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**REVIEW**

**INDEPENDENT  
REVIEW OF VICTORIA'S  
WILDLIFE ACT 1975**

AN ANIMAL LIBERATION SUBMISSION  
DEPARTMENT OF ENVIRONMENT, LAND, WATER AND PLANNING

We acknowledge the  
Traditional Owners of  
country throughout  
Australia and recognise  
their continuing  
connection to land, waters  
and culture.

We acknowledge that this  
document was written on  
land stolen from and  
never ceded by the  
Gadigal People.

We pay our respects to  
their Elders past, present  
and emerging.





We don't have a duty to **speak** for the animals;  
we have an obligation to be **heard** for the animals.

Matt Ball (2006)

## DOCUMENT DETAILS

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## ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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PHOTO: UNKNOWN



30 June 2021

Department of Environment, Land, Water and Planning  
wildlifeact.review@delwp.vic.gov.au

I present this submission on behalf of Animal Liberation.

Animal Liberation is pleased to lodge a submission in response to the Department of Environment, Land, Water and Planning's independent review of Victoria's *Wildlife Act 1975*.

We request that it be noted from the outset that the following submission is not intended to provide an exhaustive commentary or assessment in response to the review or its accompanying documentation. Rather, our submission is intended to provide a general examination and responses to select areas of key concern.

As such, the absence of discussion, consideration or analyses of any particular aspect or component must not be read as or considered to be indicative of consent or acceptance. For the purposes of this submission, Animal Liberation's focus covers aspects that we believe warrant critical attention and response.

Sincerely,

Alex Vince  
Campaign director



**WHAT HAPPENS TO THEM**  
**MATTERS TO THEM**

TOM REGAN

# 1. EXECUTIVE SUMMARY

- 1.1 The protection of wildlife is an increasingly important global issue (Wilson et al. 2020). Since 1970, global wildlife populations have decreased by approximately two-thirds (Perkins 2021a) and the threats to Australia's native wildlife are vast and expanding (Kearney et al. 2019). Many remain under existential threat from an array of sources that are progressively compounded by emergencies and the perils of the global climate crisis (Dunlop et al. 2012; Woinarski et al. 2015; Hoffmann et al. 2019). The present review represents the first opportunity to rectify and confront these urgent challenges via Victoria's chief wildlife protection legislation.
- 1.2 The Act under review is the consequence of sporadic reforms to various preceding laws (Seebeck 1995) and is historically rooted in archaic legislation governing hunting (Norman and Young 1980). Though conservation was embedded into the regime in 1975 and operationalised in 1980 (Seebeck 1995), the current Act is outdated, is not guided by sound science, and does not meet modern or emerging community expectations (Wellbelove and Lindsay 2020). Identified issues with the current regime of wildlife protection in Victoria include:

- 1.2.1 The Act contains archaic concepts relating to values that should be protected, including the protection of wildlife as game;
- 1.2.2 The arrangement and language of the Act is obsolescent and ineffectual;
- 1.2.3 The Act precedes the *Flora and Fauna Guarantee Act 1988* ('FFG Act') and is poorly integrated with its provisions;
- 1.2.4 There is an absence of clear and practical provisions for habitat protection;
- 1.2.5 There is a notable lack of accountability in the mechanisms that allow the harming of wildlife and these are neither guided nor substantiated by coherent objectives;
- 1.2.6 The penalties associated with breaches to its provisions require urgent review as the regulations relating to compliance and enforcement are obsolescent and lack the powers required and contained in other relevant or corresponding legislation;
- 1.2.7 There is no independent statutory regulator tasked with directing, overseeing or delivering provisions of the wildlife protection regime in Victoria.

1.3 In general, the current submission holds the following to be true:

1.3.1 That other-than-human animals can and do routinely suffer as a direct result and consequence of a range of human behaviours, actions, omissions and choices;

1.3.2 That for legislation or regulation of any kind to function properly and achieve its stated objectives, spirit and intent, it must not only be well crafted but appropriately executed and efficiently enforced;

1.4 The following submission will briefly outline the issues described in subsections 1.2.1-1.2.7 and will conclude by providing a modest series of recommendations for consideration.



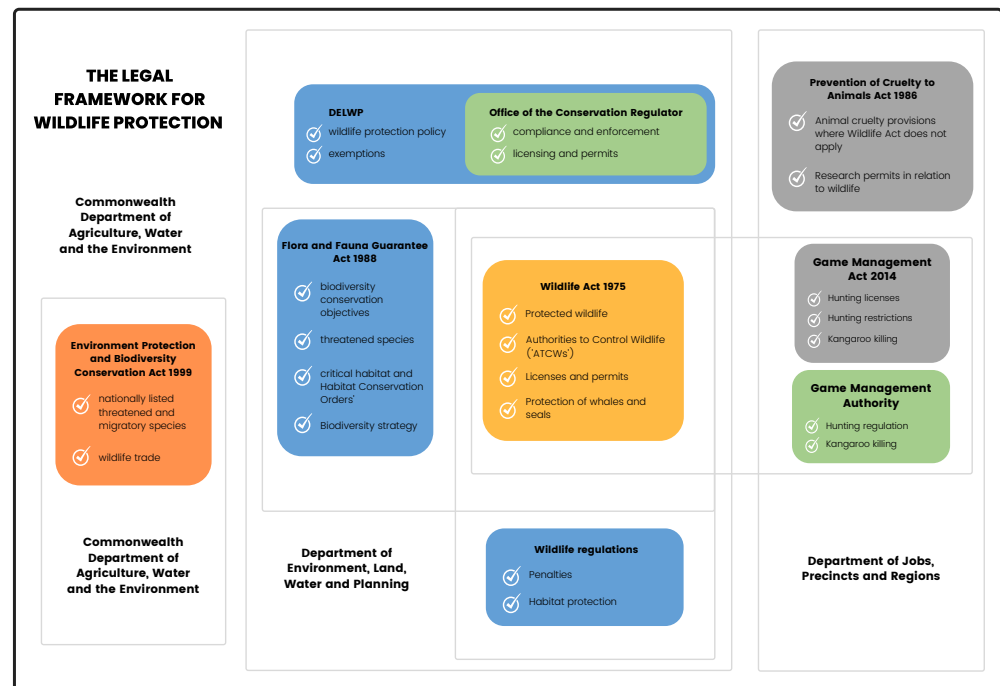


## 2. INTRODUCTION

2.1 The issues paper accompanying this review explains that the Act promotes the protection and conservation of wildlife, the prevention of extinction and sustainable use (Peterson et al. 2021). These generally reflect the aims of wildlife management outlined elsewhere (Manfredo et al. 1995; Miller 2003). The Act is administered by the Victorian Department of Environment, Land, Water and Planning ('DELWP' or 'the Department'), while the Office of the Conservation Regulator oversees compliance, enforcement, licensing and permits (Peterson et al. 2021). Compliance and enforcement activities may be undertaken against people who breach the provisions of the Act (DELWP 2018).

2.1.1 Wildlife law is the body of legal rules and processes that relate to wild things: human disputes over such things largely relate to animals and their habitats (Freyfogle et al. 2019). As such, this submission will primarily focus on this element of Victoria's wildlife law.

**FIG. 1: LEGISLATIVE AND INSTITUTIONAL FRAMEWORK FOR WILDLIFE PROTECTION IN VICTORIA**



2.2 Figure 1 (above) demonstrates the complex array of laws that currently regulate the protection wildlife in Victoria. The *Wildlife Act* (centre orange tile) operates in conjunction with these laws. For example, it provides complementary procedures provisions in the FFG Act) (Brugler et al. 2016). The confusing framework compromises efficacious and practical protection. For example,

2.2 threatened flora and fish are currently protected under the FFG Act while threatened wildlife are dependent upon the archaic and ineffective provisions of the Wildlife Act. Similarly, wildlife is not currently protected under the *Prevention of Cruelty to Animals Act* ('POCTA').

## THE REVIEW

2.3 In May 2020, the Minister for Energy, Environment and Climate Change, the Hon. Lily D'Ambrosio, announced a review of the Act (Koob 2020). Subsequent media releases tout the review as "the most comprehensive" undertaken since the introduction of the Act over 45 years ago (D'Ambrosio 2021). This is, however, the first time it has been reviewed since its enactment (DELWP 2021).

2.4 The announcement of the review followed a series of widely reported controversies that challenged the validity and efficacy of the Act. Several high profile cases, including the killing of protected native birds and wombats, revealed a significant fissure between the regime and community expectations (Ilanbey 2020; Koob 2020).

2.4.1 The failure to prosecute a landholder embroiled in the killing of hundreds of wedge-tailed eagles in East Gippsland revealed a legislative regime incongruous with contemporary community expectations (Lazzaro 2020). The Department explained that it was "the biggest case of wedge-tailed eagle deaths" that it had ever encountered (Lauder 2018). Though the subsequent sentencing was the first time a person had been jailed for wildlife crimes in Victoria's history (Koob 2018; Lazzaro 2018), others questioned whether this was sufficient (Stockwell 2018; Wahlquist 2018). The case influenced the establishment of the current review (Koob 2020).

**FIG. 2: EXHIBIT OF WEDGE-TAILED EAGLE SKULLS  
(PHOTO: NICOLE ASHER)**



2.4.2 Outrage followed the killing of koalas at Cape Bridgewater in February (Redfearn 2020). The event was described as a “massacre” after approximately 40 koalas were starved or killed during timber harvesting (Izquierdo and McGinn 2020; Towell 2020). The case also contributed to the momentum behind the current review (Perkins 2021b).

**FIG. 3: KOALA KILLED AT CAPE BRIDGEWATER**  
(SOURCE: FRIENDS OF THE EARTH AUSTRALIA)



2.5 These events revealed evolving community expectations about the state’s role in the protection of wildlife. These cases have been acknowledged by the Department (DELWP 2021) and the Premier (D’Ambrosio 2021) as triggers for the current review and consultation process. However, incremental reforms have been a common feature of the Act and its predecessors. While the first official motion to protect native wildlife in Victoria was enacted in 1803 (Shillinglaw 1879), the reactive nature of Victoria’s principal wildlife law has been a common feature since its consolidation or amalgamation with pre-existing laws (Wellbelove and Lindsay 2020).

2.5.1 By the 1960s and early 1970s, increasing community awareness and concern led to the development of a revised Act that featured a modified philosophical basis when compared to earlier legislation (Dempster 1972). Evolving community attitudes had also been a determining factor in amendments to earlier laws (Seebeck 1995).

2.5.2 When the Act was introduced in 1975, its contents were largely a reiteration of provisions included in the *Game Act 1958* and the *Protection of Animals Act 1966*. There have been a series of amendments to the Act that coincided

2.5.2 with the introduction of the FFG Act and the *Game Management Authority Act 2014*, the current framework has been criticised as representing a puzzling and inconsistent overall approach (Wellbelove and Lindsay 2020).

2.6 Animal Liberation welcomes and appreciates the opportunity to provide the following submission. As the accompanying cover letter explains, this submission is not intended to provide an exhaustive commentary on each element of the Act or provide detailed responses to each of the questions provided in the discussion paper. Rather, it is intended to highlight several aspects of key concern that we believe warrant emphasis and consideration.



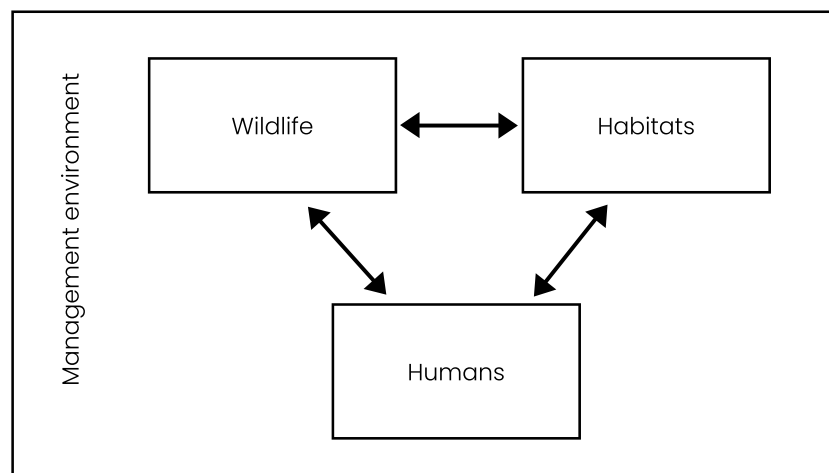
PHOTO: UNKNOWN

# 3. SUBMISSION

3.1 Human behaviour is the principal driver of worldwide biodiversity decline and extinction (Lenzen et al. 2012; Maxwell et al. 2016; Driscoll et al. 2018; Kidd et al. 2019). Though the identification of the most effective or feasible methods for addressing this issue remains elusive, changing the trajectory of ongoing extinctions or threats to biodiversity require altering those behaviours that have the largest known impacts (Steg and Vlek 2009; Schultz 2011; Selinske et al. 2018).

3.1.1 Prioritisation methods are a common tool for the systematic evaluation and guiding of decision-making processes (Margules and Pressey 2000; Schultz 2011). Such methods can assist in the identification of feasible and high-impact behaviours that may direct policymakers towards choices that have high efficacy in shifting behaviours for positive biodiversity outcomes (Selinske et al. 2020). These are particularly important as estimates indicate that current expenditure is less than 15% of what is required to avoid extinctions and recover threatened species (Wintle et al. 2019).

**FIG. 4: WILDLIFE MANAGEMENT TRIAD**



Adapted from Decker et al. (2012)

## WHAT SHOULD THE ACT DO?

### REGULATIONS MUST BE IMPROVED: ATCWs

3.2 Submissions made to the review of the Authority to Control Wildlife ('ATCW') system reveal that the current scheme for authorisations, permissions, licenses and exemptions under the Act are outdated and must be improved (DELWP 2018; Wellbelove and Lindsay 2020).

3.2.1 The Authority to Control Wildlife ('ATCW') is a system that relates to the taking, destroying or disturbing of wildlife. It is encoded under Section 28A of the Wildlife Act. Section 28A of the Act permits the Secretary or delegate to issue an authorisation to permit a person to carry out a range of activities relating to wildlife. Under Section 28A, authorisations may be issued for:

- A Hunting, taking or destroying of wildlife;
- B Buying, selling, acquiring, receiving, disposing of, keeping, possessing, controlling, breeding, processing, displaying or taking samples from or experimenting on wildlife;
- C Marking wildlife, handling wildlife for the purpose of marking and interfering the markings on wildlife (DELWP 2018).

3.3 In order to obtain an ATCW, the Secretary or delegate must first be satisfied that the authorisation is necessary. The gauge of necessity is mapped across a series of detrimental outcomes or damages posed by the species of wildlife the ATCW is applied to control or otherwise disturb. If the Minister is satisfied that a species of protected wildlife is causing damage, they may recommend that the species be declared unprotected under Section 7A (DEWLP 2018). The following are examples of considerations cited by the Department in the recent review of the ATCW system:

- 3.3.1 Because wildlife are damaging buildings, vineyards, orchards, crops, trees, pastures, habitat or other property;
- 3.3.2 For the management, conservation, protection or control of wildlife;
- 3.3.3 To ensure the health and/or safety of people;
- 3.3.4 To support a recognised wildlife management plan ('WMP') (DELWP 2018).

3.4 The Department has previously published advice about the information that must be supplied in ATCW applications. The form itself contains twelve (12) sections, including sections concerning the land and detailed information about the wildlife the applicant intends to control. The latter includes the species and number, the type and extent of damage, the actions the applicant has already attempted to manage the perceived problem and the activities the applicant intends to carry out upon being issued an ATCW. It notes that it is an offence to provide false or misleading statements or information in an ATCW application (DELWP 2018).

- 3.4.1 When an ATCW application is received it is assigned to a regional DELWP Forest and Wildlife Officer ('FWO') who verifies the data and assesses the information to determine its applicability under section 28A. It must meet



- 3.4.1 one of the conditions outlined in subsection 3.2.1(a-c) above (i.e., in order to be authorised, the application must show that an ATCW is necessary under the requirements of the system).
- 3.4.1 Assessments of an ATCW application can include a Quality Assurance ('QA') check, a Desktop Assessment or more information may be obtained via a phone interview or site inspection. The discussion paper published by the Department during the 2018 review of the ATCW system explains that when an application is either complete or has "only minor shortcomings" it is either accepted or progressed to a desktop assessment. If the FWO determines that the requirements of the ACT are met and sufficient information is provided, the ATCW will be issued. It explains that the Department "cannot inspect every property for which an ATCW application is received" so priorities are made for properties of first-time applicants or "high-risk applications". The latter are determined to be so based on the type of control applied for, the species and the number of animals proposed to be controlled (DELWP 2018).
- 3.5 The discussion paper issued by the Department as part of the recent review of the ATCW system explains that establishing whether non-lethal methods have been considered by the applicant is "a key step of the assessment process". It maintains that if this is unclear in the application, officers will contact applicants to determine whether such methods have been trialled. It concludes that officers only assess applications for lethal control when non-lethal methods have "proven to be ineffective, are impractical to implement or pose significant risks to animal welfare". It does, however, note that as non-lethal methods can be "cost-prohibitive or not practical at certain scales", it is considered unreasonable to demand applicants use these (DELWP 2018).
- 3.6 While the requirement to convince the Secretary or delegate of the necessity behind an application may appear to limit the provision of ATCWs, there is data belying this interpretation. Between 2009 and 2018, over 32,000 ATCWs were granted. These covered over 1.5 million animals (Kelly 2019).
- 3.6.1 In 2017, over 4,000 ATCWs were issued. The overwhelming majority of these were for Eastern grey kangaroos [1]. DELWP issues ATCWs to "control" kangaroos where they are demonstrated to damage pasture, crops or other property or otherwise impact on biodiversity. Under 2,732 authorisations over 160,000 Eastern grey kangaroos were authorised to be "controlled" (DEWLP 2018).

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1 Recent reports have recommended that kangaroos authorised through ATCW permits should be killed under the commercial harvest and the KHP [kangaroo commercial harvest program] on the basis that "this would enable more accurate tracking of the total take" (Ramsey and Scroggie 2020). In January 2021, the Victorian Government increased the number of kangaroos allowed to be killed by nearly 40,000; the quota in 2021 is 95,880 kangaroos, representing an increase of 37,780 from 2020 (McNaughton et al. 2021).



In 2017, over 160,000 Eastern grey kangaroos were authorised to be "controlled" under 2,732 ATCWs.

3.6.2 In 2019 the Department issued 3,441 ATCWs that authorised the destruction or harm of 185,286 animals, including over 6,600 threatened grey-headed flying-foxes. By 2020, the number of grey-headed flying-foxes targeted under ATCWs had risen to 11,399 (CRV 2021).

3.6.3 In 2020, over 77,000 red, eastern and western grey kangaroos were killed under ATCWs (Hunt 2021).

3.7 While there was previously a system to collect data on the outcome of these authorities, there is currently no reporting on activity and as such there is no data on the impacts caused by ATCWs. The previous oversight system was removed and justified as a measure “to reduce administrative burden” (DELWP 2018).

3.7.1 Similarly, there is no independent audit or review of the ATCW system and the Department does not publish information about monitoring, compliance or enforcement. There is no publicly accessible information available on the number of prosecutions made relating to ATCWs. Studies have concluded that “it is impossible to know how accurately the published ATCW permit data represents the true extent of wildlife control activity in Victoria and whether applications for ATCWs are ever rejected is unclear” (Wellbelove and Lindsay 2020). Similar conclusions have been reached regarding other legislation in the Victorian wildlife protection framework. For example, earlier reports indicate that “licences and permits issued for takes of protected species under the FFG Act are rarely refused by the Department” (EDO 2012; Brugler et al. 2016).

3.8 It is impossible to distinguish between instances in which actions that cause harm are carried out in a cruel manner, even if an authority to carry out the activity has been obtained, and instances in which an offender simply does not have the required authorisation (VSAC 2019).<sup>2</sup>

## **REGULATIONS MUST BE IMPROVED: UNPROTECTION ORDERS**

3.9 The previous subsection outlined the issuing of authorities to control wildlife under section 28A of the Act and detailed a range of concerns with this system. The current subsection outlines and discusses the provision for wildlife to be declared “unprotected” under the Act.

3.9.1 Unprotection orders exist for a range of species of Victorian wildlife. These are made under section 7A of the Act. In essence, while they are subject to set conditions and various case restrictions, these orders remove any



In 2019 the Department issued 3,441 ATCWs that authorised the destruction or harm of 185,286 animals, including over 6,600 threatened grey-headed flying-foxes. By 2020, the number of grey-headed flying-foxes targeted under ATCWs had risen to 11,399.

- 3.9.1 protection for the species under the Act. As such, the killing of wildlife who are unprotected under the Act is not a breach of the provisions outlined elsewhere in this submission.
- 3.9.2 Until February 2020, an unprotection order that provided exemption from the requirement to obtain an approval to kill wombats existed (Burke 2020). Others, including those relating to brush-tail possums, dingoes, long-billed corellas, sulphur-crested cockatoos and galahs, remain in force (DELWP 2018). Such orders permit landholders to kill these species in specified circumstances and using specified means (Environment and Natural Resources Committee 1995). In 2019, permits were issued to control over 6,000 grey-headed flying foxes despite their listing as threatened under both State and national law (Perkins 2021).



PHOTO: GARY MEREDITH

## CASE STUDY: ORDERS UNPROTECTING DINGOES

- 3.10 The dingo is Australia's largest terrestrial predator (Menkhorst 1995). Dingoes are culturally important to Indigenous peoples and are "aesthetically valued" as an icon by many Australians (Fleming et al. 2001; Elledge et al. 2006).
- 3.10.1 In Victoria, the Department has identified dingoes as both a threatened and protected species (DELWP 2019). They are listed as "threatened" under the FFG Act and are protected under the Wildlife Act (DEPI 2013). Though they are considered native species in several pieces of State legislation, others claim that they are "technically feral animals by definition" insofar as they are "the wild-living descendants of a domesticated animal" (Fleming et al. 2012). The ambiguous status of the dingo in Victorian legislation is exemplified by the Order in Council ('OC') that unprotects the species from the provisions of the WA on specified lands.
- 3.11 Despite consensus on the value and importance of the species, in practice the act of listing a species does not translate into protection (Johnson 2006). This is amply shown by the current status of the dingo. While studies cite Australia's legislative and policy structure regarding conservation as "robust", the presence of significant loopholes in laws intended to protect species, including those internationally recognised as vulnerable, is an indication that this may not be the case (Allen et al. 2017). Rather, such protection appears to be differentially applied, malleable to the perception of a specific species and the interests of those with grievances against them. As this subsection will show, this appears to be the case with the ambitious and contradictory nature of the protections afforded (or removed) from dingoes in Victoria (Hyttén 2009).
- 3.11.1 Dingoes have been listed as "vulnerable" in the IUCN's Red List of Threatened Species since 2008 [2] yet do not have a National Recovery Plan ('NRP') (DEPI 2013; Kearney et al. 2019). The Victorian Government has created an Action Statement under the FFG Act for the dingo that was prepared by the predecessor to the DELWP. It contains descriptions of threats, their sources, past and current management actions, their target, objectives, actions and the responsible agents or authorities (Robley 2013). Independent studies have identified lethal control, including poison baiting, as a pressing threat to dingo populations (Kearney et al. 2019). The suite of impacts this

2 Though the dingo is not currently provided with protection under any other international convention, the designation of a species as vulnerable in the IUCN Red List is used to guide revisions to other important international agreements, including the Convention on the International Trades in Endangered Species (CITES) (IUCN 2021). The system has guided conservation efforts for over 50 years and is considered the most widely recognised and comprehensive resource available for assessing global conservation status (Rodrigues et al. 2006; Tomasini 2018; Betts et al. 2019).

3.11.2 engenders include pack destabilisation, increased hybridisation and, paradoxical to the stated intent of such programs, increased population sizes (Corbett 1988; Thomson 1992; Glen et al. 2007; Wallach et al. 2009; Wallach et al. 2010).

3.11.3 As such, while “wild dogs” are listed as pest animals that can legally be killed dingoes are protected and it is an offence under the Act to harm or kill them without authorisation to do so. In order to continue to lethally control canids, an OC under the Act was made in October 2010 to unprotect dingoes. The original OC unprotected dingoes on all private lands, on public lands within 3km of any private land boundary and on public land within 3km of a perpetual lease property, across specified regions of the north-west and east of Victoria (DELWP n.d.). Amendments to the OC have extended the original order.

3.12 The justification for the unprotection order is that “any dingo found on private land (or on public land adjacent to private land) has the potential to threaten livestock”. This corresponds with conventional approaches to wildlife management, wherein decisions are made based on existing information and the perceptions of stakeholders (Manfredo et al. 1998; Miller and McGee 2001). The undated document published by the Department maintains that “land owners and managers need mechanisms to allow them to protect their livestock [...] without fear of being in breach of the law”. It maintains that without the OC, landholders may “inadvertently destroy a dingo”, due to the acknowledgements outlined above, and thereby would be committing an offence against a protected animal under the WA.

3.12.1 Baiting and trapping programs may impact dingo populations by disrupting the stable pack structure, causing it to fracture or break down (Wallach et al. 2009). The Action Statement (No. 248) prepared by the Victorian Government’s Department of Environment and Primary Industries (‘DEPI’) identifies poison baiting as a key threat to dingo populations (DEPI 2013).

3.13 The capacity to unprotect species has serious and detrimental impacts on the ability to implement restorative programs.

3.13.1 For example, the OC that unprotects dingoes on private land (DELWP 2019) represents a serious impediment to proposed rewilding initiatives. Recent initiatives, such as the proposed reintroduction of native predators in the Gariwerd/Grampians National Park, are significantly impeded by unprotection orders insofar as they can be legally killed with baits, guns or traps if they step over an invisible boundary onto private property (Animal Liberation 2021; Koob 2021).





## WHAT SHOULD THE ACT DO?

### REGULATIONS MUST BE IMPROVED: ANIMAL WELFARE

3.14 The Australian constitution does not refer to native animals and responsibility for animal welfare is primarily held by the states and territories (Wilson et al. 2020; Morton et al. 2021). The resulting framework is often conflictual and maintained via “a fragmented, complex, contradictory [and] inconsistent system of regulatory management” (White 2007; Geysen and White 2009; Fraser 2018; Englefield et al. 2019).

3.14.1 While the Act is not specifically concerned with animal welfare and earlier reviews have emphasised that “it is crucial to appreciate that the intention of the Wildlife Act is not to protect all specimens of wildlife at all times and in any circumstances”, its intent is to regulate and oversee activities involving wildlife in order to “ensure they are necessary, do not impact on the sustainability of the species or result in poor animal welfare outcomes” (DELWP 2018). As such there is some consideration for animal welfare, insofar as it seeks to prevent poor outcomes, in the framework of the Act.

3.15 Animal abuse, mistreatment and cruelty is a complex issue that impacts countless animals globally (Tiplady 2013). As the following figure indicates, Victoria is in the higher echelon insofar as many of its statutes include provisions for animal welfare protection (Morton et al. 2021).

**FIG. 4: STATUTES INCLUDING PROVISIONS FOR ANIMAL WELFARE PROTECTION IN VARIOUS AUSTRALIAN JURISDICTIONS**

Jurisdiction	Animal welfare	Crimes	Wildlife/environment	Fish	Livestock	Sports	Zoo	Other	Total
Commonwealth			✓✓						2
Australian Capital Territory	✓	✓	✓	✓					4
New South Wales	✓	✓	✓✓	✓					6
Northern Territory	✓	✓	✓	✓				✓	5
Queensland	✓	✓	✓			✓	✓	✓	6
South Australia	✓	✓	✓	✓				✓	5
Tasmania	✓	✓	✓	✓	✓			✓	5
Victoria	✓	✓	✓	✓	✓	✓			6
Western Australia	✓	✓	✓						3

Adapted from Morton et al. 2021

3.15.1 World Animal Protection (‘WAP’), an international animal welfare organisation, recently published a report detailing the relative standing of 50 countries according to their

3.15.1 commitments to protect animals and improve policies or legislation. On a scale ranging from “A” to “G” (where “A” represents the highest score), Australia was rated as “C” in contrast to peer nations like New Zealand who were rated “A” (WAP 2019). Australia’s score was largely, though not entirely, due to the lack of a national approach to animal welfare (Englefield et al. 2019).

3.16 Each year, approximately 60,000 reports of abuse are made each year, of which up to 11,000 are made in Victoria (Glanville et al. 2019; VSAC 2019). While this figure is significant, evidence suggest that animal cruelty is similar to other social issues and it is likely that the incidents reported are an underrepresentation (Allen et al. 2006; Henry 2009; Flynn 2011; Lees et al. 2013).

3.16.1 In the three years from January 2015 to December 2017, the RSPCA prosecuted over 50% of charges for animal cruelty offences in Victoria. Of the government agencies or departments with responsibility for animal welfare, DEDJTR prosecuted the majority of animal cruelty offences: in this timeframe, 298 charges were prosecuted by DEDJTR compared to 15 prosecutions by DELWP.

**FIG. 5: AGENCIES RESPONSIBLE FOR PROSECUTING ANIMAL CRUELTY OFFENCES IN VICTORIA BY NUMBER OF CASES AND CHARGES**

Agency	Cases prosecuted	Charges prosecuted
RSPCA Victoria	556 (53%)	1,604
DEDJTR and DELWP	114 (11%)	776
Victoria Police	330 (31%)	395
Local councils	50 (5%)	98
<b>Total</b>	<b>1,050</b>	<b>2,873</b>

Adapted from the Victorian Sentencing Advisory Council 2019

3.16.2 The Victorian Sentencing Advisory Council (‘VSAC’) explain that “this suggests that agriculture- and livestock-related offending, as opposed to wildlife-related offending, most likely represents the bulk of charges prosecuted by the various iterations of those departments during the reference period”. However, elsewhere VSAC acknowledges that “a significant number of offences” that are related to animal welfare “do not constitute an animal cruelty offence for the purposes of this report”. These could include “unlawfully possessing wildlife, hunting game from a moving vehicle and many other offences”. It does, however, advise that these offences represent “the most common

3.16.2 offence type co-sentenced alongside animal cruelty offences” (VSAC 2019).

3.17 The Victorian Animal Welfare Action Plan (‘AWAP’) outlines its vision as facilitating and fostering care and respect for animals (DEDJTR 2017). It notes that community expectations relating to animal welfare are increasing. It is reasonable, therefore, to conclude that community demand for services to assist wildlife is “unlikely to diminish” (Gilmour et al. 2019).



PHOTO: UNKNOWN

## 4. CONCLUSION AND RECOMMENDATIONS

- 4.1 The following section provides a series of modest recommendations for consideration. Animal Liberation expects these to be thoroughly and transparently considered.

### ANIMAL WELFARE

- 4.1 Though concerns for the welfare of wild animals is growing worldwide (Littin and Mellor 2005) and the cases outlined in subsection 2.4 were triggers for the current review, the Act does not currently contain any specific prohibition or offences relating to cruelty (Wellbelove and Lindsay 2020). Similarly, some actions that are conducted in accordance with the Act are exempt under POCTA (DJPR 2020). The latter is primarily administered by the Department of Jobs, Precincts and Regions ('DJPR') under the Minister for Agriculture. The State's principal animal welfare act (POCTA) "does not apply to anything done in accordance with the *Wildlife Act 1975*" (see section 6(1B) of POCTA).

- 4.1.1 It is reasonable to maintain that harm committed upon wildlife that is not carried out under the approval of the mechanisms contained within the Act is likely an offence under POCTA. At present, it is unclear under what circumstances an authorisation or an exemption is applicable but not followed under the Act (Wellbelove and Lindsay 2020). That is, though some actions may be offences under each Act (i.e., the *Wildlife Act* and the *Prevention of Cruelty to Animals Act*), it is unclear whether these are applied in a reliable manner. Therefore, cruelty is not a clearly defined and transparently punishable offence.

- 4.1.2 Animal Liberation strongly recommends that the review investigate the absence of specific provisions relating to animal welfare and consider approaches by which the concerns outlined in subsection 4.1.1 can be rectified.

### REGULATIONS

- 4.2 As section 2 of this submission has shown, there are serious concerns with the current regulatory regime as it applies to the protection of wildlife in Victoria.
- 4.2.1 Reform must urgently be undertaken at a range of levels and include:

- A The establishment of explicit and overarching objectives to guide all decision-making processes under the Act and the Victorian wildlife protection framework more generally;
- B The development and inclusion of specific criteria to guide decision-making, particularly as it relates to permissions, licences and authorisations under the Act in order to facilitate accountability and aid in enforcement;
- C The creation of duties to facilitate positive and proactive regulatory procedures that include: (1) routine and systematised collection and publication of data relating to licensing and permits; (2) independent auditing of activities undertaken under these licenses or permits; (3) a robust monitoring and compliance scheme and; (4) an effective investigation and prosecution regime for offences that deters future breaches or illegal activities.
- D The alignment of the Act with recently amended or introduced legislation [3] that provides for the development of mechanisms to ensure that all elements are informed by sound science and best conservation practice.

4.3 It is important to note that many of these directly relate to animal welfare, and should be investigated as such. Animal Liberation recommends that the following systems or schemes be specifically investigated for reform:

#### **THE AUTHORITY TO CONTROL WILDLIFE SCHEME: s28A**

- 4.3.1 The current ATCW scheme (see subsections 3.2–3.8) requires urgent and transparent reform. As earlier sections and subsections of this submission have shown, there is a notable lack of governance and monitoring of ATCWs. Animal Liberation recommends that the Victorian Government take the opportunity provided by the current review to re-establish and improve on the abandoned system (DELWP 2018) for the submission on activity under ATCWs. Similarly, recommendations relating to the auditing and review of the scheme must be prioritised (see subsections 4.2.1–b–c).
- 4.3.2 The introduction of an auditing system that includes mandatory reporting and publication of data is necessary as there are currently no provisions that enable the

<sup>3</sup> Consider, for example, the recent review of the *Prevention of Cruelty to Animals Act* which included the acknowledgement that it "no longer meets the needs of animal industries, the community or government" and that this necessitated reform. The Directions Paper provided by DJPR for community consultation noted that its many amendments and interactions with Codes of Practice ("COPs") interfered with its ability to respond to "developments in animal science" and "changing community expectations" (DJPR 2020).

4.3.2 assessment of the extent of harm or damage caused to wildlife under ATCWs (Wellbelove and Lindsay 2020). This problematises the capacity to independently assess impacts on biodiversity and represents a serious flaw in the current framework.

### **UNPROTECTION ORDERS: s7A**

4.3.3 The current capacity for species to be unprotected under the provisions of the Act (see subsection 3.9) lacks transparency due to its operation via Council order derived from the recommendation of the Environment Minister. This enables orders to remain operational without review or oversight.

4.3.4 Though there are serious concerns with the issuing of ATCWs under Section 28A, the authorities contained under Section 7A to unprotect wildlife does not require the satisfaction of certain criteria [4]. The only requirement under Section 7A that restrict or guide the creation of unprotection orders are that it "appears" to the Minister that wildlife are causing injury or damage. As such, there is no requirement in Section 7A or any other provision of the Act that such an order be instructed or guided by scientific evidence, independent or otherwise. Similarly, there is no requirement that such evidence be used to substantiate their ongoing continuation.

4.3.4 The current review offers an opportunity to investigate these deficiencies. The review should explore and scrutinise the incompatibilities and difficulties that current unprotection orders impose. For example, the review should consider the unprotection order relating to the dingo (see subsections 3.10-3.13). Given the increasing awareness (Sweeney 2016) and scientific evidence relating to the ecological benefits of rewilding (Wallach 2016), for example, the inherent difficulties that the unprotection order poses render such initiatives problematic and contradictory (Animal Liberation 2021; Koob 2021).

## **HABITAT PROTECTION**

4.4 Though the Act seeks to protect wildlife through prohibitions on the unauthorised "hunting, taking or destroying" of wildlife (see Section 41, for example), this objective is impaired by the provisions outlined above and by the fact that the most serious and pervasive threat to

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4 According to the Victorian Supreme Court, safeguards were inserted into section 28A in order to "ensure that the power to grant an authorisation is wisely used and carefully controlled" (see *Australian Society for Kangaroos Inc. v Secretary, Department of Environment, Land, Water and Planning*).



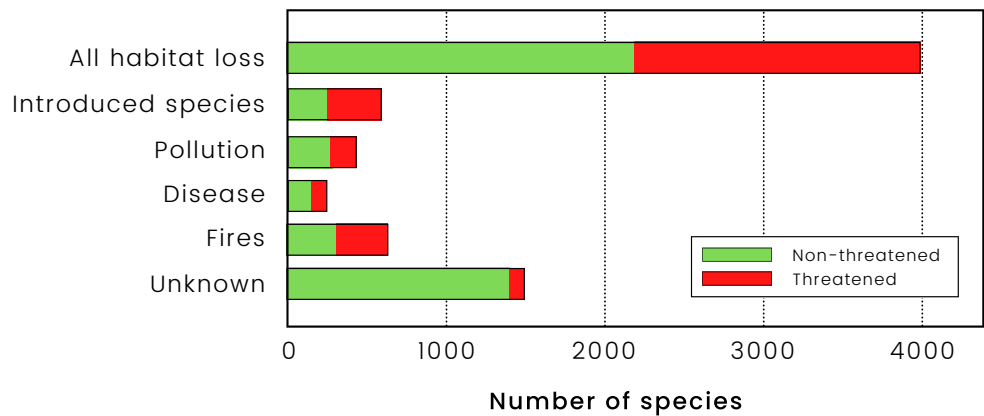
4.4

wildlife is caused by activities that impede or damage habitat (Wintle and Bekessy 2017).

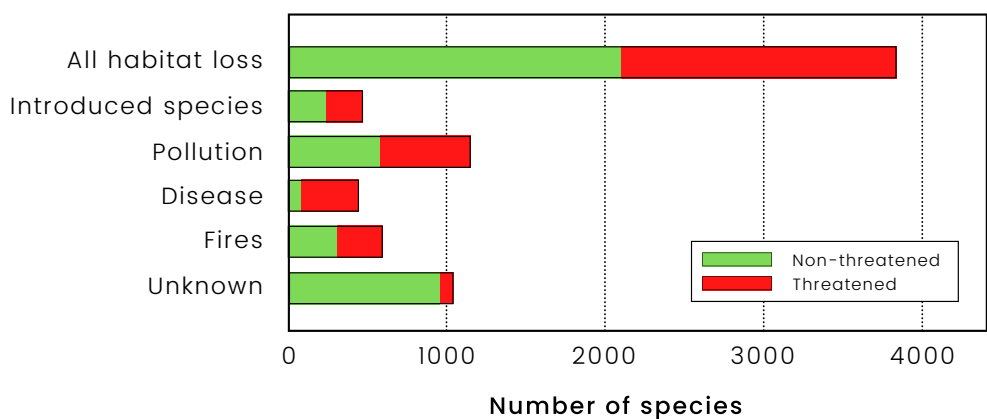
4.4.1

The predecessor to the Commonwealth Department of Agriculture, Water and the Environment ('DAWE') note that since European invasion, the "extensive clearing of native vegetation has removed, changed or fragmented habitats" and that this "can reduce their diversity and threaten the survival of many native species" (DEH 2004). Similarly, the Victorian Government has acknowledged that as Victoria is "the most extensively settled and cleared state in Australia", the decline in extent and quality of habitat has had "major implications" for many species (DELWP 2021b). Others have since noted that while land clearing is largely regarded as ecologically destructive, it is also an animal welfare issue (Finn and Stephens 2017).

**FIG. 6.1: THE RELATIVE IMPACT OF HABITAT LOSS ON MAMMALS**



**FIG. 6.2: THE RELATIVE IMPACT OF HABITAT LOSS ON AMPHIBIANS**



Figures 6.1 and 6.2 adapted from the Wintle and Bekessy (2017)

4.5

Though there are other threatening processes that drive extinctions, including the so-called "evil quartet" (Diamond 1989) [5], habitat

5 The "evil quartet" includes (over-)exploitation, habitat destruction and fragmentation, introduced species and secondary extinctions (Diamond 1989; LoGiudice 2006).

4.5 loss is the primary threat to Australian wildlife. These threats interact and do not generally function independently (Wintle and Bekessy 2017), leading to impacts that exceed those posed by a single element (Brook et al. 2008). Most habitat is degraded or destroyed through land clearing, primarily for agriculture or urban development (Evans 2016; Kilvert 2020). In Victoria, logging of native forests is a threat to vulnerable species, including the critically endangered Leadbetter's possum (Lindenmayer 2012) and the greater glider (Slezak 2017).

4.5.1 Though the *Wildlife Act* does not contain any provisions to protect the habitat of protected wildlife, Section 87(1) provides for the making of regulations to do so. While these Regulations contain offences for wildlife destruction or damage [6], the term "habitat" is not defined in the Act or the Regulations. This leads to an ambiguity that is "unclear on paper and under-utilised in practice" (Wellbelove and Lindsay 2020).

4.5.2 Part II of the Act contains provisions for the management of public lands ("State wildlife reserves" and "nature reserves") which can involve the protection of native fauna habitat. Despite this, various activities that harm wildlife are permitted in these areas. This includes hunting. Animal Liberation proposes that recommendations contained in the Victorian Environment Assessment Council's ('VEAC') assessment of public land should be considered during the current review (VEAC 2017).

## INDEPENDENT REGULATOR AND EXPERT ADVICE

4.6 Studies have explained that "everything in the wildlife management system that is not directly about wildlife and habitat is about humans, and much of the environment in which people, wildlife and habitats interact is influenced by humans in some way" (Decker et al. 2012). This is acknowledged in the accompanying Issues Paper (Peterson et al. 2021). Because interactions between humans and wildlife can be controversial and involve conflicting interests, the government must seek the advice of independent experts when such conflicts arise.

4.6.1 While DELWP consults with experts to provide advice on some elements of the Act, there is currently no provision that formally establishes any advisory boards or expert panels. This is in contrast to other legislation, such as the FFG Act's Scientific Advisory Committee, that provides for the establishment of such expert panels. In addition,

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6 Regulation 42(1) of the *Wildlife Regulations 2013* contains an offence to damage, disturb or destroy wildlife habitat.

- 4.6.1 concerns exist regarding the ambiguity or inexplicit nature of the experts the Department does consult. For example, important factors that are not made clear include professional allegiances or ties and the procedure that led to their appointment. Other important elements not generally provided include their qualifications, expertise, role and function (Wellbelove and Lindsay 2020).
- 4.6.2 These inconsistencies should be prioritised during the review and considered for inclusion in any amended version of the Act.



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