Independent Review of the *Wildlife Act 1975*

April 2021

VICTORIA
State Government

Photo credits

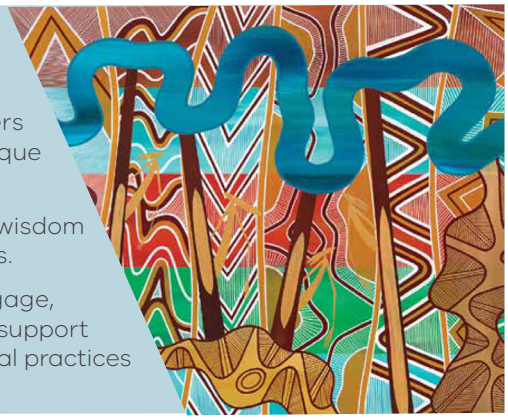
Cover: *(left to right, top to bottom)* Major Mitchell Cockatoo (DELWP), Traditional Owner artwork on possum skin (Jack Pascoe), Southern Brown Bandicoot (Richard Hill, DELWP), Snorkelers and an Australian Fur Seal at Chinaman's Hat (Kirsty Greengrass, DELWP)
Page 2: Common Wombat (Marcia Riederer)
Page 5: Koala release (DELWP)
Page 6: Monitoring Helmeted Honeyeaters (Zoos Victoria)
Page 11: Mitchell's Short-tailed Snake (Marcia Riederer)
Page 13: Traditional Owner artwork on possum skin (Jack Pascoe)
Page 14: Western Pygmy Possum (DELWP)
Page 16: Forest and Wildlife Officers (Office of the Conservation Regulator, DELWP)
Page 17: Researcher holding a Silky Mouse (DELWP)
Page 19: Researcher measuring a lizard (DELWP)
Page 20: Red Wattlebird (DELWP)
Page 21: Wodonga Grey-headed Flying Fox camp (Glen Johnson, DELWP)
Page 22: Penguin Parade (Phillip Island Nature Parks)
Page 23: Wildlife Officers inspection of a Southern Boobook Owl (Jim O'Brien, DELWP)
Page 25: Australian Fur Seals & snorkelers at Chinaman's Hat (DELWP)
Page 26: Eastern Barred Bandicoot release (Zoos Victoria)
Page 27: Blue-tongue Lizard (Amy Warnock)
Page 28: Eastern Water Skink (Nick Talbot, DELWP)
Page 29: Grey-headed Flying-fox (Russell Jones)
Page 31: Red-tailed Black Cockatoos on a fence (DELWP)
Page 33: Little Penguin examination by Melbourne Zoo veterinarians (Zoos Victoria)
Page 35: Penguin parade underground viewing experience (Phillip Island Nature Parks)
Page 37: Waving Australian Fur Seal (Zoos Victoria)
Page 41: Variegated Fairy-wren (Nick Talbot, DELWP)

Traditional owner acknowledgement

The Department of Environment, Land, Water and Planning (DELWP) acknowledges and respects Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it.

DELWP honours Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

DELWP is committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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Contents

About this review 3

The Independent Review Panel 4

The scope of the review 5

This paper guides discussion about the key issues 7

Some background about the Act 7

Part 1: What should the Act do? 10

1.1 Does the Act reflect contemporary attitudes towards wildlife? 10

1.2 Is the intent of the Act clear? 11

1.3 The Act doesn't appear to appropriately recognise the rights and interests of Traditional Owners and Aboriginal Victorians 12

1.4 Could a general duty help clarify roles and responsibilities? 14

1.5 Definitions of key terms can be unclear and confusing 15

Part 2: How does the Act interact with other legislation about wildlife and animals? 17

2.1 There are overlaps and gaps in the broader legislative framework 17

2.2 Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act 18

2.3 The current legislative framework doesn't preserve and conserve habitat 19

2.4 The treatment of wildlife as property 20

Part 3: What mechanisms does the Act need to achieve its objectives? 21

3.1 The Act lacks principles about how to manage wildlife 21

3.2 Does the Act facilitate an equitable and participatory approach to wildlife management and conservation? 22

3.3 The Act has no framework for enabling wildlife management plans 23

3.4 The permissions framework lacks clarity, transparency and accountability 24

3.5 Fees imposed by the Act do not fully recover costs 25

3.6 The Act doesn't have a mechanism for the making of mandatory codes, standards or guidelines 26

Contents (cont.)

Part 4: Does the Act promote transparency and accountability? 27

4.1 Should expanded reporting requirements be included in the Act? 27

4.2 Should independent expert advice play a greater role in decision making under the Act? 28

Part 5: Are current enforcement and compliance mechanisms adequate? 29

5.1 It's not clear whether the Act creates the appropriate offences 29

5.2 Do maximum penalties deter or sufficiently reflect the seriousness of offences? 30

5.3 Continuing offences and additional penalties could be strengthened 30

5.4 The sentencing process does not provide sufficient guidance for judges 31

5.5 The Act could also contain a number of other sanctions and remedies to help achieve its objectives 32

5.6 Authorised officers may not have the necessary powers to enforce the Act 34

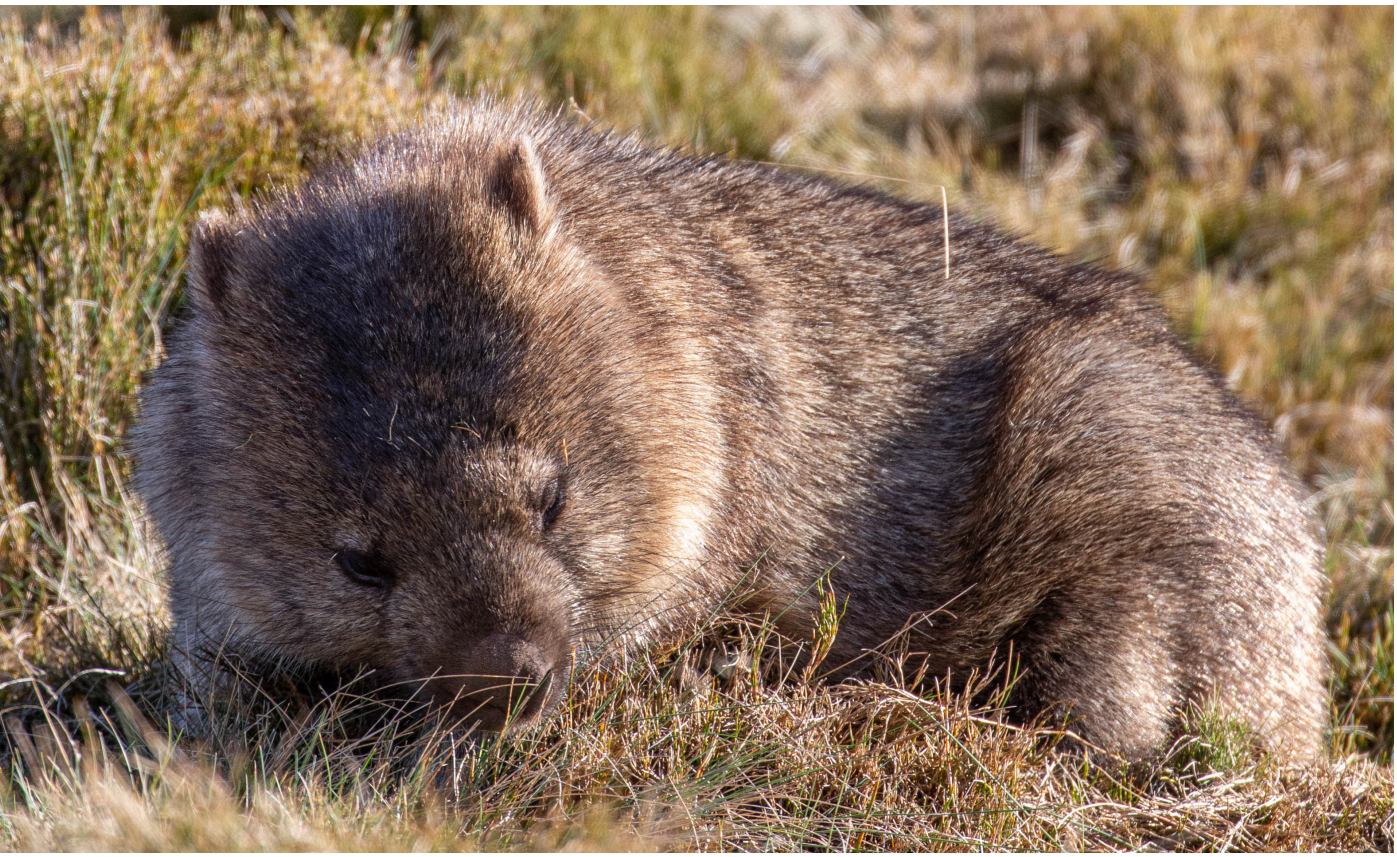
5.7 Are appeal and review provisions sufficient? 34

5.8 Should the Act provide for third party civil enforcement? 34

Appendix A: Roles and responsibilities of government agencies under the Wildlife Act 35

Appendix B: Wildlife Act offences 38

Appendix C: Rights of Traditional Owners and Aboriginal Victorians over wildlife 40



About this review

The *Wildlife Act 1975* (the Act) promotes the protection and conservation of wildlife, the prevention of wildlife extinction, and the sustainable use of, and access to, wildlife. The Act also plays a central role in Victoria's legal framework for protecting and managing biodiversity.

The Minister for Energy, Environment and Climate Change announced a review of the Act in May 2020 following a series of high-profile incidents that sparked community outrage, including the illegal destruction of wedge-tailed eagles in East Gippsland and an incident at Cape Bridgewater that involved a large number of koalas (Box 1).

The Act has not been systematically reviewed since becoming law more than 45 years ago. Community values and expectations related to wildlife have changed over time, and the Act now appears to be outdated and out of step with modern, best practice regulation.

This review is part of a wider examination of Victoria's legislative framework for protecting and managing biodiversity. The Victorian Government has undertaken a number of initiatives as it examines this framework, including reviews of the *Flora and Fauna Guarantee Act 1988*, the Authority to Control Wildlife system, the native vegetation clearing regulations and the development of Biodiversity 2037, the overarching Biodiversity Plan for Victoria. The government is also currently considering feedback on a directions paper about modernising the *Prevention of Cruelty to Animals Act 1986*.

Box 1: Two examples of recent incidents that sparked community outrage

Illegal poisoning of wedge-tailed eagles

In 2018, 134 wedge-tailed eagles were found dead on a Tubbut property in East Gippsland. Many were killed between October 2016 and April 2018 using bait impregnated with poison. Following a major investigation, charges were laid against two men, the farm manager who lived on the property and the landholder. The farm manager was found guilty under the Wildlife Act for the illegal destruction of a large number of eagles between 2016 and 2018. He was fined $2,500 and jailed for 14 days, the first custodial sentence for destruction of wildlife under the Wildlife Act in Victoria. However, many in the Victorian community viewed the prosecution outcomes as inadequate and disproportionate given the large number of deaths of an iconic protected species.

In 2019, reports of wedge-tailed eagles being killed on a property near Violet Town in north east Victoria prompted another substantial investigation. Remains of over 200 eagles and other birds were found on the property, and charges have since been laid. Legal proceedings are ongoing against one individual.

Incident involving injured and starving koalas

In February 2020, the Conservation Regulator and the Department of Environment, Land, Water and Planning investigated an incident involving a significant number of injured and starving koalas on a private property near Cape Bridgewater in south west Victoria.

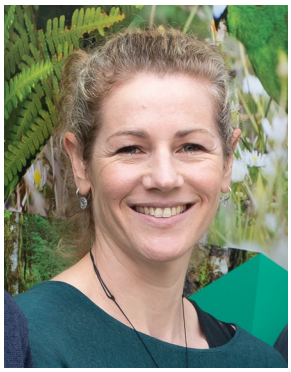
Qualified wildlife rehabilitators and veterinarians assessed more than two hundred koalas. Of these, over one hundred were initially released back into the wild, 32 were euthanised and another 74 needed rehabilitation. Of the 74 koalas placed into rehabilitation care, 63 were later released into the wild and 11 were euthanised.

The ongoing investigation has involved 15 officers with support from forensic specialists and Victoria Police. The Conservation Regulator is working through the legal process and the case is ongoing.

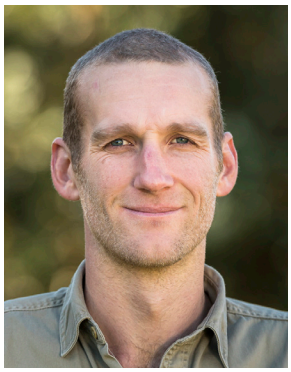
The Independent Review Panel

The Independent Review Panel comprises **Dr Deborah Peterson** (Chair), **Associate Professor Ngaio Beausoleil, Dr Jack Pascoe** and **Emeritus Professor Arie Freiberg AM.**

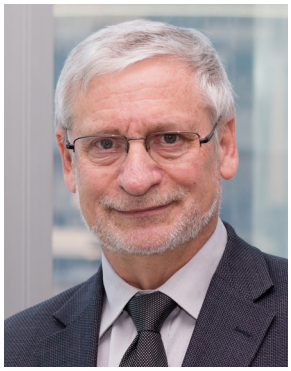
Dr Deborah Peterson
Visiting Fellow of the Crawford School of Public Policy at the Australian National University. Dr Peterson is an eminent agricultural and natural resource economist, and has extensive experience working in both the private and public sector.



Associate Professor Ngaio Beausoleil
Co-director of the Animal Welfare Science and Bioethics Centre, School of Veterinary Science, Massey University, New Zealand. Dr Beausoleil is an expert in wildlife welfare and ethics.



Dr Jack Pascoe
Conservation and Research Manager, Conservation Ecology Centre. Dr Pascoe is a Yuin man living in Gadabanut Country and has expertise in ecological research and conservation land management, and an understanding of Victorian Traditional Owner values and cultural obligations.



Emeritus Professor Arie Freiberg AM
Emeritus Professor, Faculty of Law, Monash University. Professor Freiberg has extensive experience in regulatory reform.

The scope of the review

Based on its own expertise, research and the community engagement process, the Panel will examine:

- 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.

In its review, the Panel will consider:

- contemporary values and expectations regarding wildlife
- the need to protect and conserve wildlife and to prevent wildlife from becoming extinct
- interests in sustainable use of, and access to, wildlife
- the role of wildlife in the cultural practices and beliefs of Traditional Owners and Aboriginal Victorians
- the impact of wildlife on agriculture and other activities
- the impact of ecotourism and other activities on wildlife
- the benefits of activities that foster an appreciation of wildlife
- emerging issues affecting wildlife protection and conservation, sustainable use and access
- any gaps or inconsistencies resulting from changes to other legal frameworks or policy settings
- insights from reviews of similar legislation
- the most appropriate and effective ways to encourage compliance with the Act and punish wildlife crime.

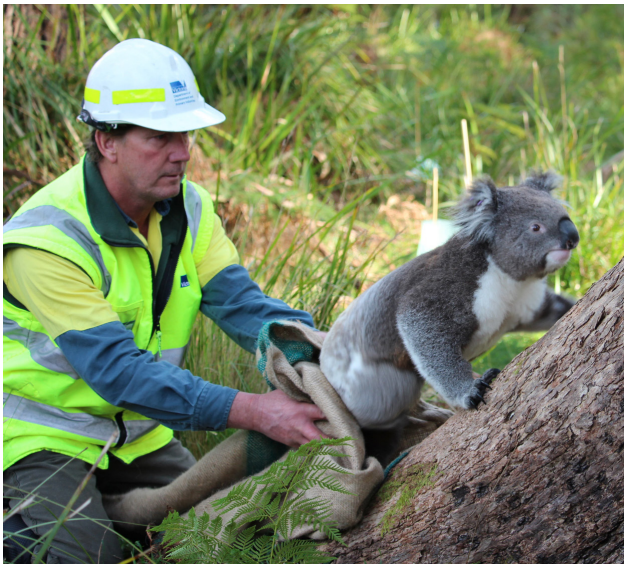
The Panel will focus on the terms of reference. Some issues, although important, will necessarily fall outside the scope of the review either because they are not central to the operation of the Act or because other reviews are already considering them.

Accordingly, the Panel will not consider:

- how the Department of Environment, Land, Water and Planning (DELWP) and other responsible organisations administer the Act, including their policies, organisational structures and procedures
- the regulations under the Act
- topics regulated by other Victorian legislation or covered by other legislative reform projects, such as:
  - arrangements for declared wildlife emergencies, such as whale entanglements, bushfire and marine pollution that are regulated under the *Emergency Management Act 2013*
  - cruelty offences that are part of the current reform of Victoria's animal welfare legislation
  - land classifications (state wildlife reserves and other categories, Parts II and V of the Wildlife Act) which are being considered as part of the government's proposed reforms for public land legislation.

The Panel has not been asked to consider whether the current range of activities permitted by the Act should be changed.

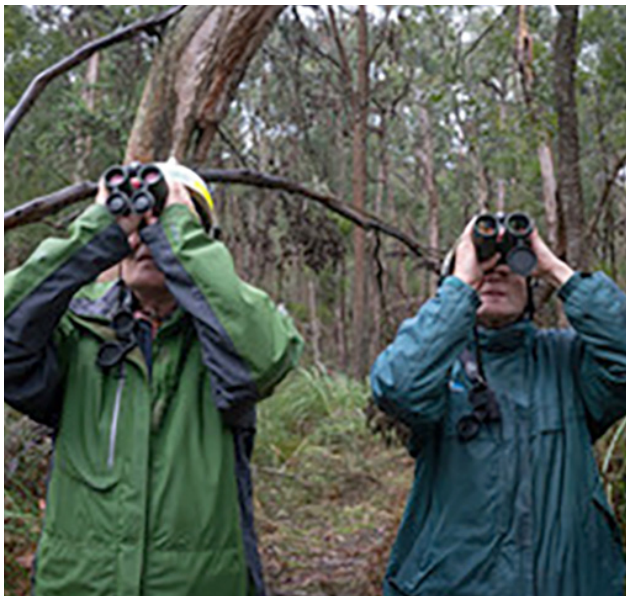
The Panel acknowledges there may be occasions where a stakeholder or member of the community raises issues in their submissions outside our terms of reference. Where appropriate, we may bring these submissions to the attention of DELWP for further consideration.



How are we engaging with the community

You can contribute to the review in several ways:

- Visit the review's Engage Victoria webpage (www.engage.vic.gov.au/independent-review-victorias-wildlife-act-1975) to:
  - provide a brief comment on the review
  - answer some or all of the questions outlined in this issues paper
  - provide a written submission that can be lodged through the Engage Victoria website.
- Email a submission directly to wildlifeact.review@delwp.vic.gov.au



How you can make a submission

Important information about how you can make a submission and the process for publishing submissions can be found on Engage Victoria.

The Panel will hold a small number of meetings and consultation sessions with stakeholders. We are also asking Traditional Owners how they would like to engage with the review.

If you would like to receive updates on the review and submission process, please register your interest on the review's Engage Victoria webpage.

The Panel welcomes relevant data and research that may be provided as an attachment to your submission.

At the end of the review, the Panel will provide a report to the Minister on its findings and recommendations for reforming the Act. The final report is expected to be provided to the Minister by 31 August 2021. Key dates for the review appear below.

Key review dates

Release of issues paper:	Wednesday 28 April
Submissions open:	Wednesday 28 April
Submissions due:	Wednesday 9 June
Final report to Minister:	Tuesday 31 August

A further phase of consultation on the report and government response is anticipated after the Panel delivers the final report to the Minister.

This paper guides discussion about the key issues

The Panel invites submissions and feedback from all stakeholders about reforming the Wildlife Act.

This paper aims to guide discussion of the key issues, starting with issues that have already been identified. The list is preliminary and by no means exhaustive. Each section briefly outlines an issue, and then poses some questions that indicate the information and views the Panel is seeking.

You do not need to answer all the questions, and you don't have to limit your feedback to answering the questions posed in the paper. We invite you to raise other issues and present information about those issues that support your views.

Some background about the Act

There are many ways in which people interact with wildlife, across both the private and commercial sectors. Many Victorians value living in areas rich in wildlife and some actively secure and protect wildlife habitat on private property for conservation purposes. There is also a strong not-for-profit sector who volunteer their time to the rescue and care of sick or injured wildlife. Other interactions involving wildlife include recreational hunting of game species and the management or control of wildlife where they are negatively impacting on people or businesses. Victoria has thriving commercial industries that centre on wildlife and make a significant contribution to State and local economies. These include, for example, businesses involved in breeding, trading, farming, controlling and harvesting wildlife; ecotourism operations such as whale watching, bushwalking and bird watching; producing products such as meat, eggs and leather; and businesses displaying wildlife in wildlife parks.

The Wildlife Act sets the rules about how people interact with wildlife in Victoria. The Act developed out of the *Game Act 1958*, in response to increasing concerns among the community about wildlife conservation and preservation. It has been amended 125 times since it passed into law in 1975. Substantive amendments reflected the emergence of new industries such as whale watching and the establishment of new administrative and statutory bodies such as the Game Management Authority. Many of the other amendments were administrative changes or the consequence of amendments to other Acts. There are a number of government agencies involved in administration of the Act (Appendix A). Box 2 details the Act's key functions.

The Act is one of several that regulate wildlife in Victoria specifically and Australia more generally. Other relevant Acts include the *Flora and Fauna Guarantee Act 1988,* the *Prevention of Cruelty to Animals Act 1986, the Game Management Authority Act 2014,* the *Environment Protection Act 2018*, the *Fisheries Act 1995*, the *Catchment and Land Protection Act 1994* and the *Environment Protection and Biodiversity Act 1999* (Cth), among others. The framework is shown in Figure 1.

Box 2: Key functions of the *Wildlife Act 1975*

Keeping and trading wildlife: Under the Act, it is an offence to kill, take, control or harm wildlife without a permit or licence. Licences permitting private and commercial activities involving wildlife are granted under the Wildlife Regulations 2013.

Managing wildlife: Using the Authority to Control Wildlife (ATCW) system, the Act enables the management and control of wildlife. In some situations, wildlife can be 'unprotected' under the Act, meaning they can be controlled without an ATCW.

Hunting game: Game licences are necessary to hunt game species, including species of deer and ducks that are defined as wildlife under the Act. The Act also imposes on the Game Management Authority monitoring and reporting obligations relating to hunting.

Caring for and rehabilitating wildlife: Authorisations may be granted to allow for the treatment or rehabilitation of sick, injured or orphaned wildlife.

Creating, managing and enforcing protected areas: The Act allows the creation, management and enforcement of state wildlife reserves, nature reserves, wildlife management cooperative areas, prohibited areas and sanctuaries.

Granting permits to conduct wildlife research, tourism and commercial filming: Permits must be obtained to conduct research using Victoria's wildlife, use wildlife in commercial films, and conduct tours in areas protected under the Act. Permits are not required for non-commercial films.

Protecting Victoria's whales, dolphins and seals: Whales (including dolphins) and seals are regulated under specific provisions in the Act. Operators of whale watching, whale (dolphin) swim tours and seal tours must seek permits to undertake tours. Permits may also be granted to keep whales for rehabilitation and scientific and educational purposes.

Figure 1: The framework for wildlife protection in Victoria

***Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth)**

- Nationally listed threatened species and migratory species
- Approvals process for matters of national environmental significance
- Regulates international wildlife trade

Department of Environment, Land, Water and Planning

Minister for Energy, Environment and Climate Change

Department of Environment, Land, Water and Planning

- Wildlife policy and administration of the *Wildlife Act 1975*
- Community education and advice for managing wildlife issues and impacts
- Wildlife population management and research

Office of the Conservation Regulator

- Compliance and enforcement
- Licensing and permits

Wildlife Act 1975

- Protection, conservation and sustainable access and use of wildlife
- Licences, authorisations and authorisation orders
- Offences and Authorised Officers powers
- Protections for whales, dolphins and seals
- Regulates tour operators in State Wildlife Reserves

Flora and Fauna Guarantee Act 1988

- Biodiversity conservation objectives
- Listing of threatened species
- Critical habitat and habitat conservation orders
- Biodiversity strategy

Parks Victoria

- Regulates protection, use and management of Victoria's national parks and other state parks
- Regulates tour operators

Wildlife Regulations 2013

- Regulate the trade, possession and use of wildlife
- Prescribe licences and their conditions
- Prescribe fees, offences, royalties and exemptions
- Habitat protection

Wildlife (Marine Mammal) Regulations 2019

- Regulate activities relating to marine mammals, including tourism

Native Title Act 1993
(Commonwealth)

- Traditional Owner Corporations can apply for a Federal court determination to recognise native title rights

Department of Jobs, Precincts and Regions
Minister for Agriculture

Department of Jobs, Precincts and Regions

- Policy relating to recreational game hunting, animal welfare, agriculture and biosecurity

Prevention of Cruelty to Animals Act 1986

- Animal cruelty offences that apply to wildlife
- Research permits in relation to wildlife
- Exemption from offences for anything done in accordance with the Wildlife Act

Game Management Authority Act 2014

- Establishment of the Game Management Authority

Game Management Authority

- Regulation of game hunting, including deer, native duck, quail
- Administration of game licences
- Regulation and enforcement of kangaroo harvesting program

Wildlife (Game) Regulations 2012

- Regulate game hunting
- Prescribe game licences, conditions and restrictions
- Prescribe fees and offences relating to game

Wildlife (State Game Reserves) Regulations 2014

- Prescribe particulars relating to the management of state game reserves

Department of Justice and Community Safety
Attorney-General

Traditional Owner Settlement Act 2010

- Traditional Owner Corporations can enter into a Recognition Settlement Agreement with the State to recognise their right to access and use wildlife
- Exempt from offences under the Wildlife Act

Local Government
Minister for Planning

Planning and Environment Act 1987

- Section 52.17 of Victoria's Planning Provisions sets out the requirements for a planning permit to remove native vegetation and offset specific impacts on threatened species

Other legislation with intersections with the Wildlife Act:

- ***Catchment and Land Protection Act 1994***
- ***Meat Industry Act 1993***
- ***Crown Land Reserves Act 1978***
- ***Land Act 1958***
- ***Forests Act 1958***
- ***Conservation Forests and Lands Act 1987***
- ***Fisheries Act 1995***

Part 1: What should the Act do?

1.1 Does the Act reflect contemporary attitudes towards wildlife?

Wild animals are valued for a wide range of reasons, and different groups in the community have diverse attitudes and expectations about protecting, interacting with, and using wildlife. A recent study by Boulet et al.[1], for example, found strongly polarised attitudes among Victorians about using lethal methods to control overabundant wildlife: there was roughly equal support for and against lethal control, and few respondents were neutral. Such strongly held views reflect stakeholders' 'self-identifying' interests (both positive and negative) in, and connections to, particular wildlife species, particular geographical areas or both. This diversity means it can be difficult to reconcile competing interests or desires within the community, for example between conserving and using or managing wildlife.

What is acceptable or desirable to different parties depends, in part, on the values ascribed to wildlife. Wildlife has instrumental value if it provides benefits to humans; these benefits may be economic, cultural, emotional, spiritual, recreational or environmental. While the value (or loss of value) associated with commercial activities is relatively easy to evaluate, other kinds of instrumental values are more difficult to quantify. These less tangible benefits include being able to perform traditional expressions of culture; the emotional, spiritual or recreational benefits of seeing, interacting with, taking, protecting or helping wild animals; and knowing that wildlife will exist for future generations.

Further, some wild animals are also intrinsically valuable to some people – that is, their value is independent of the benefits they offer humans – and that value alone warrants their protection and conservation. For these people, wildlife's intrinsic value often translates into moral obligations, for example obligations to protect the welfare of individuals of some species.

When the Act was enacted over 45 years ago, Victorians' values and expectations about wildlife were probably different from those held today. At that time, public awareness of ecosystem destruction, species extinction and loss of biodiversity was just emerging and the shift from focusing on 'natural resource management' to make room for 'biological conservation' was only beginning.

Since then, human settlements and activities have expanded, bringing wildlife into conflict with humans more frequently, and there is increasing concern about the accelerating loss of endemic wildlife species and associated biodiversity and the effects of climate change. Over the same period, factors such as urbanisation, increased education and income, and a growing focus on individual freedoms have influenced values relating to wildlife.

These factors have led to broad changes in attitudes about how animals should be treated, such as increased compassion and care for wild animals and reduced emphasis on using wildlife for human interests. Accordingly, the Act may no longer be consistent with broadly held community values, expectations and aspirations for wildlife in Victoria.

To ensure the Act represents the needs and desires of Victorians now and into the future, we need to understand their values and expectations. The Act also needs to provide mechanisms to capture and respond to changes in community values and expectations over time.

1.1.1 In what ways does the Act succeed or fail in representing contemporary expectations for, and values relating to, wildlife in Victoria? Please provide examples from your own experience.

1.1.2 Are there conflicts between the interests or expectations of different stakeholders or community members regarding wildlife in Victoria? Please provide examples from your own experience.

1.1.3 How can the Act balance the diverse interests of Victorians in protecting, conserving, managing and using wildlife? How might such competing interests be better reconciled in legislation? Are there examples from other sectors or other jurisdictions (both in Australia and internationally) that may be useful?

1 Boulet, M., Borg, K., Faulkner, N. and Smith, L. 2021. 'Evenly split: Exploring the highly polarized public response to the use of lethal methods to manage overabundant native wildlife in Australia.' *Journal for Nature Conservation* 61, 125995 https://doi.org/10.1016/j.jnc.2021.125995.

1.2 Is the intent of the Act clear?

Good legislation contains clear and consistent objectives that provide guidance about the desired outcomes and give a firm foundation for its operational provisions.

Currently, the purposes of the Act (stated in s 1A) have an operational focus:

a. To establish procedures in order to promote
   i. The protection and conservation of wildlife
   ii. The prevention of taxa of wildlife from becoming extinct; and
   iii. The sustainable use of, and access to, wildlife; and

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

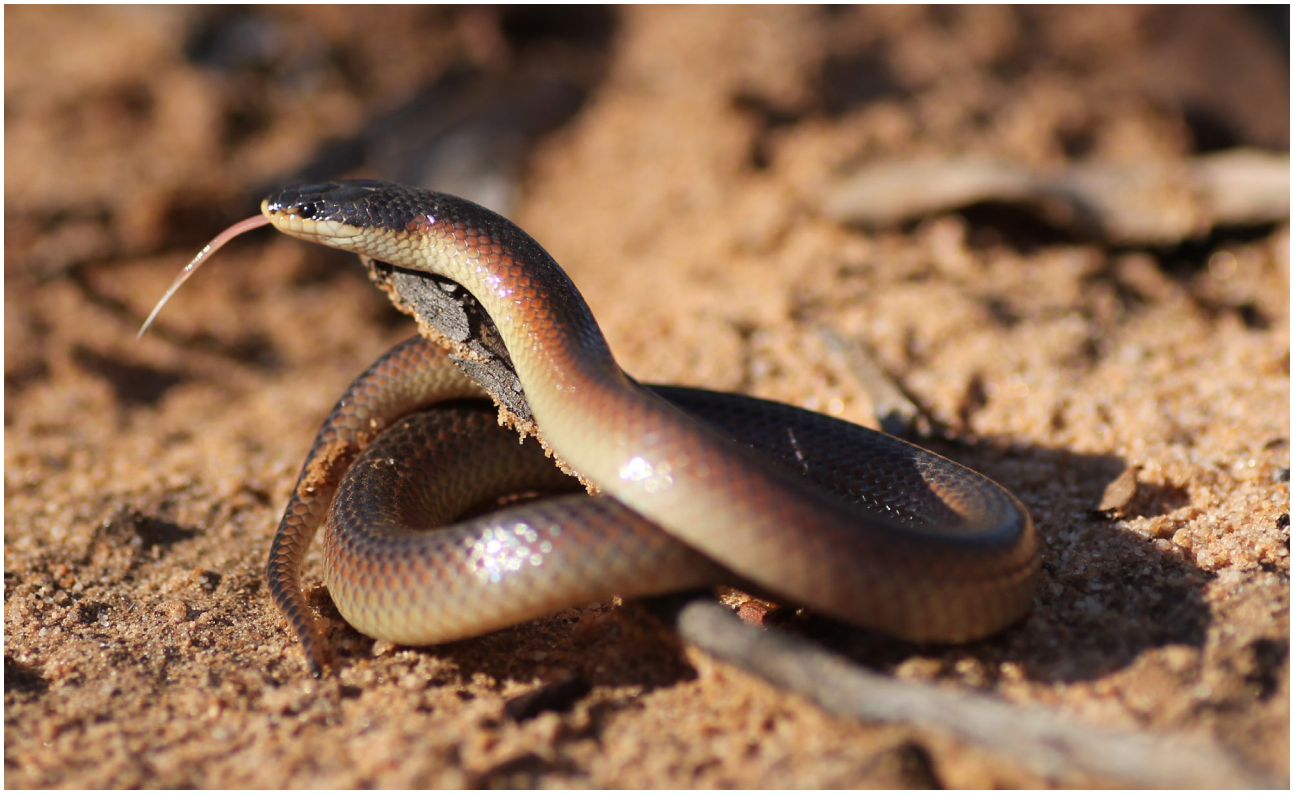
The Act's stated purposes – 'protection', 'conservation' and 'sustainable use' – sit uneasily together and, in fact, are often in direct conflict. In particular, some activities sanctioned by the Act, such as protection offered to some introduced animal species and 'take' or 'unprotection' of indigenous wildlife, do not appear to be consistent with conservation of wildlife or prevention of extinction.

Without clearly stated desired outcomes and specific objectives, there is no way to decide which operations should take precedence nor whether those objectives and outcomes are being achieved.

1.2.1 Are the current purposes of the Act satisfactory? What should the outcomes, objectives or purposes of the Act be? How should the objectives and purposes of the Act relate to the desired outcomes? How would they ensure desired outcomes are achieved?

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

1.2.3 Are there examples of well designed legislation from other jurisdictions (both in Australia and internationally) with clearly stated objectives and purposes that could inform Victorian law?



1.3 The Act doesn't appear to appropriately recognise the rights and interests of Traditional Owners and Aboriginal Victorians

The Victorian Government acknowledges Victorian Aboriginal communities as Australia's First Nations, and that as the world's oldest continuing culture they have an intrinsic and lasting connection to Victoria's land, waters and animals. It also acknowledges that the culture, customs, and practices of Victorian Aboriginal People valued, protected and shaped the land and its animals over thousands of years.

Australia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples. As a signatory, Australia acknowledges the right of its First Nations to exercise self-determination. The Victorian Government also acknowledges this right, which is reflected in the *Aboriginal Self-Determination Reform Strategy 2020–2025: Pupangarli Marnmarnepu 'Owning Our Future'*. In this context we consider recognition in the Act of the rights and interests of Traditional Owners and Aboriginal Victorians and the role of Traditional Owners and Aboriginal Victorians in decision making related to conserving, protecting and using wildlife (see Appendix C).

1.3.1 Is the Act a barrier to self-determination for Traditional Owners or Aboriginal Victorians? If so, what specific elements give rise to barriers and how might these barriers be reduced or eliminated?

First Nations Australians have played a significant role in managing the country's natural resources for many thousands of years. Supported by deep and continuous ecological knowledge, the use of fire and agricultural practices have shaped contemporary Australian landscapes. These landscapes supported a biodiverse fauna that play an important role in the cultural practice of Traditional Owners and Aboriginal Victorians.

1.3.2 Should the Act recognise the cultural significance of Country and wildlife to Traditional Owners and Aboriginal Victorians? Should the Act explicitly recognise the value of Indigenous Ecological Knowledge for the stewardship of Country and the conservation of wildlife?

Currently, references to Traditional Owners in the Act are mainly limited to taking, hunting or using wildlife. However, Traditional Owners also have a cultural obligation to protect Country and wildlife. These obligations can be realised in many ways.
For instance, each nation has totems that represent sacred animals and areas. The Maar of south-west Victoria have a diverse relationship with several totemic species: Bunjil (the wedge-tailed eagle) is commonly considered a totem and creator sprit of the Maar, the sulphur-crested cockatoo and red-tailed black cockatoos represent the kinship moieties of the nation, and Kuuyang (eel) is a major cultural identity. Likewise, individuals of each nation have personal totems, which ensures that many native species are someone's responsibility. Individuals are responsible for protecting their totem and normally totemic species are not to be eaten. In this way, wildlife is protected both by nations and individuals.

1.3.3 Should the Act prescribe a role for Traditional Owners and Aboriginal Victorians as key partners in decision making about conserving wildlife? What could that role look like?

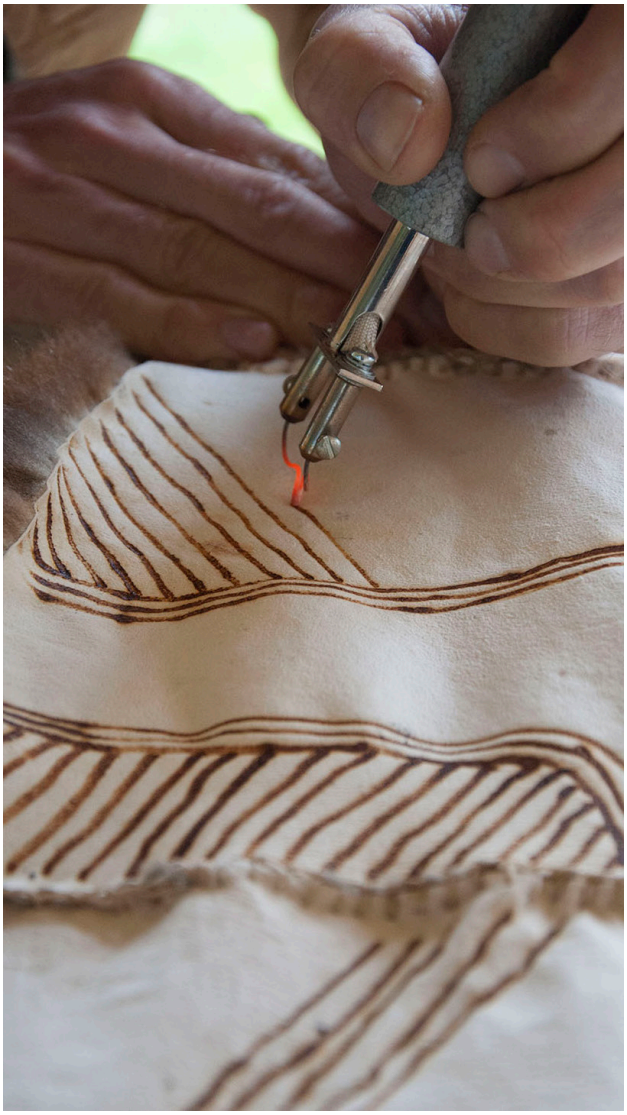
Some species have high cultural importance to Traditional Owners and Aboriginal Victorians, yet these species are not recognised under the Act or any other Victorian statute as being culturally important. The Act does not require consideration of the impacts on Traditional Owners when these totem animals are hunted or killed on Country. Nor does it enable the restoration of culturally significant species to country where those species are no longer extant.

1.3.4 Should the Act afford additional protection and the ability to return species to country because of their cultural significance?

Wildlife provides resources including food, medicine and skins, so using and taking wildlife plays an important role in the continuing cultural practice of Traditional Owners and Victorian Aboriginals. Common examples include harvesting kangaroo and wallaby for meat and collecting possum skins to create cloaks.

In Victoria, several pathways allow Traditional Owners and Aboriginal Victorians to use wildlife. The *Native Title Act 1993* (Cth) allows Native Title holders to undertake certain activities (defined as hunting, fishing, gathering, a cultural or spiritual activity or any other kind prescribed) which is generally interpreted in Victoria to exempt Native Title holders from offences under the Wildlife Act when undertaking these activities. Similarly, Traditional Owners who have entered into a Recognition and Settlement Agreement under the Victorian *Traditional Owner Settlement Act 2010* and who are acting within the terms of that agreement are also exempt from most offences under the Wildlife Act.

However, apart from these circumstances, all relevant legislation, including the Wildlife Act, applies to any cultural practice that involves wildlife. Therefore, many Traditional Owners and Aboriginal Victorians must still apply to government for taking, hunting or using wildlife. Similarly, the Act does not allow for commercial use of wildlife by Traditional Owners and Aboriginal Victorians.

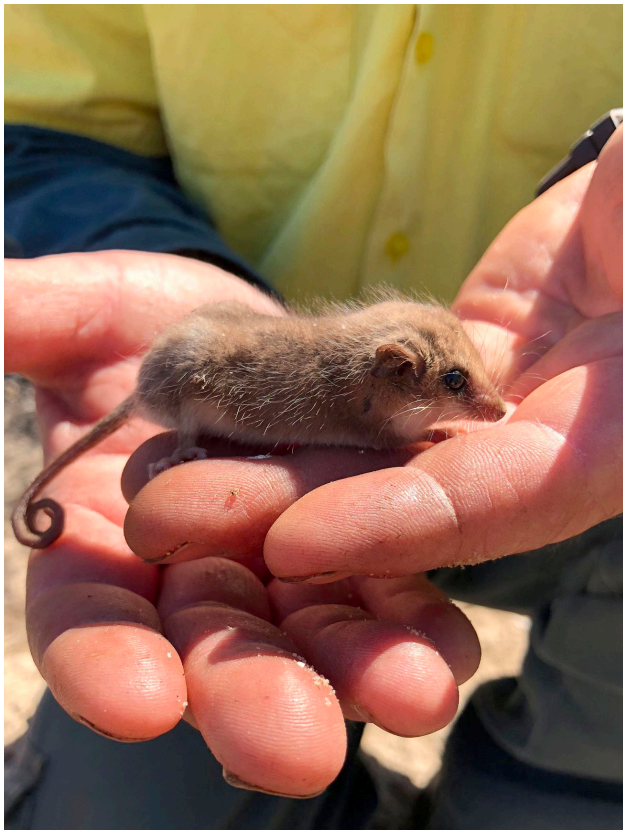


1.3.5 Does the Act provide appropriate mechanisms for Traditional Owners and Aboriginal Victorians to use wildlife? Should the Act support commercial use of wildlife by Traditional Owners and Aboriginal Victorians?

1.4 Could a general duty help clarify roles and responsibilities?

A duty of care is an obligation to avoid or undertake acts that could reasonably be foreseen to cause or avoid injury or harm. Proponents argue that general duties can fill gaps in existing legislation where no specific duties are imposed, and in the context of environmental management can be used to articulate standards and positive measures. When backed by appropriate guidelines they can also guide individuals on their roles and responsibilities and what practices are acceptable.

A duty of care may exist both in common law and statute law. A common law duty of care can only protect the environment or wildlife indirectly because it relates only to harm to personal interests. In other words, it can only impose a legal liability for impacts on persons and property arising out of activities that cause harm. Consistent with common law, statutory duties of care tend to be owed to individuals, but they may also be owed to the environment itself. Such a duty can also be applied to government bodies such as those responsible for managing public lands, for example to require proactive action to repair and restore degraded areas.



A statute law duty of care relating to environmental protection has already been introduced in some Australian jurisdictions, including Victoria. The South Australian, Tasmanian and Queensland environmental protection Acts, for example, impose a general obligation on people to take all reasonable and practical measures to prevent or minimise pollution or environmental harm. Similarly, in Victoria, the *Environment Protection Amendment Act 2018* introduced a broadscale, positive obligation on 'a person who is engaging in an activity' to proactively prevent and minimise risks of harm to the environment and human health from pollution and waste 'so far as reasonably practicable'.

Defining the duty as one owed to individuals means it focuses on the financial penalties of breaching the duty, rather than encouraging individuals to consider their impacts on the environment. Alternatively, a statutory duty of care that is owed to the environment can encourage individuals to focus on the environment. However, such duties may be difficult to enforce and may not provide much additional protection for biodiversity if direct environmental protection legislation exists.

Recognising or imposing a duty of care affects who bears the costs of achieving desired outcomes. Federal and most state law provides some rights of compensation for removing property rights which may result from imposing new duties. Given this, it may be necessary to help people understand their obligations under a general duty, by phasing in standards of best practice, and/or helping with the costs of fulfilling their obligations.

Importantly, a statutory duty of care is unlikely to be a panacea and would need to be supported by complementary approaches to support shared responsibilities.

1.4.1 Should the Act prescribe a general duty of care related to wildlife conservation or biodiversity protection more broadly? Why or why not? How could it work in practice?

1.5 Definitions of key terms can be unclear and confusing

The Act's definitions of wildlife and protected wildlife are complex, may not reflect what most people would consider wildlife, may create confusion about what is or is not covered, and affect the ability of the Act to achieve its objectives. Figure 2 shows the animals that are covered and not covered under the Act.

Section 3 of the Act defines 'wildlife' to include vertebrate animals indigenous to Australia or its territories or terrestrial waters, as well as terrestrial invertebrates listed as threatened under the *Flora and Fauna Guarantee Act 1988* (FFG Act). The definition extends to wildlife kept and bred in captivity. The Act references wildlife in any form, whether alive or dead and whether the flesh is raw or cooked or preserved or processed. The definition includes parts of the animals such as the skin, pelage, plumage, fur, skeletal material, organs, blood, and the eggs or any part of the eggs.

However, some indigenous vertebrates (fish) and invertebrates (marine or non-threatened terrestrial species) are specifically excluded from the Act's definition of wildlife and thus from any protections it may confer.

The Act provides for the Governor in Council to proclaim any wild animal to be wildlife for the purposes of the Act, including non-indigenous animals such as deer and some game bird species (game). The ability to protect non-indigenous animals highlights the competing purposes of the Act, and is considered counterintuitive by some stakeholders. For example, deer proclaimed to be wildlife under the Act can destroy the habitat of indigenous wildlife and therefore undermine the Act's goals to preserve and conserve indigenous species.

Figure 2. Taxa or categories of wildlife animals included in, or excluded from, the definition of wildlife in the Wildlife Act

Terrestrial taxa	**Terrestrial vertebrates that are indigenous to Australia** (incl. fauna listed as threatened under FFG Act)^ e.g. koalas, magpies and blue-tongue lizards	**Non-indigenous vertebrates declared to be 'game' by the Governor in Council^** e.g. deer, non-indigenous ducks and quail, pheasants, partridges	
	Terrestrial invertebrates listed as threatened under FFG Act e.g. Giant Gippsland earthworm, Golden sun moth	**Terrestrial invertebrates not listed under FFG Act** e.g. some insects and snails	**Non-indigenous vertebrates declared as 'pests' under CaLP Act** e.g. foxes, rabbits
Aquatic taxa	**Aquatic mammals, birds, reptiles and amphibians including marine mammals^** e.g. whales, dolphins	**Fish** e.g. eels and other marine and freshwater bony fish, cartilaginous fish such as sharks and rays	**Aquatic invertebrates** e.g. oysters and other molluscs, aquatic crustaceans, echinoderms
Colour Key:	Included in Wildlife Act*†	Excluded from Wildlife Act	

* Wildlife includes wildlife in any form, whether alive or dead, whether the flesh is raw, cooked, preserved or processed, and includes skin, pelage, plumage, fur, skeletal material, organs, blood, tissue or any other part and the eggs or any part of the eggs thereof. It also includes those that are bred or kept in captivity or confinement and hybrids of wildlife.

† All wildlife is 'protected wildlife' unless specifically unprotected or declared as pests.

^ Any wildlife, indigenous or introduced, may be declared 'unprotected' by the Governor in Council in specific areas or circumstances (e.g. brushtail possums are unprotected when living in residential buildings or municipal parks (subject to conditions) but remain protected in all other circumstances).

Adding further complexity is that some indigenous species may become 'unprotected' in some circumstances, through the Governor in Council's conferred power. Unprotection orders are currently in place for brushtail possums, long-billed corellas, sulphur-crested cockatoos, galahs, and dingoes (on private land only) and most species of deer. Most of these orders do not apply across Victoria uniformly; they apply to specific areas, under specific circumstances and are subject to conditions which are not widely known. While offering flexibility, this element can cause uncertainty and affect compliance.

The term 'protected' can also be confusing because some people assume it implies the species is 'threatened'. This causes confusion about the meaning and purposes of 'protection' and its role in achieving the objectives of the Act. In addition, the failure to define terms such as 'protection' can lead to the expectation that safeguarding the welfare of individual wild animals is a key purpose of the Act.

There are a number of other issues related to definitions. For example, terms such as 'habitat', 'destroy' and 'disturb' are not defined, which can hinder enforcement of parts relating to protecting wildlife habitat.

1.5.1 Are there any definitions that are unclear or confusing or that cause problems for achieving the outcomes and objectives of the Act?

1.5.2 Should any additional animal species or taxa (groups of species) be included in the definition of 'wildlife' or 'protected wildlife'? Should any species or taxa be excluded and therefore be exempt from some provisions in the Act?

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

Part 2: How does the Act interact with other legislation about wildlife and animals?

2.1 There are overlaps and gaps in the broader legislative framework

In some instances, the relationship between the Act and its regulations and other statutes that regulate wildlife can create problems. Figure 1 shows the complex array of legislation regulating wildlife which includes the Act, as well as other Victorian and Federal legislation. These complex legislative arrangements create several issues, for example:

- Some taxa of animals are not covered by the Act or any other Act. For example, the Act does not apply to 'fish' within the meaning of the *Fisheries Act 1995*. This is particularly problematic given that some fish (eels, for example) have special cultural significance to some Traditional Owners and Aboriginal Victorians. Similarly, indigenous terrestrial invertebrates that are not listed as threatened under the *Flora and Fauna Guarantee Act 1988* (FFG Act) are not protected under any legislation.
- Some taxa are covered by multiple Acts. For example, some threatened species have specific provisions relating to their protection and management under Victoria's Wildlife and FFG Acts, and the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*.

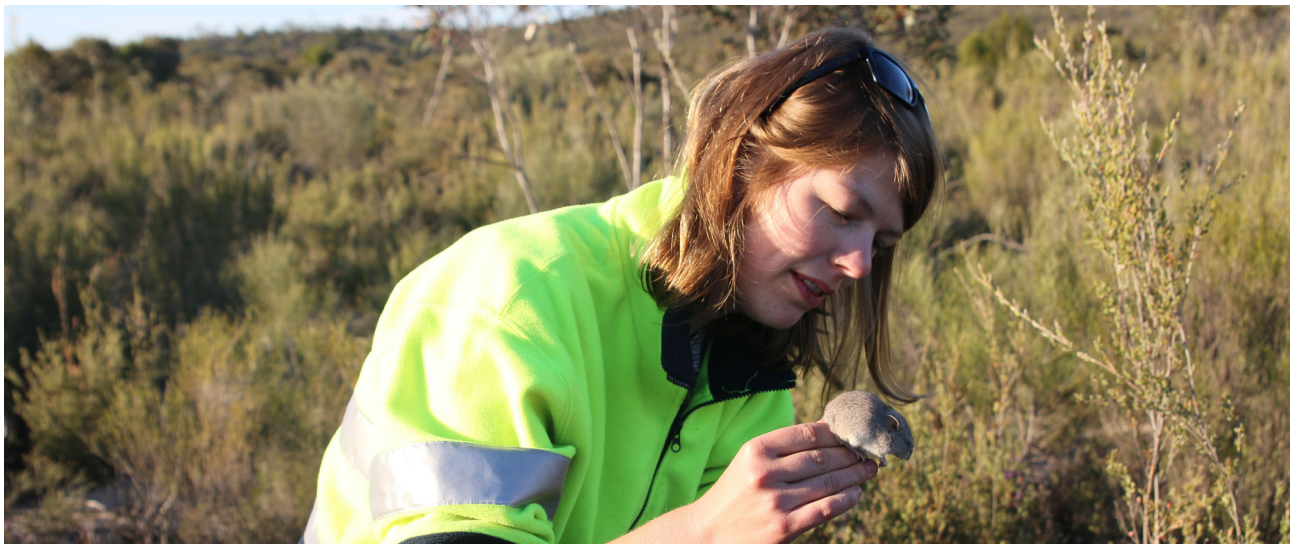
Importantly, the scale of planning for protection, conservation and management of wildlife and wildlife habitat varies between relevant legislation and associated regulations. Achieving conservation and biodiversity protection objectives requires planning and operating at the ecosystem or landscape level, rather than developing plans for privately owned lands, state reserves or regions.

While the Panel's terms of reference do not extend to examining other statutes that regulate wildlife, the Panel can consider the relationship between the Wildlife Act and other legislation. There may be arguments for amalgamating some parts of existing Acts into a broader statute that encompasses all aspects of biodiversity. For example, the *Biodiversity Conservation Act 2016* (NSW) regulates both fauna and flora, as well as land management and development. Similarly, the *Nature Conservation Act 2014* (ACT) provides a more comprehensive approach to regulating native plants and animals. There may also be advantages to managing game species through their own Act.

2.1.1 Do you have any comments on the interactions between the Wildlife Act and other legislation?

2.1.2 Should wildlife, flora and fauna generally be regulated by a more inclusive statute?

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



2.2 Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act

The movement and distribution of many Australian wildlife species, such as kangaroos and birds, across state borders requires the involvement of multiple jurisdictions in their management and regulation.

Wildlife management should account for impacts on the whole population regardless of state borders or land tenure, to ensure wildlife control or management is appropriate and sustainable. Currently, authorisations under the Act to control or manage wildlife that cause damage (Authorities to Control Wildlife or ATCWs) can be issued only to the property owner for damage that occurs on a specific property, while the impact on a species can be cumulative within its natural range. Although the level of control can be accounted for (for example, by considering authorisations granted for neighboring properties), in practice this rarely leads to an outright refusal to grant an ATCW. In areas where some species may be perceived to be locally abundant and ATCW applications for their control are common, the regulator has limited ability to consider cumulative impacts of multiple control authorisations on the species' population as a whole. The Act does not provide decision makers with sufficient guidance, consistent tools to measure impacts or a set of principles that must be considered when deciding on issuing ATCWs for common and widespread species.

The same applies to populations that span state borders, where the control or management of the species can be subject to different requirements depending on which side of the border the property is on. In some cases, regulatory differences are necessary to best suit the particular challenges facing each state. In other cases, regulatory approaches between jurisdictions may be inconsistent, leading to the inadequate management and conservation of Victorian wildlife. This situation not only jeopardises the sustainability of wildlife populations but can also cause confusion and complexity for owners whose properties span the borders and require authorisation to control or manage wildlife.

Another cross-border inconsistency relates to hunting indigenous game birds such as the Pacific black duck, a nomadic species whose movements depend on rainfall and seasonal shifts. In New South Wales, indigenous game birds may be hunted only for management purposes through a native game bird management licence under the *Game and Feral Animal Control Act 2002* (NSW) and the Game and Feral Animal Control Regulation 2012. In contrast, in Victoria, indigenous game birds may be recreationally hunted through a duck-specific game licence under the Wildlife Act and the Wildlife (Game) Regulations 2012.

In Victoria, import–export permits are granted under the Wildlife Act for cross-border wildlife trade. Wildlife must be self-sufficient to be transported into or out of Victoria. A permit is not necessary for emu egg shells, cast or shed wildlife feathers, sloughed skins of reptiles, cast antlers of deer, some wildlife species listed under Schedule 4 and 5 of the Wildlife Regulations 2013, some bird species listed under Schedule 1 of the Act, and legally obtained dead game. In contrast, in New South Wales, an interstate import–export licence is granted under the *Biodiversity Conservation Act 2016*. A licence is not necessary for introduced or exotic species, dingoes, and some species of native birds. The NSW system makes no distinctions about the state of wildlife. It does not require that wildlife be self-sufficient and does not make reference to the trade of products made from dead wildlife.

Where wildlife crime occurs across state borders, Victorian legislation penalties are relatively low. This may mean that in practice, illegal activity (including smuggling and poaching) may be more attractive in Victoria, to avoid more stringent regulation in other states.

Additionally, most offences within the Act are not indictable – that is, they are generally treated as summary offences and will be normally heard in a Magistrates' court rather than by a judge and jury. This limits the role of authorised officers and the Victoria Police to investigate where wildlife crime crosses borders. Accordingly, evidence crossing borders cannot be seized by the regulator; its jurisdiction does not extend to other states because it is not party to arrangements for interstate cooperation. Information sharing between regulatory authorities across state borders is poor, and there are no provisions in the Act that consider these activities.

2.2.1 How do regulatory differences between states help or hinder wildlife management? Please provide examples from your own experiences.

2.2.2 How can the review of the Act address differences in regulation across land tenure regimes?

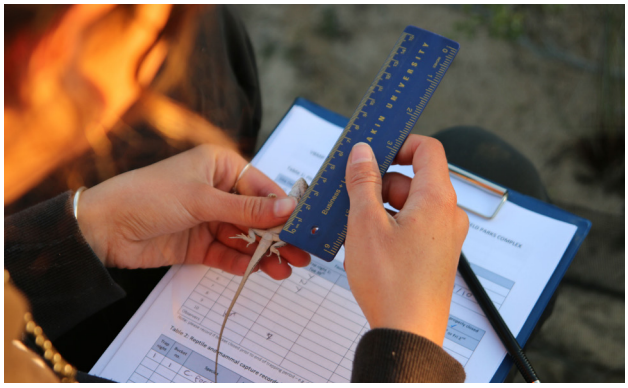
2.3 The current legislative framework doesn't preserve and conserve habitat

Habitat health and integrity are necessary components of protecting and conserving Victoria's wildlife. Habitat is an organism-specific term referring to the resources and conditions that allow a species to survive and reproduce, including vegetation, water bodies and the climate. It recognises the link between a species and its environment. The latest Victorian State of Environment Report identifies the clearing, fragmentation and declining quality of habitat as one of six major threats to biodiversity, with native vegetation being lost in Victoria at a rate of 4,000 habitat hectares per year. The destruction and degradation of habitat has flow-on effects on Victoria's native wildlife, increasing the vulnerability of our ecosystems.

The Act addresses conservation by regulating direct threats to wildlife, such as taking wildlife without an authorisation or licence. However, it does not account for indirect threats such as the destruction of wildlife habitat.

Nonetheless, the Act has several tools that indirectly provide for habitat protection. State wildlife reserves and nature reserves, for example, may be created to propagate and manage wildlife and preserve wildlife habitat. Offences include prohibitions on unauthorised removal of sand (s 21) and fallen trees (s 21AA) in state wildlife and nature reserves. However, neither directly references habitat, acknowledges the impacts of habitat destruction on wildlife nor applies to wildlife habitat outside of state wildlife and nature reserves.

Section 87(1) of the Act allows the Governor in Council to make regulations for preservation and maintenance of wildlife habitat. Section 42 of the Wildlife Regulations 2013 makes it an offence to damage, disturb or destroy wildlife habitat without authorisation. But neither the Act nor the regulations define wildlife habitat.



In practice, a permit is required to remove native vegetation under clause 52.17 of the *Victoria Planning Provisions* which applies statewide. The clause aims to ensure there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation and is achieved by:

- avoiding removal, destruction or lopping of native vegetation
- minimising impacts from the removal, destruction or lopping of native vegetation that cannot be avoided
- providing an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.

The *Guidelines for the removal, destruction or lopping of native vegetation* (made under clause 52.17) are incorporated into the planning scheme and must be complied with.

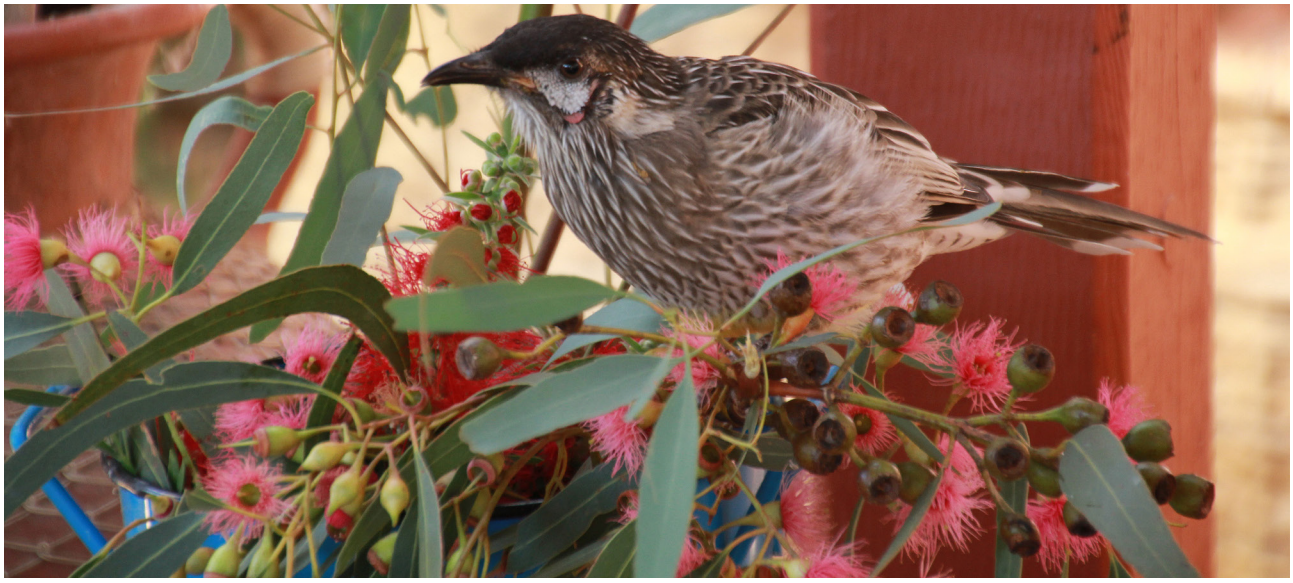
2.3.1 In what ways does the Act succeed or fail in protecting and conserving wildlife habitat? Please provide examples from your own experience.

2.3.2 How should the Act provide for the protection and conservation of wildlife habitat?

In addition, the Act does not specify the obligations of landholders relating to habitat on their land. Private land occupies around two-thirds of Victoria's total land area. As such, landowners play an important role in conserving and managing Victoria's wildlife.

Private landowners may voluntarily engage in conservation, such as through voluntary land management cooperative agreements under Part 8 of the *Conservation, Forests and Lands Act 1987*. However, landowners are not subject to any mandatory or minimum obligations towards wildlife conservation. In contrast, the *Catchment and Land Protection Act 1994* imposes general duties on landowners, such as taking reasonable steps to avoid contributing to land degradation, conserve soil and protect water resources and management of vertebrate pests.

2.3.3 Should the Act prescribe duties for landowners about protecting and conserving wildlife and wildlife habitat on their land? What could those duties look like?



2.4 The treatment of wildlife as property

In Australia, state governments have primary responsibility for natural resources, including native fauna. The Australian Government has constitutional power over exports, including exports of native fauna, plus responsibility for implementing international treaties. Wildlife ceases to be property of the Crown when taken under a licence; 'ownership' then transfers to a non-state owner under circumstances that are highly regulated.

Jurisdictions such as Queensland and New South Wales now explicitly specify that indigenous wildlife, unless lawfully taken or used, is the property of the Crown (*Nature Conservation Act 1992* (Qld); *Biodiversity Conservation Act 2016* (NSW)). In contrast, Victoria's Wildlife Act does not confer this status. This is relevant to the rights, interests and obligations of the Crown, private landowners and licence holders relating to wildlife.

'Property' can be thought of as comprising a collection of rights which vary according to the specific property interest at issue. The High Court (Yanner v Eaton (1999) 201 CLR 351 10 – 31) held that the nature of property in relation to indigenous wildlife is not the same as 'absolute ownership' but it may give rise to regulatory or supervising rights for the Crown. In this sense, wildlife can be said to be a natural resource held in trust by the state for the public. This approach is well established in the United States but is less clear in Australian law.

Although in Victoria it is implied that unless wildlife is taken or held under a licence or authorisation it is ultimately the property of the Crown, some stakeholders suggest clarifying rights relating to wildlife, which would arguably impose fundamental obligations on the Crown to ensure sustainable management of wildlife and their habitat for the benefit of current and future generations.

Some stakeholders also support granting some private property rights to landowners over wildlife on their property. Doing so could provide financial incentives to protect habitat and increase the distribution and abundance of species on private land. Various property rights approaches, including a private custodianship model, have been implemented successfully in some circumstances internationally.

Another view altogether is that wildlife should not be considered as property at all; rather, the law should recognise inherent rights in wild animals (wildlife and nature as legal subjects).

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

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

2.4.3 Should the Act recognise sentience of some wildlife and, if so, what would this achieve? How would this recognition affect the rights and responsibilities of governments, businesses and individuals?

2.4.4 What rights and responsibilities should Traditional Owners and Aboriginal Victorians have related to wildlife?

Part 3: What mechanisms does the Act need to achieve its objectives?

3.1 The Act lacks principles about how to manage wildlife

The Act does not contain principles that provide clear direction for managing Victoria's wildlife.

There are many definitions of the term 'principle', but most have in common the notion of fundamental truths, beliefs or propositions that either explain or direct how something happens or works. Explanatory principles may be external to legislation but guide its design (e.g. the principles of smart regulation), while 'directing' or rules-based principles are set within legislation and guide its implementation (e.g. the precautionary principle).

A legislated objective clarifies an Act's role, while legislated rules-based principles can provide direction to decision makers on how to perform their function under the legislation. Principles should align to an Act's objective and provide a practical and rigorous framework for decision making. Such principles recognise that regulators often face trade-offs, and that their decision making often involves balancing different values and outcomes.

Principles in the Act could relate to wildlife management or conservation, as well as the Act's application more broadly.

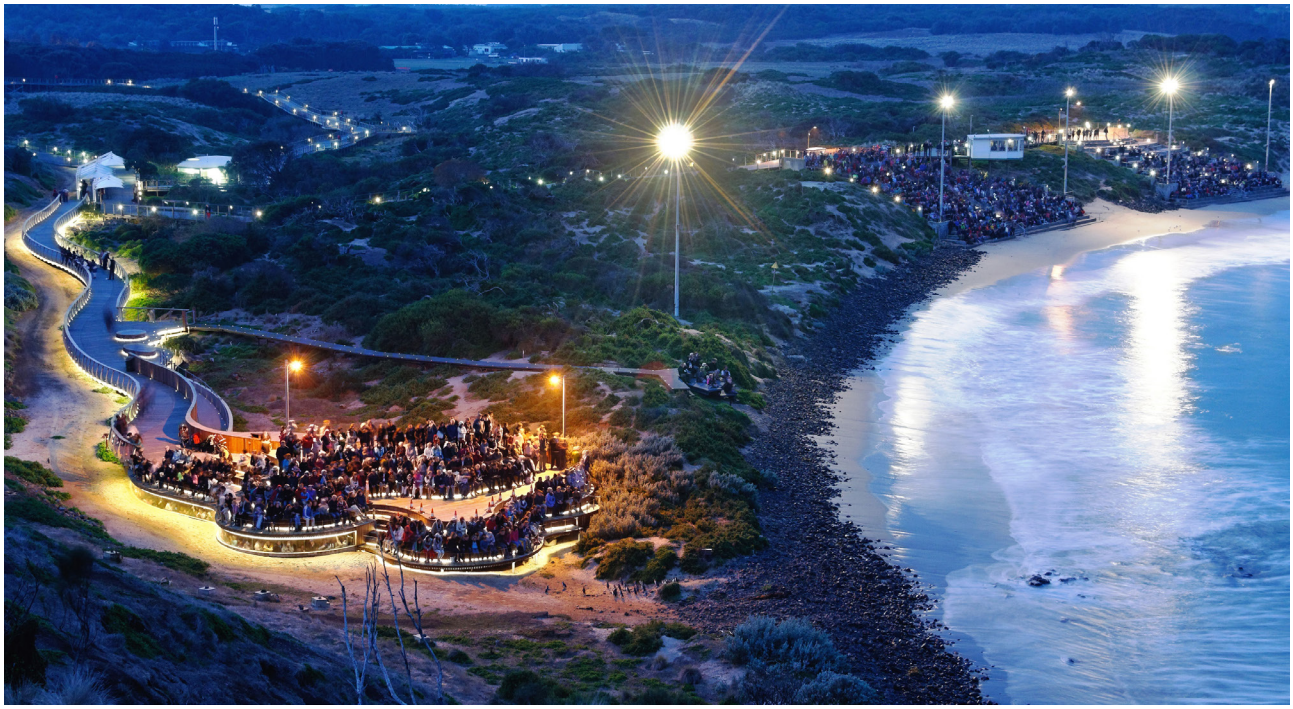
An example where principles have been incorporated into legislation is the recent amendments to the Environment Protection Act, which included that:

- environmental, social and economic considerations should be effectively integrated
- prevention is preferred to remedial or mitigation measures
- decisions, actions or things directed towards minimising harm or a risk of harm to human health or the environment should be proportionate to the harm or risk of harm that is being addressed (proportionality)
- responsibility should be shared by all levels of Government and industry, business, communities and the people of Victoria
- actions or decisions are to be based on best available evidence in the circumstances that is relevant and reliable
- where threats of serious or irreversible harm to human health or the environment, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or minimise those threats (the precautionary principle)
- members of the public have the right for their interests to be accounted for in decisions made under the Act.

A number of other principles could also be considered, including:

- principles related to participation, consultation and involvement in decision making, including that a decision, policy, program or process account for the rights and interests of Traditional Owners in relation to wildlife
- principles promoting particular economic measures, such as that polluters should pay for the costs of their environmental impacts
- the principle of ecosystem-based management
- the principle of ecologically sustainable development
- the principle of adaptive management.

3.1.1 Should the Act include statements of principle and criteria to guide regulators, duty holders and the public? Why are such principles important? If you do support including principles, what do you think they should be and why?



3.2 Does the Act facilitate an equitable and participatory approach to wildlife management and conservation?

There are no provisions in the Act that require or enable broader participation from the community or interest groups in planning and developing strategies for wildlife management and conservation. Emphasising equitable and participatory approaches to wildlife management and conservation may lead to better representation of diverse values and expectations, the development of innovative solutions, more streamlined systems and processes and an improved sense of duty and compliance in some areas. Further, non-government sectors such as charities and not-for-profit organisations and those in the private sector can play significant roles in leadership and governance, including contributing to the design and implementation of strategies aimed at conservation, management and sustainable use of wildlife. Given this, there is value in considering whether the Act should incorporate provisions requiring or enabling consultation and engagement with stakeholders and community members and whether there are currently barriers to involvement by the private sector.

Participatory approaches to planning and decision making are likely to be particularly important and effective for wildlife issues that involve multiple landowners (including the State government), for species that are wide-ranging or migratory, and thus cross jurisdictions, and for highly contested issues such as kangaroo control and managing wild dogs versus conserving dingoes. For example, regular community consultation about overabundant or destructive wildlife is reported to be useful for information sharing including about alternatives to lethal control. This approach could support the development of effective wildlife management plans and damage-mitigation strategies at a regional level rather than by individual landowners operating in isolation. Consultation would also allow collection of informal data about the impacts of wildlife on communities and the impacts of people and activities on wildlife to supplement official reporting.

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

3.2.2 How can community involvement in decision making under the Act be improved?

3.2.3 Are there currently barriers to private sector actors having meaningful involvement in wildlife management and conservation in Victoria? What are those barriers and what problems do they create for achieving the objectives of the Act? How might any such barriers be removed or minimised?

3.3 The Act has no framework for enabling wildlife management plans

The Act has no enabling powers or framework for establishing plans that manage, conserve or preserve wildlife. Wildlife management plans are critical to effective protection, conservation and sustainable use of wild animals and their habitats. They integrate and coordinate activities that involve wildlife, as well as the impacts of decisions and authorisations by various government agencies. They also recognise movement of many species across jurisdictions and land ownership types, and the integral links between animal and land management. Such plans should have clear objectives and principles, and indicate how the plan interacts with other Acts, policies, codes and guidelines.

Currently, wildlife management plans are mentioned only in s 28A (authorisations) and ss 28G and 28H (authorisation orders), under which the Secretary (DELWP) can authorise a person to undertake a range of actions such as hunting, taking, destroying, disturbing, marking, buying, selling, breeding and displaying wildlife if satisfied that the authorisation is necessary to support a recognised wildlife management plan. However, the Act does not specify what should be in plans nor how plans are recognised or approved.

The authorising provisions have been used to grant ATCWs for complex situations which requires the land manager to prepare a management plan before issuing the ATCW. This situation relates most commonly to damage caused by eastern grey kangaroos. Another example is the Kangaroo Harvesting Program, under which a Kangaroo Harvest Management Plan (KHMP) has been approved by the Secretary (DELWP). The Game Management Authority issues kangaroo harvesters with a s 28A(1)(a)(h) authorisation which requires that harvesters must comply with the KHMP.

The lack of guidance on what a management plan must include may lead to poorly developed plans, inconsistency and lack of clarity on expected standards. In contrast, the *Fisheries Act 1995* (s 28) enables the development of fishery management plans and provides an example of criteria with which plans must comply. These criteria include that the plan must be consistent with the objectives of the Act, and that the plan must include management objectives, and guidelines for the criteria used to issue licences and permits. Further, the plan must:

> *as far as is known, identify critical components of the ecosystem relevant to the plan and current or potential threats to those components and existing or proposed preventative measures;*
>
> *(f) specify performance indicators, targets and monitoring methods;*
>
> *(g) as far as relevant and practicable, identify in respect of the fishery declared noxious aquatic species or fisheries reserve, the biological, ecological, social and economic factors relevant to its management including—*
>
> *(i) its current status, human uses and economic value;*
>
> *(ii) measures to minimise its impact on target species and the environment;*
>
> *(iii) research needs and priorities;*
>
> *(iv) the resources required to implement the plan. (s 28(6)(aa)).*

3.3.1 Should the Act enable wildlife management plans? What provisions should be included for such plans?

3.4 The permissions framework lacks clarity, transparency and accountability

Licences, permits and authorisations are the Act's principal tools for regulating the conservation, management and use of wildlife. They allow the regulator to protect the community, minimise or prevent harm, facilitate enforcement and enhance probity. Although expensive to operate, they also provide a means of recovering the costs of the scheme through fees (discussed below). However, licences and permits also restrict access to markets and reduce competition.

Currently, a number of provisions grant various forms of permissions: commercial wildlife licences; private wildlife licences; game hunting licences; authorisations to control wildlife that damages crops or property; authorisations relating to research, health and safety, and Aboriginal cultural purposes; authorisations relating to the care, treatment or rehabilitation of sick, injured or orphaned wildlife; and different types of wildlife tours. Licences, authorisations and permits are issued in most part by the Conservation Regulator who is responsible for compliance under the Act.

Criticisms of the permissions provisions of the Act include the following:

- They lack clarity and accountability and are not informed by a clear objective.
- The Act does not contain a graduated permissions system that would allow a better risk-based approach to authorisations.
- The Act does not consistently provide for a negative licensing system that would exempt certain classes of people from needing to hold a licence (i.e. a person would not require a licence or permit to enter a market but any serious breach of a standard may exclude them from undertaking that activity).
- The Act does not provide clear, consistent decision frameworks for refusing, cancelling or suspending different permissions. (For example, the Secretary (DELWP) must prove a person is not 'fit and proper' to hold a wildlife licence, rather than the applicant having to prove their fitness.)
- Some licences may be perceived as a public right to possess wildlife, rather than a privilege.
- The Act contains no provisions that require the holder of an authorisation to report on the use and outcomes of that authorisation, with the result that it is not possible to determine how they affect wildlife populations (discussed in Part 4 of this paper).
- Licence fees do not reflect the cost of administering the scheme (discussed below).

Licences and authorisations can also impose a burden on the regulated party that is sometimes not commensurate with the risk of the activity being conducted. Administering a licensing system for low risk activities can also be a burden on the regulator. For example, the Wildlife Specimen Licence (s 22) requires anyone who possesses prepared or mounted dead wildlife to obtain a licence and pay a fee, despite the low risk nature of this activity.

The Act's regulation making powers allow for licence exemptions for activities that the regulator considers are low risk. However, exemptions limit the regulator's ability to track an activity (e.g. to be sure possession and trade of a species is occurring from a legal captive source and not illegally taken from the wild) and therefore are not applied broadly. An alternative is a requirement to register when undertaking a specified activity, which provides a means of tracking an activity without the regulatory burden for government of administering, and for the community of applying for, a licence.

3.4.1 Should the Act simplify and clarify the provisions relating to the various licences, permits and authorities? Is there scope to reduce regulatory burden without undermining the intended outcomes of the Act?

3.5 Fees imposed by the Act do not fully recover costs

Various provisions in the Act provide for charging a fee. Licence and permit fees are typically based on the costs associated with administering and managing the licensing system and the costs of compliance and enforcement. However, the Act does not explicitly state that fees are charged to recover costs; nor does it limit fees to this purpose. Any monies collected do not have to be reinvested in administering the Act or funding wildlife-related activities; they are directed to central revenue.

Under the Victorian Government's Cost Recovery Guidelines, cost recovery fees should recover full costs, except if there are positive spill over effects (often called externalities) associated with the service.

Wildlife regulatory agencies need sufficient resources to undertake the functions necessary to achieve legislative outcomes. Adequate funding allows regulators to access qualified staff, monitor compliance, use appropriate technologies and follow through with prosecutions when necessary.

Many jurisdictions set charges for licences, permits and other activities. However, whether these charges are based on cost recovery principles and the relevant cost base is often not clear. To promote objectivity and independence, regulators should be clear about who pays for regulatory services, how much and why. This information should be published in a transparent way that facilitates policy analysis and promotes regulator accountability. Some jurisdictions (such as New Zealand) consider the broader costs of administering legislative frameworks, and a generic framework for methods for achieving cost recovery.

3.5.1 Is the Act transparent about who pays for regulatory services?

3.5.2 Is full cost recovery appropriate, or should fees for some licences and activities be subsidised? What role is there for user pays or beneficiary pays principles? What, if any changes, should be made and why?

3.6 The Act doesn't have a mechanism for the making of mandatory codes, standards or guidelines

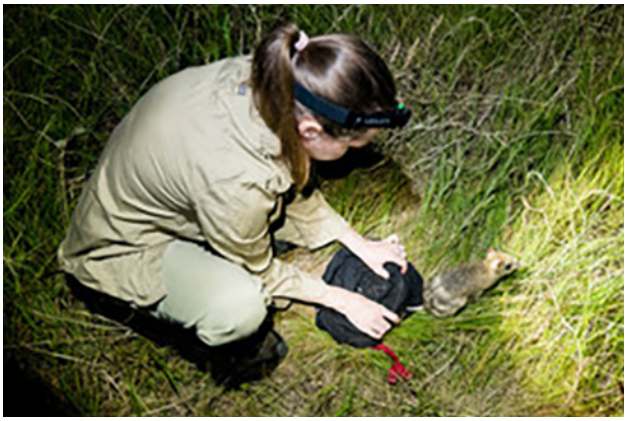
The Act does not contain heads of power for the development and issuing of mandatory codes, standards or guidelines that stipulate how activities relating to wildlife must be lawfully conducted (see Box 3 for an example). Currently, guidance for licence or authorisations holders is provided in the form of conditions applied to authorisations, licences and permits for activities relating to wildlife. While the authorisation allows the holder to undertake the activity, a breach of any of the stipulated conditions would be grounds not only for suspending or cancelling the authorisation but it would also be an offence under the Act.

Subordinate instruments have three main benefits:

- It is easier for the duty holder to be confident they comply with licence conditions.
- They are more flexible. The regulator can prescribe mandatory standards that can be amended and updated easily as scientific knowledge grows.
- Their creation is more transparent than for the current licence conditions, which are drawn from various voluntary codes and guidelines.

3.6.1 Should the Act contain provisions that allow for issuing mandatory codes of practice, standards or guidelines?

3.6.2 What activities could most benefit from the development of mandatory codes or standards?



Box 3: Licence conditions relating to wildlife rescue and rehabilitation

Wildlife rescue involves the removal of wild animals from situations in which they may be temporarily or permanently unable to survive or in which they may be at risk of immediate or further harm. Rehabilitation involves the subsequent care, treatment and/or provision of a safe environment for sick, injured or orphaned wildlife to recover. These activities require an authorisation under the Act and are carried out mainly by not-for-profit organisations staffed by volunteers with some financial support from DELWP and public donations.

Section 28A(1) authorises a person (or corporation) to take and care for sick, injured and orphaned, wildlife for the purposes of rehabilitation. Authorisations are issued to wildlife shelter operators and foster carers, operating out of their private premises (i.e. a shelter). The authorisation provides an exemption from relevant offences under the Act when undertaking these activities.

Section 28A(2) provides for authorisations to be subject to conditions. These conditions require the wildlife shelter operator and carers to meet minimum standards for the humane treatment and successful rehabilitation of wildlife. As long as the authorisation holder abides by the conditions of their authorisation, cruelty and aggravated cruelty offences under the *Prevention of Cruelty to Animals Act 1986* do not apply. DELWP's Wildlife Shelter and Foster Carer Authorisation Guide explains the objectives of the authorisation conditions and how to comply. However, the advice provided is not mandatory but rather provides the suggested method of meeting the conditions. In addition, a non-mandatory Code of Practice for the Welfare of Wildlife during Rehabilitation (issued under the *Prevention of Cruelty to Animals Act 1986*) also contains minimum standards.

In contrast, the mandatory Code of Practice for the Care of Sick, Injured or Orphaned Protected Animals in Queensland which is made under the *Nature Conservation Act 1992* (Qld) is directly enforceable in instances of non-compliance.

Part 4: Does the Act promote transparency and accountability?

Transparency and accountability are two key interrelated principles of good governance. Accountability means ensuring that officials in public, private and voluntary sector organisations are answerable for their actions and that there is redress when duties and commitments are not met. Transparency requires acting visibly, predictably and understandably to promote participation and accountability. Transparency fosters internal and external confidence in the leading organisation and encourages 'buy in' from stakeholders, which supports achievement of the targeted outcomes. In the public sector, applying these principles provides assurance that the government's agencies are achieving their public interest goals and also contributes to improved organisational performance.

4.1 Should expanded reporting requirements be included in the Act?

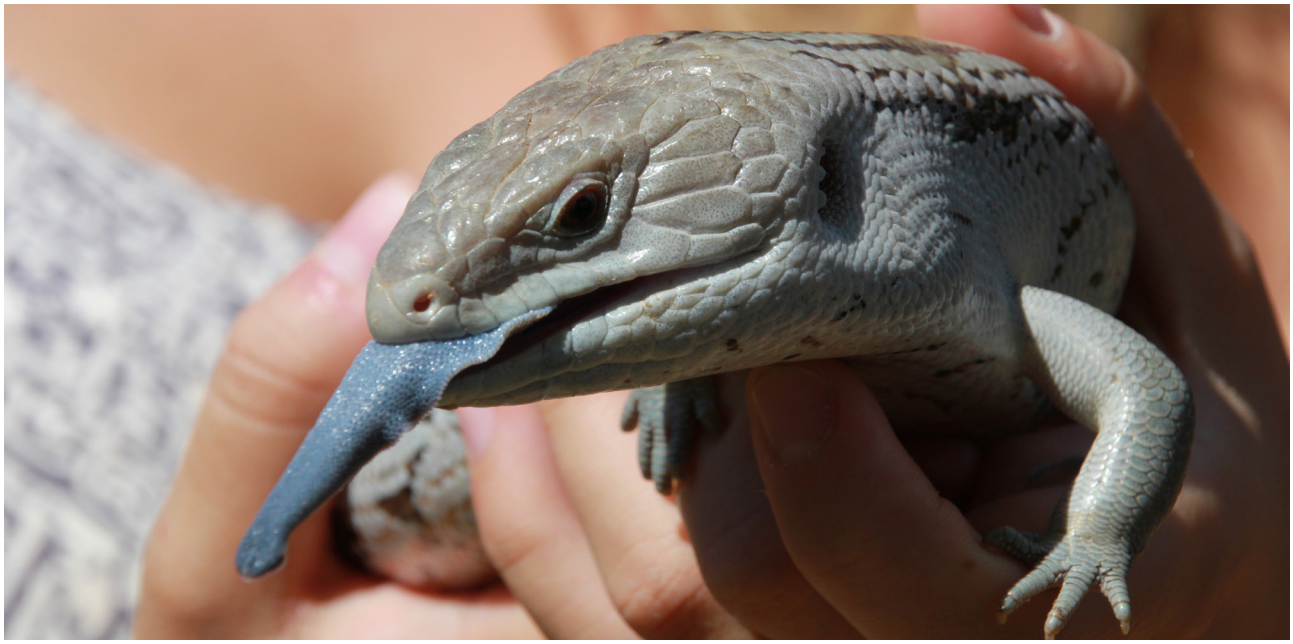
The Act lacks provisions to enable publicly available evidence-based justifications for some government decisions about wildlife management. For example, information is published on the number and general nature of ATCWs issued, but there is no publicly available information about the effect of these authorities on wildlife populations. The Act does not require holders of an authorisation to report on the use and outcomes of that authorisation.

As noted above, the Act may not currently require or enable adequate transparency, reporting and accountability in the system authorising activities involving wildlife. For example, the Act does not:

- delineate explicit and publicly available criteria for approving or refusing applications for ATCWs and other licences, permits and authorities
- delineate explicit and publicly available criteria for appeals to decisions about ATCWs and other licences, permits and authorities
- require reporting on the number of applications for ATCWs and other licences, permits and authorities, the number of declined and approved applications and the general reasons for declined applications
- require reporting on the number and type of animals actually taken, killed, destroyed, disturbed, marked or controlled, the methods actually applied and the possible impacts on the animals under approved ATCWs and other licences and permits
- require reporting on the number and type of animals 'taken' from the wild for rehabilitation and the number and type of rehabilitated animals released, and post-release outcomes for those animals.

Reporting such information is common in contemporary law and is critical for applying scrutiny and evaluating impacts.

4.1.1 Does the Act require an adequate degree of transparency about, and accountability for, decision making on matters relating to wildlife? If not, how could this be improved? For example, which activities/decisions/criteria should be more transparent? Which parties should be more accountable and for what?



4.2 Should independent expert advice play a greater role in decision making under the Act?

The Act lacks provisions to establish expert advisory bodies to advise key decision makers on strategic matters relating to wildlife management. Scientific knowledge, products, practices and technology for managing wildlife evolve constantly. Expert consideration and advice on these developments is necessary to support up-to-date and evidence-based decision making.

Several other Acts allow for advisory bodies:

- The Fisheries Advisory Council (established in Part 6 of the *Fisheries Act 1995*) advises the Minister on strategic matters relating to managing fisheries at the request of the Minister.
- A Scientific Advisory Committee established under the *Flora and Fauna Guarantee Act 1988* (s 8) advises the Minister on listing threatened taxa, identifying potentially threatening processes and any other matters relating to flora or fauna conservation.
- The *Environmental Protection Amendment Act 2018* (s 235) empowers the Environment Protection Authority to establish advisory panels to advise the Authority on any matter arising from the administration of the Act or regulations.

4.2.1 Should the Act include provisions that require and enable establishment of a scientific advisory committee or advisory panels to provide expert guidance to key decision makers such as the Minister, the Secretary or the regulator on specific matters relating to wildlife? Why or why not? What other approaches are available?

Part 5: Are current enforcement and compliance mechanisms adequate?

The Act also contains regulatory tools such as banning orders, exclusion orders, prohibition orders and emergency closure notices as well as licences and permits and criminal offences. However most of these tools have narrow application and generally apply only to prevent obstruction of lawful hunting of wildlife. The Act provides authorised officers with enforcement powers.

The Panel has identified several problems with the current enforcement and compliance framework regarding wildlife, including its inability to limit the illegal wildlife trade, and the inadequacy of penalties and sentences to punish and deter offenders.

5.1 It's not clear whether the Act creates the appropriate offences

The Act creates numerous offences, but it is unclear whether these offences are over or under-inclusive of the conduct that needs to be prohibited or prevented, and whether they could be rationalised and simplified.

Similar legislation in other jurisdictions includes offences that the Victorian Act does not cover, such as trespass to wildlife, feeding animals in the wild, taking native wildlife from critical habitats, and disturbing dangerous native animals. A major omission is interfering with or destroying wildlife habitat, which indirectly affects wildlife. Although it is an offence under the Wildlife Regulations (r 42) to disturb, damage or destroy wildlife habitat, the maximum penalty is only 50 penalty units ($8,261) which significantly diminishes the seriousness of this offence. In contrast, the B*iodiversity Conservation Act 2016* (NSW) (s 2.4) makes it an offence to damage the habitat of threatened species or ecological communities and carries a maximum penalty of 2 years' imprisonment or $1,650,000 for a corporation or $330,000 for an individual.

5.1.1 Should the Act include other offences?

5.1.2 Should any offences be repealed?

5.2 Do maximum penalties deter or sufficiently reflect the seriousness of offences?

Maximum penalties place an upper limit on the court's power to punish an offender, to indicate how serious the offence is and to establish the outer limits of the punishment that is proportionate to the offence. They also provide for sentencing the worst example of the offence by the worst offender.

The Act contains over 40 offences with maximum penalties ranging from fines of 20 penalty units ($3,300) to 1000 penalty units ($165,220) or 2 years' imprisonment (Appendix B). The maximum penalties under the Act have been considered too low to either deter or punish offenders. They do not reflect the gravity of the offences committed against wildlife and are lower than the maximum penalties in other jurisdictions.

To illustrate, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) contains maximum penalties of up to $1,050,000 and 7 years' imprisonment for an individual or up to $10,050,000 for a corporation. New South Wales has the highest maximum penalties for offences relating to flora and fauna under the *Biodiversity Conservation Act 2016* (NSW) (s 13.1). That Act creates five tiers of maximum monetary penalties. Tier 1 penalties for a corporation are $1,650,000 and an additional daily penalty of $66,000 for each day as well as an additional penalty of $66,000 for each plant or animal to which the offence relates. For an individual, the maximum penalties are $330,000 with an additional daily penalty of $33,000 and a penalty of $33,000 for each animal or plant. The maximum imprisonment term is 2 years. A tier 5 offence carries a maximum penalty of $22,000 for either an individual or corporation.

The Victorian community has also expressed concern about the sentences imposed for some offences, such as the prosecution of a farm owner and manager for destroying a large number of wedge-tailed eagles in East Gippsland in 2018. One defendant was not prosecuted under the Act but was convicted of an offence relating to the incorrect use and storage of chemicals, sentenced to a community correction order and 100 hours of community service, and fined $30,000. The other defendant was convicted under the Act and sentenced to 14 days' imprisonment and fined $2,500 (see Box 1, page 3).

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

5.3 Continuing offences and additional penalties could be strengthened

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. It is usually specifically provided for in legislation; an example is s 13.11 of the *Biodiversity Conservation Act 2016* (NSW), which is likely to apply to offences against the environment rather than wildlife.

Additional penalties can be imposed on top of the general sentence, for example, for each animal killed, harmed or affected. Such penalties can be graduated to reflect the status of the animal (e.g. whether it is protected, endangered or vulnerable).

For example, the *National Parks and Wildlife Act 1972* (SA), imposes 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.

Although the Victorian Act contains some additional penalties, it does not include a general additional penalty provision covering all offences.

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

5.4 The sentencing process does not provide sufficient guidance for judges

A judicial officer sentencing people who have committed offences under the Act must impose a sentence in accordance with the framework of the *Sentencing Act 1991*. The sentence must account for factors such as the harm caused by the offence and the moral culpability of the offender, current sentencing practices, the offender's prior convictions (if any), and whether there was a guilty plea.

Judges may only sentence people who have been charged and found guilty of an offence. Over recent years, a limited number of offences have been prosecuted under the Act and even when successful, the sentences imposed have been regarded by many members of the community as inadequate to either sufficiently punish offenders or deter them or others from committing similar offences. The low number of prosecutions may reflect high compliance, inadequate enforcement or barriers to successful prosecutions such as a high standard of proof. It may also be due to inadequate powers for authorised officers to seize or forfeit property and enter and search property.

Often, it is difficult for judicial officers to determine the gravity of a harm if they are not familiar with the nature or the context in which it may occur. This is particularly the case for harms to wildlife and the environment. Some harms may affect a community, or some members of a community more than others, such as Traditional Owners who may have a particular interest in certain wildlife.

To properly inform a magistrate or judge of the effect of the crime on the community, some jurisdictions have introduced 'community impact statements', similar to victim impact statements used in criminal proceedings. South Australian and Canadian law, for example, permit community impact statements that describe the harm or loss suffered by the community as the result of the offence and the impact of the offence on the community. (See *Criminal Code 1985* (Canada), s 722.2 and *Sentencing Act 2017* (SA), s 15).

5.4.1 Should the Act contain provisions to permit community impact statements relating to the harm caused to wildlife?

The Act could also specify matters to be considered other than those provided for under the *Sentencing Act 1991*. For example, s 13.12 of the *Biodiversity Conservation Act 2016* (NSW) requires the court to consider matters such as the extent of the harm caused or likely to be caused by the offence, the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused, and whether the offence was committed for commercial gain.

5.4.2 Should the Act contain specific provisions to guide sentencing of offenders convicted under the Act?

5.5 The Act could also contain a number of other sanctions and remedies to help achieve its objectives

The Act lacks other sanctions or remedies that might help achieve its objectives. A revised Act could include sanctions and remedies that are proportionate to the harm done and the culpability of the offender. Such sanctions and remedies may deter the offender and others from committing the same or similar offences, ensure offenders do not profit from their crimes and change the offender's behaviour.

Civil penalties

Civil penalties are sanctions that are imposed by courts in non-criminal proceedings following action taken by a government agency. 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 than that for a criminal offence, which is proof beyond reasonable doubt. Civil penalties are primarily a deterrent, rather than a punitive measure.

Currently, the Act does not contain any civil penalty provisions. In contrast, the *Environment Protection (Amendment) Act 2018* (Part 11.5) contains numerous civil offences for breaching permits or licences, and maximum penalties can amount to 1,000 penalty units for an individual or 5,000 penalty units for a corporation.

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?

Infringement notices

Infringement notices or 'on-the-spot' fines involve paying a monetary penalty to forestall prosecution for an alleged summary offence. The aim is to provide an efficient method for dealing with minor offences while saving the offender, the regulator and the court time. Prosecutions are expensive, slow and resource intensive, and the time between committing the offence and imposing the sanction, if that occurs, lessens the deterrent value of the sentence.

Infringement notices can vary depending on the seriousness of the offence, though the maximum penalties are significantly lower than court-imposed fines.

The Act does not contain sufficient, appropriate provisions that allow for issuing an infringement notice. Further, many of the offence provisions in the Act are not infringeable because they do not meet the requirements under the Attorney-General's Guidelines to the *Infringements Act 2006*. For example, possession of captive bred wildlife under a lapsed licence is an offence under s 47 but is not infringeable because it is an indictable offence. The lack of infringeable offences means the regulator has few options to take compliance action. Options such as issuing an official warning and suspending and cancelling a licence or authorisation do little to deter future offending in some circumstances, while prosecution is often onerous and disproportionate with the harm posed.

5.5.2 Should the Act allow for infringement notices for minor offences? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

Enforceable undertakings

An enforceable undertaking is an agreement between a person (or an organisation) and a regulatory body, where the person agrees to carry out certain activities in a matter relating to an alleged breach. The undertaking is enforceable in a court and provides an alternative to formal court proceedings. An enforceable undertaking may, for example, require a person to comply with the terms of the undertaking, pay compensation for any harm or damage caused, publish an apology, cease the offending conduct, establish compliance programs, or perform community services.[2] The person cannot be prosecuted while the undertaking is operating, but failure to comply can result in prosecution.

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?

2. *Environment Protection (Amendment) Act 2018,* Part 11.2; *Flora and Fauna Guarantee Act 1988*, Part 6, Div 3A, s 62AI; *Regulatory Powers (Standard Provisions) Act 2014* (Cth), ss 109–115.

Compensation orders, financial assurances and payment of prosecution costs

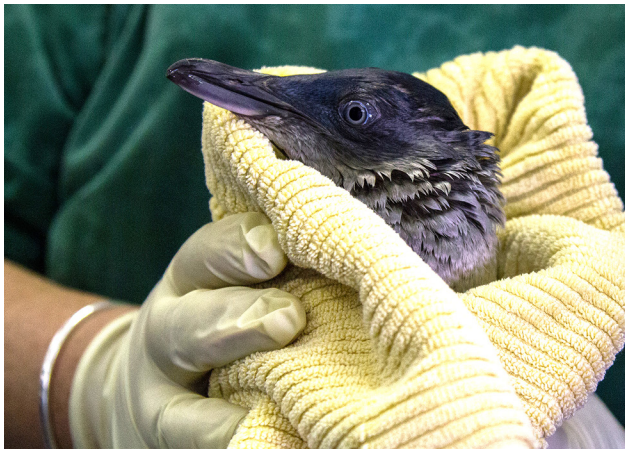
A compensation order requires a person who has been found guilty of an offence or contravention that has resulted in a person suffering injury, loss or damage to compensate the person, or a regulatory authority for:

- the injury, loss or damage
- any costs incurred by the regulatory authority or the person in the course of taking action to prevent, minimise or remedy any injury, loss or damage suffered.[3]

Currently, the Act does not allow for compensation orders. Nor does it provide for mandated bonds or financial assurances, by which a regulator may secure the costs and expenses of keeping and maintaining seized wildlife pending finalisation of a prosecution, which may take a considerable time.[4] The costs of prosecution may be considerable and, in some cases, exceed the amounts received via financial sanctions. In some jurisdictions, orders for paying costs of investigation and prosecution may be made against an offender.

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?

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?



Removal of monetary benefits

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. This provision acts as a deterrent by removing any financial benefit gained from committing the offence (e.g. s 13.24 of the *Biodiversity Conservation Act 2016* (NSW)). The amount that may be ordered to be paid is not subject to any maximum penalty otherwise stated in the 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?

Forfeiture of seized items and property used in committing an offence

Section 70A of the Act allows a court that has found a person guilty of an offence to order that anything seized relating to the offence may be destroyed or otherwise disposed of.

An additional potential sanction is forfeiture of property that is used to commit an offence, such as vehicles or weapons (e.g. s 12C of the *Singapore Wild Animals and Birds (Amendment) Bill 2020*). The *Confiscation Act 1997* contains general provisions for confiscating property and the proceeds of crime, but a specific provision in the Act could give it added force in cases where property used to commit an offence is forfeited, no matter what its value.

5.5.7 Should the Act contain specific provisions to allow for the forfeiture of property used in the commission of an offence under the Act? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

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?

3. *Environment Protection (Amendment) Act 2018*, s 313; *Flora and Fauna Guarantee Act 1988*, s 62.
4. *Environment Protection (Amendment) Act 2018*, Part 8.4.

5.6 Authorised officers may not have the necessary powers to enforce the Act

The Act contains several provisions that allow authorised officers to enter, inspect and search premises, inspect parcels, bags or receptacles, investigate reports of illegal activities relating to wildlife, require that persons produce licences under the *Firearms Act 1966*, obtain evidence, issue retention notices and obtain information.

Modern regulatory statutes contain relatively standardised provisions relating to the appointment of authorised officers; powers of entry and inspection; information gathering powers; and powers to ask a person's name and address, give directions, apply for search warrants, and seize, forfeit or return property. They also contain offences and penalties for offences relating to authorised officers such as obstruction (e.g. *Environment Protection (Amendment) Act 2018*).

Current powers under the Act require strengthening. For example, the Act does not grant authorised officers with powers to require a person to stop an activity and remedy a harm. It also does not clarify that authorised officers are themselves exempt from offences under the Act while carrying out their duties (e.g. the euthanasia of wildlife).

5.6.1 Does the Act contain the necessary powers and provisions to enable authorised officers to enforce the Act? What powers and provisions should be available to authorised officers? Are there examples from other jurisdictions (both in Australia and internationally) that could also apply in Victoria?

5.7 Are appeal and review provisions sufficient?

Section 86C of the Act allows the Victorian Civil and Administrative Tribunal to review decisions made by the Secretary, Parks Victoria and the Game Management Authority to refuse to grant, renew, suspend or cancel licences, authorisations or permits under the Act.

5.7.1 Does the Act provide appropriate provisions for the review and appeal of decisions?

5.8 Should the Act provide for third-party civil enforcement?

Sometimes public enforcement authorities fail to act even when there may be a public interest in taking enforcement action. In some jurisdictions, legislation may confer civil rights of action on third parties for breach of an Act. This is increasingly common in environmental legislation. Under the *Environment Protection (Amendment) Act 2018*, for example, an eligible person may apply for a court order to prevent certain forms of activity that affect the interests of that person. Such provisions are intended to provide interested and affected third parties with a remedy if the regulator fails to act.

5.8.1 Should the Act provide for third-party civil enforcement under the Act? How might this make a difference in achieving the intended outcomes of the Act?

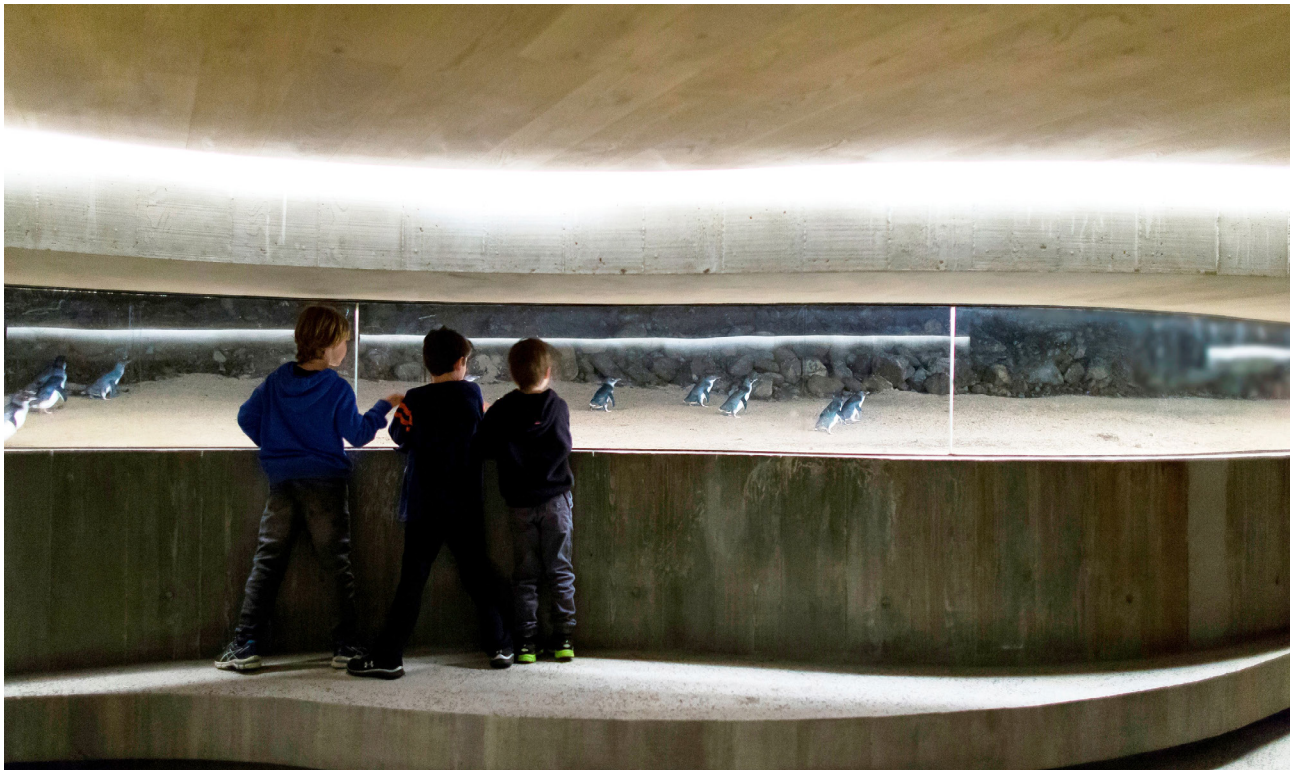
Appendix A: Roles and responsibilities of government agencies under the Wildlife Act

Minister for Energy, Environment and Climate Change

- Jointly administers sections of the Wildlife Act with the Minister for Agriculture (as it relates to hunting).
- Severally (solely) administers the Wildlife Act as it relates to the conservation and protection of wildlife.
- Jointly administers the Wildlife (Game) Regulations with the Minister for Agriculture.
- Jointly administers sections of *Flora and Fauna Guarantee Act 1988* (FFG Act), including those which provide for the listing of threatened species, with the Minister for Agriculture.
- Solely administers parts of FFG Act relating to planning for the recovery of threatened species.

Minister for Agriculture

- Jointly administers the Wildlife Act as it relates to:
  - Offences regarding hunting, taking or destroying threatened wildlife
  - Management of state game reserves, offences in relation to wildlife sanctuary
  - The entry & conduct in hunting areas – the open and closing of hunting seasons & hunting areas (including emergency closures).
- Making regulations that provide for the effective management of hunting including preserving good order among hunters of wildlife.
- Jointly administers the Wildlife (Game) Regulations with the Minister for Energy, Environment and Climate Change.
- Jointly administers sections of FFG Act, including those which provide for the listing of threatened species, with the Minister for Energy, Environment and Climate Change.
- Administers the *Game Management Authority Act 2014*.
- Administers the *Prevention of Cruelty to Animals Act 1986*.



Appendix A: Roles and responsibilities of government agencies under the Wildlife Act (cont.)

Department of Environment Land Water and Planning

- Wildlife policy.
- Administering the Wildlife Act and its subordinate legislation (e.g. making regulations, legislative instruments, delegations, etc).
- Establishing reserves set aside for the management of wildlife such as:
  - State Wildlife Reserves
  - State Game Reserves
  - Wildlife Sanctuaries.
- Office of the Conservation Regulator
- Offences – Enforcement, Compliance & Legal Proceedings.
- Preparedness and response to wildlife emergencies.
- Permitting – Licences, permits and authorisations such as:
  - Authority to Control Wildlife
  - Private and commercial possession and trade of captive-bred wildlife
  - Marine mammal tour operator licences (including whale watching, swim tours)
  - Import/Export permits.
- Recognising and incorporating the rights & responsibilities of Traditional Owners with regard to wildlife.
- Community education and engagement and response to enquires.
- Work with community to manage wildlife issues and impacts (human–wildlife interaction).
- Conduct formal wildlife population surveys.
- Conservation and management of wildlife as a public land manager.
- Reporting.

Parks Victoria

- Conservation and management of wildlife as a public land manager.
- Delegated authority to administer specified permits such as tour operator licences.
- Compliance.

Department of Jobs Regions and Precincts

- Hunting and game management policy.
- Facilitating safe and responsible hunting.
- Administers the *Wildlife (Game) Regulations 2012*.
- Managing biosecurity issues as they relate to wildlife – such as wildlife or zoonotic diseases.

Game Management Authority

- Regulation of game hunting in Victoria.
- Permitting – Licences, Permits and Authorisations – as they relate to game and hunting such as:
  - Administering game licences
  - Control of game
  - Enforcement and compliance in relation to game hunting.
- Develop operation plans and procedures addressing the sustainable hunting of game and the humane treatment of animals while hunting.
- Monitor, conduct research and analyse the environmental, social and economic impacts of game hunting and game management and make recommendations to the relevant Minister.
- Deliver programs to improve and promote responsible and sustainable hunting in Victoria.
- Develop a statewide compliance strategy and enforcement guidelines.
- Reporting (e.g. harvest reports and bag surveys).

Victoria Police

- Administer the firearms licensing system and ensures compliance with the *Firearms Act 1996* with respect to the ownership, use, storage, transport and sale of firearms.
- Assist agency Authorised Officers to conduct compliance work when interacting with armed hunters.
- Play an important role in ensuring public safety and responding to illegal activity under the criminal code, such as trespass or destruction of private property from illegal hunting of wildlife.

Appendix B: Wildlife Act offences

OFFENCES		
S 20	Offence to take wildlife from State Wildlife Reserve	25 penalty units
S 21	Removing sand etc from State Wildlife Reserve or a Nature Reserve	25 penalty units
S 21AAA	Offence to construct, remove, alter, or carry out maintenance on, a levee within a State Wildlife Reserve or Nature Reserve	12 months' imprisonment or 120 penalty units
S 21AA(1)	Offence to cut or take away 2 cubic metres or less of fallen or felled trees in a State Wildlife Reserve or Nature Reserve	20 penalty units
S 21AA(2)	Offence to cut or take away more than 2 cubic metres of fallen or felled trees in a State Wildlife Reserve or Nature Reserve	12 months' imprisonment or 50 penalty units
S 21A	Offence to conduct organised tour or recreational activity on State Wildlife Reserve if unlicensed	Natural person: 20 penalty units Body corporate: 100 penalty units
S 21F	Contravention of (tour operator licence) condition an offence	Natural person: 20 penalty units Body corporate: 100 penalty units
S 28B	Offence of failing to comply with conditions of authorisation	50 penalty units
S 35	Offences in relation to wildlife sanctuaries	25 penalty units
S 41	Hunting, taking or destroying threatened wildlife	240 penalty units or 24 months' imprisonment plus 20 penalty units for every head of wildlife
S 43	Hunting, taking or destroying protected wildlife	50 penalty units or 6 months' imprisonment plus 5 penalty units for every head of wildlife
S 44	Hunting, taking or destroying game	50 penalty units or 6 months' imprisonment plus 5 penalty units for every head of wildlife (3) During open season: 10 penalty units
S 45	Acquiring etc. threatened wildlife	240 penalty units or 24 months' imprisonment plus 20 penalty units for every head of wildlife
S 47	Acquiring etc. protected wildlife	50 penalty units or 6 months' imprisonment plus 5 penalty units for every head of wildlife
S 47D	Wildlife unlawfully taken	240 penalty units or 24 months' imprisonment
S 48	Offence for dogs or cats to attack wildlife	25 penalty units
S 50	Import and export permits	100 penalty units
S 51	Marking protected wildlife	100 penalty units

OFFENCES		
S 52	Release of birds and animals from captivity or confinement	50 penalty units
S 53	Use of prohibited equipment	25 penalty units
S 54	Killing wildlife by poison	100 penalty units or 6 months' imprisonment
S 55	Using bird lime	20 penalty units
S 56	Punt guns	50 penalty units
S 57	Interference with signs etc	50 penalty units
S 58	Molesting and disturbing etc protected wildlife	20 penalty units
S 58A	Keeping false records	120 penalty units
S 58B	Providing false information	120 penalty units
S 58C	Offence for certain person to enter on or remain in specified hunting area	60 penalty units
S 58D	Offence to approach a person who is hunting	60 penalty units
S 58E	Hindering or obstructing hunting	60 penalty units
S 58J	Offence to contravene a banning notice	First offence 20 penalty units Second or subsequent offence 60 penalty unit
S 58L	Offence to refuse or fail to comply with direction to leave area to which banning notice applies	First offence 20 penalty units Second or subsequent offence 60 penalty unit
S 76	Killing, taking whales etc an offence	1000 penalty units
S 76(3)	Taking live whales without a permit	100 penalty units
S 77	Action to be taken with respect to killing or taking of whale	50 penalty units
S 77A	Offence to approach whales	20 penalty units
S 81	Power of authorised officers to give directions	100 penalty units or 6 months' imprisonment
S 83	Offence to conduct whale watching tour	50 penalty units
S 83C	Offence to conduct whale swim tour	100 penalty units or 6 months' imprisonment
S 83I	Breach of condition an offence	100 penalty units or 6 months' imprisonment
S 83J	Power of authorised officer to give directions	100 penalty units or 6 months' imprisonment
S 85	Offence to conduct seal tour	50 penalty units
S 85I	Breach of condition an offence	100 penalty units

Appendix C: Rights of Traditional Owners and Aboriginal Victorians over wildlife

The *Traditional Owner Settlement Act 2010* (TOS Act) provides a framework for negotiating out-of-court native title settlements in Victoria. It is an alternative framework for settling native title claims in Victoria to the one available under the *Native Title Act 1993* (Cth). The TOS Act recognises Traditional Owners and certain rights over Crown land within an agreed area.

A TOS Act settlement package can include:

- A Recognition and Settlement Agreement (RSA), which is the primary agreement between the State of Victoria and a Traditional Owner corporation under which certain Traditional Owner rights to Country are recognised, and under which the other sub-agreements in the settlement package sit;
- A Land Agreement, which provides for grants of land in freehold title, or in Aboriginal Title to be jointly managed in partnership with the State;
- A Land Use Activity Agreement, which provides the comment or consent processes for land use activities on public land;
- A Natural Resource Agreement (NRA), which recognises Traditional Owners' rights to take and use specific natural resources and provide input into the management of land and natural resources;
- A Traditional Owner Land Management Agreement (TOLMA), which establishes measures to support the joint management arrangements between Traditional Owners and the Victorian Government over Aboriginal Title lands; and
- A funding agreement.

Wildlife

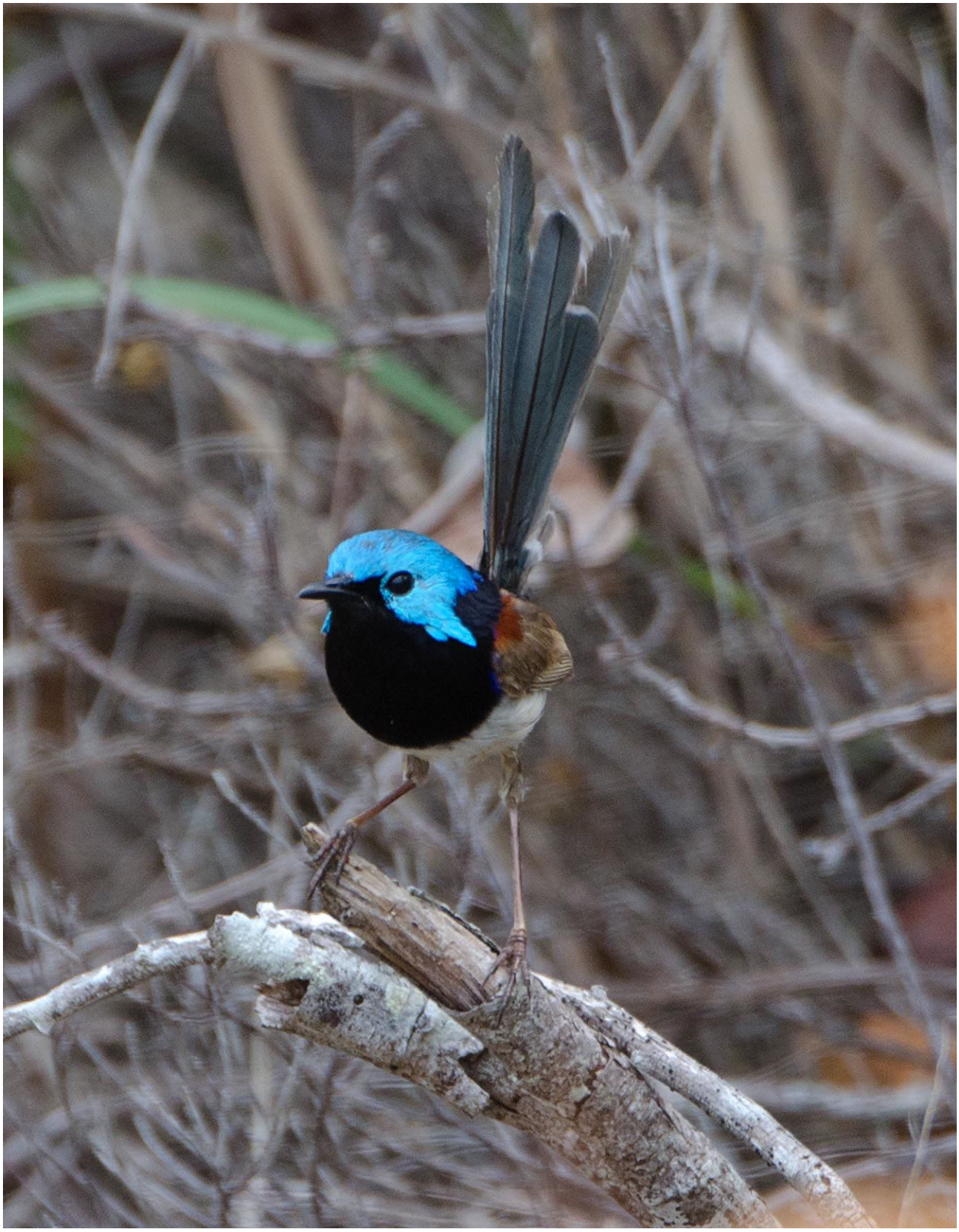
NRAs can authorise Traditional Owners to take native wildlife and game resources (e.g. duck, deer and quail) without the need to obtain an authorisation or licence. Under the NRA, Traditional Owner groups can determine where, how and how many animals are taken each year, subject to the take being sustainable, safe and humane.

NRAs also provide for an annual Partnership Forum between the Traditional Owner group and relevant management agencies to exchange information and discuss management. This partnership approach is consistent with self-determination and provides an outcome-based management regime administered at a regional level. This approach also improves dialogue between Traditional Owners and relevant management agencies.

Native title determinations

Native title determinations, made under the Native Title Act (Cth) provide associated rights to Traditional Owners of that Country including the right to camp, conduct ceremonies, hunt and fish, collect food and to manage natural resources

Country Plans are in place or under development for many Traditional Owner groups in Victoria. A Country Plan is a document that is developed and owned by a Traditional Owner group, which describes the group's aspirations, values and actions associated with managing natural resources.



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