offence has been committed.	98(5) An officer may seize any animal believed to be killed, held or used in contravention of this Act.
Releasing wildlife		343 power to seize and release distressed native birds. 344 power to release an animal seized under s 342 if the animal is likely to die or suffer pain or be subjected to distress unless it is released from capacity - the conservator may apply to the Magistrates Court for an order for that animal to be realised from capacity.			98(5) an officer may seize and then (6) release, retain or sell an animal.
Forfeiture of things seized	60(3) Where any equipment, trap, net, gun or other weapon or other device is seized and the person found with that equipment, trap, net, gun or other weapon or other device is convicted by a court for an offence of taking or killing wildlife in contravention of this Act that equipment, trap, net, gun or other weapon or other device is forfeited to Her Majesty and shall be disposed of as the Minister directs.	354 If thing seized is not released under 343 or 344 and an application for disallowance of the seizure has not been made, the seized thing is forfeited to the Territory and may be disposed of as the conservator directs.	16	12.18 - regulations may make provisions for the disposal or return of things seized.	98 Confiscation and forfeiture. (1) Where a court finds a person guilty of an offence against this Act, the court may order the forfeiture to the Territory of any vehicle, aircraft, vessel or thing used or otherwise involved in the commission of the offence.

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
Power to destroy/dismantle unsafe things	59(1)(f) Searching for and seizing or dismantling or destroying any duck-trap, net, or other equipment which is apparently being used or has been used in contravention of this Act	355 Power to destroy unsafe things Officer has power to destroy unsafe things (1) This section applies to anything inspected or seized under this part by a conservation officer if the conservation officer is satisfied on reasonable grounds that the thing poses a risk to the health or safety of people or of damage to property or the environment. (2) The conservation officer may direct a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.			
Power to require production of licence or records / Check compliance	28 An authorised officer has power to demand that the holder of any licence, permit, or other authority under this Act produce the licence, permit or authority. Firearms: 60A An AO may demand that the person produce his/her firearm licence. 59(h) generally for ascertaining whether the holder of any licence issued pursuant to this Act is complying with the conditions, limitations or restrictions subject to which the licence was issued.	321 officers may direct a licensee to produce their nature conservation licence or any record required under this Act.	156B(2)(a) an officer may exercise functions to determine where there has been compliance with or contravention of national parks legislation.		97 power to inspect permits

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
Compel offender to give their name or address	S 61(1)	319	157	12.21	96(6)
Direction to provide information		323 an officer may direct a person to provide information or documents to the officer.	158 Officer may require owner of motor vehicle and others to give information.	12.19	96(5)(j)(i)
Direct a person to assist officer					
Use facilities or equipment					
Require a person to stop an activity		325 Officer may direct a person to leave reserve. 327 Officer may direct a vehicle containing an animal or plant to stop. 329 the Conservator may make urgent direction to stop cease conduct causing the breach, contravention or threat. 336 the Conservator or anyone else may apply to the Supreme Court for an injunction to stop a person engaging in conduct that is in breach of the Act or to comply with an officer's direction.		11.31 power to direction a person to stop an activity that is causing or likely to cause distress to protected animals.	
Direct person keeping a native animal to carry out a treatment on the animal OR treat animal / Require a person to remedy a harm		333 - direct to carry out a medical treatment on the animal	164(3) - direct a person to train the animal and to feed, house, and maintain the animal.	11.32 power to give direction to a person who keeps a protected animal in confinement or in a domesticated state to take such steps with respect to the feeding, shelter and other	

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
				welfare of the protected animals.	
Direct person to give the native animal to the officer or destroy the native animal/dispose of	Requires court order 70(2).	335	165 - direct a person to deliver up fauna. 167 - Where any property seized under section 164 or delivered up under section 165 is fauna or is perishable, it may forthwith be disposed of, by way of sale or otherwise, by an authorised officer. The proceeds of any sale under subsection shall be paid into the Fund.		
Euthanise wildlife					
Scientific study	59(g) carrying out any scientific study authorized by the Secretary				
Erecting notices	59(1)(c) Constructing, erecting, and maintaining notices, posts, buoys, beacons, or other markers in the boundaries of areas referred in this Act or … for the purposes of this Act		Under the *Protection of the Environment Operations Act 1997 No 156*		
Liability	59(5) An authorised officer or police officer shall not in any way be liable for anything done by him in the exercise of his powers and functions under this Act.		156C Exclusion of personal liability for anything done or omitted to be done by an officer or ranger in good faith for the purpose of exercising functions under the national parks legislation		110 limitation of liability - no civil or criminal liability is incurred by a conservation officer in relation to acts or omissions done in performance of powers under the act. Civil liability of an honorary conservation member is to

	Wildlife Act 1975 (Vic)	*Nature Conservation Act 2014* (ACT)	*National Parks and Wildlife Act 1974* (NSW)	*Biodiversity Conservation Act 2016* (NSW)	*Territory Parks and Wildlife Conservation Act 1976* (NT)
					the extent to that of a member of the police force.

ANNEXURE M: COMPARISON TABLE FOR SECTION 5.6.1 OF ISSUES PAPER – POWERS OF AUTHORISED OFFICERS – QLD, SA, TAS AND WA

	Nature Conservation Act 1992 **(QLD)**	***National Parks and Wildlife Act 1972*** **(SA)**	***Threatened Species Protection Act 1995*** **(TAS)**	***Biodiversity Conservation Act 2016*** **(WA)**
Title	conservation officer	wardens	authorised officers	wildlife officer
Power of constables / power of arrest		20(5) Every police officer is, while holding office as such, a warden competent to exercise powers as such in any part of the State. 25 A warden may arrest a person who fails to comply with a direction, requirement or order of a warden under this Act.		
Power to enter / Power to search	145 Entry and search for the purpose of monitoring compliance. An officer can only enter a residential premises with a warrant or with consent of occupier. 147 lists general powers of officers in relation to places	22(1)(a) a warden may enter and search any premises or vehicle connected with the suspected offence.	48(2)(e) officer may enter a vehicle, land or a building not occupied as a place of residence. 48(2)(f) may search any of the premises entered. 48(2)(g) may search a place of residence with a warrant.	199 Power to enter places for inspection purposes - may enter licensed premises, place that is not a residential dwelling, residential dwelling with the consent of the occupier, enter a place in accordance with an entry warrant.
Power to stop & search vehicle	144 power to stop and search vehicles.	22(1)(a) a warden may enter and search any premises or vehicle connected with the suspected offence.	48(2)(e) officer may enter a vehicle, land or a building not occupied as a place of residence.	201 power to stop and enter vehicles.
Inspecting & Photography	146 power to enter and search for evidence of offences.	22(1)(cd) yes.	48(2)(h) may inspect any equipment, machine, implement, flora, fauna, enclosure, container or other goods;	203(f)

	Nature Conservation Act 1992 (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Threatened Species Protection Act 1995* (TAS)	*Biodiversity Conservation Act 2016* (WA)
	147 power to inspect, examine, photograph or film.			203(d) inspect and open any package, compartment, cupboard or container of any kind, and inspect its contents; 203(e) inspect any cage, enclosure or similar structure on or in a place or vehicle; 203(h) patrol and inspect any fence on or bounding a place
Inspecting/copying documents	147(c)		48(2)(m) require a person to produce a document which may relate to, or contain evidence of, an offence under this Act;	
Taking samples / specimens		22(1)(ca)	48(2)(l) officer may require a person to give to the authorised officer samples or articles	203(i)
Mark any wildlife				203(j)
				204
Seizing property	149 with a warrant, the officer may seize any evidence 152A general power for seized things - may seize equipment used to contravene the Act, may seize wildlife	23(1)(a) an object is liable to confiscation if it has been used in the commission, or is likely to be used in the commission of an offense. 23(1)(b) power to seize evidence of the commission of an offence 23(1)(c) power to seize an animal, carcass, egg or plant 23(2) power to seize a vehicle.	48(2) (j) seize, examine or take copies of, or extracts from documents; or (k) seize any flora or fauna; (p) seize any equipment or material which is being used by any person in contravention of this Act.	202(g) restrain, muster, round up, yard, draft or otherwise move or handle any animal;

	Nature Conservation Act 1992 (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Threatened Species Protection Act 1995* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Seizing wildlife	152A(1)(d)	23(1)(c) officer may confiscate an animal, carcass, egg or plant	48(2)(k) seize any flora or fauna;	
Releasing wildlife	152A(d)	23(5) an officer may release animal that has been confiscated.		
Forfeiture of things seized		23(1)(a) an object is liable to confiscation if it has been used in the commission, or is likely to be used in the commission of an offense. 23(5a) officer may the seized thing (unless it is required to evidentiary purposes) and the proceeds of sale are to be dealt with under the Act.		
Power to destroy/dismantle unsafe things	152A(1)(c) officer has power to make equipment inoperable by removing a component or dismantling it. 152A(1)(c) - dismantle animal traps.		48 (p) seize any equipment or material which is being used by any person in contravention of this Act.	
Power to require production of licence or records / Check compliance		22(4)(c) officer may require any person carrying on an activity that requires a license to produce a permit.	22 (n) officer may require a person to produce any permit issued to him or her	204(2) an officer may direct a person who has the custody or control of a record to give the wildlife officer the record or a copy of it;
Compel offender to give their name or address	151	22(1)(c) and 22(2) and (3).	48 (o) require a person to give his or her name and place of residence;	
Direction to provide information	152		48 (m) require a person to produce a document which may relate to, or contain evidence of, an offence under this Act	

	Nature Conservation Act 1992 (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Threatened Species Protection Act 1995* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Direct a person to assist officer				204(2) (b) direct a person who has the custody or control of a record, computer or thing to make or print out a copy of the record or to operate the computer or thing; (d) direct a person who is or appears to be in control of a record that the wildlife officer reasonably suspects is a relevant record to give the wildlife officer a translation, code, password or other information necessary to gain access to or interpret and understand the record;
Use facilities or equipment				203(a) an officer may take onto or into, and use on or in, a place or vehicle any equipment or facilities that are reasonably necessary in order to carry out an inspection; 203(b) an officer may make reasonable use of any equipment, facilities or services on or in a place or vehicle in order to carry out an inspection and for that purpose operate the equipment or facilities; 204(2) (c) operate a computer or other thing on which a record is or may be stored;
Require a person to stop an activity			49 If an authorised officer believes on reasonable grounds that a landholder has not complied with the terms of an interim protection order, the authorised officer may, with any assistance that the authorised officer reasonably considers necessary (a) enter the land of the landholder; and (b) take any action which the authorised officer reasonably believes to be necessary to ensure compliance with the order.	

	Nature Conservation Act 1992 (QLD)	*National Parks and Wildlife Act 1972* (SA)	*Threatened Species Protection Act 1995* (TAS)	*Biodiversity Conservation Act 2016* (WA)
Direct person keeping a native animal to carry out a treatment on the animal OR treat animal / Require a person to remedy a harm	152A(1)(d) the officer may take steps to ensure the animals survival by moving the animal, giving it accommodation, food, water and appropriate living conditions, leaving the animal with the person but directing them to look after the wildlife. 152A(d)(v) officer may direct the person to look after wildlife in order to ensure its survival			
Direct person to give the native animal to the officer or destroy the native animal/dispose of				
Euthanise wildlife				
Scientific study				
Erecting notices				
Liability				

ANNEXURE M: COMPARISON TABLE FOR SECTION 5.6.1 OF ISSUES PAPER – POWERS OF AUTHORISED OFFICERS – INTERNATIONAL

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	**SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020***	**SG: *Wildlife Act***	**NZ: *Wildlife Act 1953***	**IND: *The Wild Life (Protection) Act 1972***
Title	Enforced by "wildlife inspector" & "constables"	Enforced by "authorised persons"	Enforced by police officers or "authorised officers"	Enforced by "rangers"	Enforced by the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub- inspector
Power of constables / power of arrest	E&W: 19(2) a constable may arrest a person S: 19(1)(c) constable may arrest		11C & 12 police officer, officer of customs or authorised officer has power to arrest without warrant	39E the Director-General may issue a ranger to whom a written authority stating that the ranger is authorised to exercise power of arrest under s 39F. 29F may arrest a person without warrant if the officer believes they committed or are committing an offence.	50(c) in respect of which an offence against this Act appears to have been committed…arrest him without warrant, and detain him
Power to enter / Power to search	E&W: 18B & 18D / S: 19(1)(2) inspector may enter premises (not a residential dwelling) to check compliance with a licence or check whether an offence has occurred. E&W: 19(2A)/ S:19(6) when entering premises, constable may take with them any other person or any equipment or materials.	46(4)(d) Regulations made by Scottish Ministers may confer powers to enter premises (other than dwelling-houses) in connection with issuing of fixed penalty notices	11A authorised officer of police officer has power without warrant to enter any place in which any wildlife is kept and search the place and any person in the place 11A(3)(c) authorised officer or police may examine any wildlife	39(1)(f) enter upon, pass through, or remain on any land (other than a dwelling house or the enclosed garden or curtilage of any dwelling house) or any hut, tent, caravan, bach, or other erection (not being a permanent residence), or any shop, warehouse, factory, bond store, office, or any other premises of any description, or into or upon any lake, river, pond, lagoon, or other water (whether natural or artificially constructed):	50

	UK: ***Wildlife & Countryside Act 1981*** Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	**SCT:** ***The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020***	**SG:** ***Wildlife Act***	**NZ:** ***Wildlife Act 1953***	**IND:** ***The Wild Life (Protection) Act 1972***
Power to stop & search vehicle	E&W: 19(1) constable may stop and search a person, search or examine anything in a person's possession S: 19(1)(a) Scottish equivalent to E&W		11A authorised officer of police officer has power without warrant to enter any place in which any wildlife is kept and search the place and any person in the place	39(1)(d) stop any vehicle, or any riding or pack animal, or any boat, launch, or other vessel, or any aircraft while on the ground or on the water, or any other device for carriage or transportation, or stop in transit any parcel, package, case, bag, luggage, or other container 39C power to require people to stop and to stop things or articles in transit	50(b)
Inspecting & Photography	E&W: 18B & 18D inspector E&W: 19(1) constable may stop and search S: 19(1)(b) constable may examine anything in person's possession which may be used as evidence.		11A(3)(b)		50(a)
Inspecting/copying documents	E&W: 18B & 18D inspector E&W: 19(1) constable may stop and search S: 19(1)(b) constable may examine anything in person's possession which may be used as evidence.		11A(1)		50(a)
Taking samples/ specimens	E&W: 18C & 18E where an inspector has entered the premises, the inspector, or veterinary surgeon				50(a) & 50(c)

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	SG: *Wildlife Act*	NZ: *Wildlife Act 1953*	IND: *The Wild Life (Protection) Act 1972*
	accompanying him, may examine a specific or take a sample from it. 18F Samples may only be taken from a live animal by a veterinary surgeon and if it will not cause the animal lasting harm. E&W: 19XA constable has power in connection with samples. S: 19ZD constable or wildlife inspector has power to take samples.				
Mark any wildlife					
Seizing property	E&W: 19(1)(d) constable may seize and detain anything a person has in their position if constable suspects the thing is evidence of the commission of an offence. S: 19(1)(d)		10A authorised officer has power to remove wildlife trap after giving written notice to the occupier 11B - authorised officer or police officer has power to size any wildlife, any article suspected to have been used to commit an offence, any food or drink that accompanies wildlife, anything that can be used as evidence.	39(1)(b) seize all nets, traps, firearms, ammunition, boats, vehicles, engines, instruments, appliances, or devices that are being used or are intended to be used or have been used in breach of this Act, or that he reasonably believes are so being used or are intended to be so used or have been so used 39B power to seize evidential material	50(c) seize any trap, tool, vehicle, vessel or weapon used for committing any such offence
Seizing wildlife	18C(7) inspector may seize a specimen which is not a live animal	19 Where a protected animal has been taken into possession, an authorised person may, without the consent of the owner and without having obtained a court order, administer treatment to		39(1) seize any animal or any part of any animal or any egg or nest thereof illegally taken or had in possession, or which he reasonably believes	50(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	SG: *Wildlife Act*	NZ: *Wildlife Act 1953*	IND: *The Wild Life (Protection) Act 1972*
		the animal, transfer ownership of the animal to another person or destroy the animal. 32C authorised person must give 'decision notice' to the owner as to what they are going to do with the seized animal.		to be illegally taken or had in possession	
Releasing wildlife					
Forfeiture of things seized	E&W: 19(1)(d)/ S: 19(1)(d) things seized as evidence of the commission of an offence may be liable to be forfeited	19 Where a protected animal has been taken into possession, an authorised person may, without the consent of the owner and without having obtained a court order, transfer ownership of the animal to another person.	12C - court may order forfeiture		50(4) Any … things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law
Power to destroy/dismantle unsafe things			10A authorised officer has power to remove wild life trap after giving written notice to the occupier		
Power to require production of licence or records / Check compliance	E&W: 18C & 18D S: 19ZC wildlife inspector may ascertain whether the licence has been complied with.				50(a)
Compel offender to give their name or address		46A(t) if is an offence to fail to provide information requested in connection with an offence.	11A(2)(a) - (c) 12(3) - power to request name and address in relation to power of arrest without warrant	39F power of arrest	

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	SG: *Wildlife Act*	NZ: *Wildlife Act 1953*	IND: *The Wild Life (Protection) Act 1972*
Direction to provide information		46A(t) if is an offence to fail to provide information requested in connection with an offence.	11A(2) authorised officer has power to compel person to provide information in respect of a search 12A an authorised officer has power to examine orally a person or require a person to provide written statement about the facts and circumstances of the alleged contravention 12B an authorised officer has power to require information about contravention		50(c)
Direct a person to assist officer	18C(6) inspector may require occupier of premises to give assistance for the purpose of examining a specimen or taking a sample from it.		11A(2), 12A, 12B	39(1)(f) power to call on any person for assistance, and the person is authorised to assist the ranger **(i)** in the exercise of a search power in accordance with section 113 of the Search and Surveillance Act 2012; or **(ii)** in the exercise of any other power if the person acts under the direction and supervision of the ranger.	50(5) any person who fails to assist an offer commits an offence
Use facilities or equipment					
Require a person to stop an activity	E&W: 19(1) a constable may stop and search a person possession. S: 19(1)(a) Scottish equivalent to E&W.			39C power to require people to stop. 39D power to intervene to intervene to prevent offending in a manner that is	

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	SG: *Wildlife Act*	NZ: *Wildlife Act 1953*	IND: *The Wild Life (Protection) Act 1972*
				reasonable in the circumstances.	
Direct person keeping a native animal to carry out a treatment on the animal OR treat animal / Require a person to remedy a harm					
Enter a premises accompanied by a veterinary surgeon	E&W: 18A(4) A wildlife inspector entering premises under either of those sections may take with him a veterinary surgeon if he has reasonable grounds for believing that such a person will be needed for the exercise of powers under section 18C or 18E. S: 19(6)(a)(i)				
Direct person to give the native animal to the officer or destroy the native animal/dispose of					
Euthanise wildlife		19 Where a protected animal has been taken into possession, an authorised person may, without the consent of the owner and without having obtained a court order, destroy the animal. An authorised person may decide to destroy the animal under subsection (1) only if a veterinary			

	UK: *Wildlife & Countryside Act 1981* Section applies to England (**E**), Scotland (**S**) & Wales (**W**), unless specified to only apply to particular countries.	SCT: *The Animal and Wildlife (Penalties, Protection and Powers) (Scotland) Act 2020*	SG: *Wildlife Act*	NZ: *Wildlife Act 1953*	IND: *The Wild Life (Protection) Act 1972*
		surgeon certifies that destruction of the animal is appropriate.			

ANNEXURE N: COMPARISON TABLE FOR SECTION 5.7.1 OF ISSUES PAPER – APPEALS MECHANISMS – ACT, NSW AND NT

***Wildlife Act 1975* (Vic)**	***Nature Conservation Act 2014* (ACT)**	***National Parks and Wildlife Act 1974* (NSW)**	***Biodiversity Conservation Act 2016* (NSW)**	***Territory Parks and Wildlife Conservation Act 1976* (NT)**
86C - allows VCAT to review decisions made by the Secretary, Parks Victoria and the Game Management Authority to refuse to grant, renew, suspend of cancel licences, authorisations or permits under the Act.	262 - a nature conservation licence means a licence that authorises the licensee to carry on 1 or more activities (the licensed activity) that would otherwise be an offence under this Act. The Act does not mention appeals though in another section on licensing, the Act refers to the ACT Civil and Administrative Tribunal Act 2008. It can be assumed that appeals can be made to the ACT CAT.	Act does not make reference to an appeals mechanism except for: 90L - (1) An applicant for, or holder or former holder of, an Aboriginal heritage impact permit may appeal to the Land and Environment Court against any of the following decisions of the Chief Executive— decision to refuse any application in relation to an Aboriginal heritage impact permit or former permit, decision in relation to any condition to which a permit or former permit (or a surrender of a permit) is subject, decision to suspend or revoke a permit. (3) The decision of the Land and Environment Court on the appeal is final and is binding on the Chief Executive and the appellant, and is to be carried into effect accordingly.	Div 3 - 2.16 Reasons for, and appeals against, licensing decisions. (1) In this section— *licensing decision* means a decision of the Environment Agency Head— o refuse an application for a biodiversity conservation licence, or o grant a biodiversity conservation licence subject to conditions, or o vary a biodiversity conservation licence, or o suspend or cancel a biodiversity conservation licence. (3) An applicant for, or the holder of, a biodiversity conservation licence may appeal to the Land and Environment Court against a licensing decision.	64 A person who is aggrieved by a decision made (in respect of a permit authorising the person to take or interfere with protected wildlife, take or interfere with wildlife for commercial reasons, keep protected wildlife, release protected wildlife or take protected wildlife out of the Territory, or bring prohibited entrants in the Territory) may, no later than 30 days after the date of the decision, appeal against the decision to the Local Court. (2) The appeal is to be by hearing de novo (a new decision, fresh decision). (3) The Local Court may confirm the decision, vary the decision or remit the decision to the decision maker to reconsider.

ANNEXURE N: COMPARISON TABLE FOR SECTION 5.7.1 OF ISSUES PAPER – APPEALS MECHANISMS – QLD, SA, TAS, WA AND CTH

Nature Conservation Act 1992 **(QLD)**	***National Parks and Wildlife Act 1972*** **(SA)**	***Threatened Species Protection Act 1995*** **(TAS)**	***Biodiversity Conservation Act 2016*** **(WA)**	**Commonwealth:** ***Environment Protection and Biodiversity Conservation Act 1999***
173O Extended standing for judicial review (standing for administrative appeal). This sections applies, for the Judicial Review Act 1991, to any of the following: (a) decision made under this Act; (b) a failure to make a decision under this Act; (c) conduct engaged in for the purpose of making a decision under this Act.	53A (1) A person who has applied for a permit under section 53 may apply to the Tribunal under section 34 of the South Australian Civil and Administrative Tribunal Act 2013 for review of a decision of the Minister— (a) to refuse to grant the permit; or (b) to grant the permit subject to limitations, restrictions or conditions; or (c) as to the term of the permit; or (d) to revoke the permit.	9 Establishes a Community Review Committee. (1) There is established a body to be called the Community Review Committee. (2) CRC is to consist of 9 members appointed by the Minister as follows: (a) a person appointed by the Minister as chairperson of the committee; (b) a person nominated by the Tasmanian Farmers and Graziers Association; (c) an economist; (d) a person representing rural industry; (e) a person representing the forest industry; (f) a person representing the fishing industry; (g) 2 members of SAC nominated by SAC; (h) a person nominated by the Local Government Association of Tasmania. (3) The functions of the CRC are as follows: (a) to receive and consider draft recovery plans and listing statements; (b) in respect of private land, to assist in, and make recommendations to the Minister on, the preparation of land management plans and land management agreements;	256(1) The regulations are to establish a licensing scheme under which the CEO may grant licences for the purposes of this Act. (3) Regulations may provide for or regulate the following: (l) the review by the State Administrative Tribunal of decisions to amend, suspend or cancel licences or to refuse to grant, renew or transfer licences.	206A In respect of a review of decisions by the Minister, an application may be made to the Administrative Appeals Tribunal for the review of a decision: (a) to issue or refuse a permit; or (b) to specify, vary or revoke a condition of a permit; or (c) to impose a further condition of a permit; or (d) to transfer or refuse to transfer a permit; or (e) to suspend or cancel a permit.

		(c) to provide for conciliation as may be required in any matter arising from a land management agreement or for the purpose of making any such agreement; (d) to consider the social and economic impact of the implementation of land management agreements; (e) to advise the Minister on the effect of interim protection orders; (f) to consider, and advise on, such other matters as may be referred to it by the Minister. 14 In respect of listing of threatened flora and fauna, a listing by the Minister may be appealed to the Resource Management and Planning Appeal Tribunal.		

ANNEXURE O: COMPARISON TABLE FOR SECTION 5.8.1 OF ISSUES PAPER – THIRD-PARTY CIVIL ENFORCEMENT

Jurisdiction	Legislation	Capacity for third-party civil enforcement	Section(s)
CTH	*Environment Protection and Biodiversity Conservation Act 1999*	No	
	Great Barrier Reef Marine Park Act 1975	Limited	s 38HB
ACT	*Nature Conservation Act 2014*	No	
NSW	*National Parks and Wildlife Act 1974*	No	
	Biodiversity Conservation Act 2016	Yes	s 13.13; s 13.15; s 13.17
NT	*Territory Parks and Wildlife Conservation Act 1976*	No	
QLD	*Nature Conservation Act 1992*	Yes	s 173D
SA	*National Parks and Wildlife Act 1972*	No	
TAS	*Threatened Species Protection Act 1995*	No	
VIC	*Wildlife Act 1975*	No	
WA	*Biodiversity Conservation Act 2016*	No	
UK	*Wildlife & Countryside Act 1981*	Yes	s 21
SCT	*Animals and Wildlife (Penalties, Protections and Powers (Scotland) Act 2020*	No	
SG	*Wildlife Act*	Yes	s 12C; s 12D
CA	*Canada Wildlife Act*	Yes	s 14(1)
IND	*The Wild Life (Protection) Act 1972*	Yes	s 51(2)