Review of the *Wildlife Act 1975*

Expert Advisory Panel Report

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# Letter to the Minister

**Hon Lily D’Ambrosio MP**

Minister for Energy, Environment and Climate Change

Minister for Solar Homes

Level 16, 8 Nicholson Street

EAST MELBOURNE VIC 3002

20 December 2021

Dear Minister,

It is with pleasure that we present our report of the review of the *Victorian Wildlife Act 1975*.

Victoria’s native fauna is wonderfully diverse. It is loved by Victorians for a variety of values and purposes. But our native fauna and biodiversity more broadly are under pressure. We know this from state of the environment reporting and that the decline is likely to continue as pressures from population growth, human activity and climate change persist.

It is not acceptable to assume or accept that this decline is inevitable or that we are powerless to effect change. Awareness, community expectations, scientific knowledge and understanding of Traditional Knowledge about ecological systems have evolved since 1975 when the Wildlife Act was enacted. This presents both an opportunity and moral imperative to act to improve outcomes for Victoria’s native fauna.

If we are to improve the outcomes for our native fauna – to truly protect, conserve and reverse biodiversity decline – a new Fauna Act must be framed and operationalised in a different way to its predecessor.

To seize this opportunity, the most significant and important reform is to introduce a new Fauna Act that is underpinned by an explicit ethical framework and embeds new approaches that:

* unequivocally centre on our native animals with their welfare and outcomes at its core
* recognise the sentience, intrinsic value and inherent rights of animals
* adopt a holistic, systems approach that seeks to improve ecosystems integrity
* flip the onus of decision making in favour of native fauna
* formally recognise and value Traditional Ecological Knowledge

establish the rights and interests of Victoria’s First Nations peoples and strengthen genuinely collaborative governance.

Our vision is for a new Fauna Act that focuses on maintaining diverse and healthy native fauna populations and the ecological communities and processes they are an intrinsic part of. Importantly, a new Act must explicitly and exclusively focus on indigenous species – terrestrial, aquatic, vertebrate and invertebrate – and on keeping common species common.

By adopting this new vision, a new Act will borrow from the concepts of Whole of Country management. It is an opportunity to acknowledge the ancient obligations of Victoria’s First Nations peoples to care for Country and clarify and activate the rights and interests of all Aboriginal Victorians. A new Act could represent a significant step on the road to self-determination in Victoria.

A new Act must also inform, engage and empower government, stakeholders and the community to act with confidence. They will be guided by a transparent fauna strategy that is underpinned by expert science and Traditional Ecological Knowledge and given effect through actionable fauna plans with outcomes monitored and reported.

As well as a clearly articulated purpose and outcomes, a modernised Fauna Act must provide the governance and mechanisms to support effective decision making and improved outcomes, and to avoid harms. These structures must be backed by contemporary and efficient risk-informed regulatory tools, including enforceable codes of practice and graduated permissions and offence structures and penalties.

We acknowledge human activities and behaviours will continue to bring native fauna, humans and pest species into competition and conflict. Judgements and choices will need to be made to mediate and balance these interests. Our intention is for a new Act to ensure the interests of animals are considered upfront and not as an afterthought. It is far better to avoid harms than to intervene when species are critically threatened and at real of being lost.

It has been our deep privilege to undertake this review. But our work would not have been possible without the participation, expertise and generosity of many people. We are grateful to the many individuals and organisations who responded to the call to engage and shared their passion and insight, to the First Nations representatives who entrusted us with their wisdom, and to the expert advisers who challenged our thinking.

The Panel was expertly supported by a Secretariat involving the DELWP team led by Warrick McGrath and the Marsden Jacob Associates team led by Dr Jeremy Cheesman. The review grappled with complex issues and its conduct was disrupted by the pandemic, but the team supported us with their expertise, professionalism and commitment throughout.

We also acknowledge and thank our former Panel members and colleagues, Dr Deborah Peterson who chaired the review for much of its course and Associate Professor Ngaio Beausoleil and Emeritus Professor Arie Frieberg who established the foundations for our enquiries.

Reform is never without challenge and requires sustained leadership and engagement. But to not change is to accept the continued decline and loss of our unique fauna and biodiversity – an outcome unacceptable to most, if not all, Victorians.

We commend this report to you and look forward to a new Fauna Act that will realise better outcomes for Victoria’s treasured native animals.

Yours sincerely,

**Jane Brockington**

Chairperson

**Dr John Hellstrom, ONZM**

Member

**Dr Jack Pascoe**

Member

# Executive summary

**The *Wildlife Act 1975* is an important part of Victoria’s legal framework for protecting and managing biodiversity. The Act establishes procedures that seek to promote the protection and conservation of wildlife, the prevention of wildlife extinction, and the sustainable use of, and access to, wildlife. It also prohibits and regulates the conduct of people engaged in activities connecting with or relating to wildlife.**

The Act developed out of the *Game Act 1958*, in response to increasing concerns among the community about wildlife conservation and preservation and increasing risks to wildlife and their habitat. When the Act was enacted over 45 years ago, Victorians’ values and expectations about wildlife were different from those held today. At the 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 ‘biological conservation’ was only beginning.

Since then, human settlements and activities have expanded, bringing wildlife into conflict with humans more frequently. There is increasing concern and evidence about the accelerating loss of native wildlife species and associated biodiversity in Victoria 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.

There is good evidence and a common understanding that the Wildlife Act is no longer consistent with broadly held community values, expectations and aspirations for wildlife in Victoria.

More importantly, the poor and declining state of much of Victoria’s wildlife highlights that the Act is inadequate to maintain diverse, healthy wildlife populations and their ecosystems in ways that keep wildlife common in Victoria. The case for change is clear.

## About this review

In December 2020, the Minister for Energy, Environment and Climate Change appointed an Expert Advisory Panel to review the Act. The review was prompted by 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 many koalas.

The Minister instructed the Panel to 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.

The Minister requested we focus on these terms of reference. Some issues, although important, were 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. These issues included how the Act is administered, regulations under the Act and some matters covered by other Victorian legislation or other legislative reform projects (e.g. animal welfare legislation and land classifications).

A starting point for our review about the state of *Victoria’s wildlife was the Victorian state of the environment 2018* report prepared by the Commissioner for Environmental Sustainability. Our review also drew on the insights of Victorian Government agencies, First Nations peoples, scientists, industry and interest groups, academics and the general public. We collected views and inputs to our inquiry over a 9-month timeframe from more than 1,000 individuals and organisations, including meeting with 18 key stakeholder groups,12 Traditional Owner groups, 9 Victorian Government agencies, 3 sector forums and 3 expert workshops.

We thank everyone who participated in this review; our report and recommendations are better for your contributions.

This review is part of a wider examination of Victoria’s legislative framework for protecting and managing biodiversity. The Victorian Government has undertaken several 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*.

## Findings and recommendations

Our findings and recommendations are presented in 3 parts:

* **Part 1** details the context of the review, the changing challenges facing wildlife and changing community expectations. From this context, we consider what a new Act should achieve for Victoria’s wildlife in the future.
* **Part 2** makes recommendations about a new Act for managing wildlife in Victoria, and the evidence base and rationale for supporting these recommendations. A key recommendation is to revise the definition of ‘wildlife’ to focus on native species or ‘fauna’. In light of this recommendation, we propose a new Fauna Act.

**Part 3** makes recommendations for mechanisms that we consider should be in place or examined to support a new Act for managing fauna in Victoria. These mechanisms fall outside the provisions of a new Act, but support its implementation, or are longer-term reform opportunities.

## Part I: Context and objectives

### Trends and challenges impacting Victoria’s wildlife

Indicators of Victoria’s native wildlife populations show many are in fair to poor condition and are generally trending downwards. Pressures including population growth, land use and habitat fragmentation, and climate change are likely to increase the risk that the downward trend continues.

Victoria’s approach to managing wildlife has shifted over time from a species and location-based approach towards a more systems-based approach that focuses on ecosystem resilience, functions and stability. However, the focus remained primarily on managing wildlife as a resource, rather than recognising the intrinsic value and sentience of wildlife and its inherent right to be protected.

Increasingly, First Nations peoples’ connections and relationships with wildlife are also being recognised. First Nations peoples have managed and conserved Victoria’s cultural landscapes for thousands of years, forming a fundamental connection with wildlife. The concept of Country binds the living and inanimate parts of a landscape, including all people and wildlife. Many animals have spiritual and ceremonial significance and are considered sacred. Protecting wildlife involves managing landscape holistically, ensuring Country and her people are also healthy.

Victorians value wild animals for many reasons, and different groups in the community have diverse attitudes and expectations about protecting, interacting with and using wildlife.

### The *Wildlife Act 1975*

The Wildlife Act was introduced in 1975, to establish a framework for managing human interactions with wildlife. Since it passed into law 45 years ago, it has been amended 125 times. Some of these 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. Other amendments were administrative in nature, or changes to the Act because of amendments to other Acts.

Over time, it has become apparent the Act cannot effectively achieve many of its purposes related to wildlife or broader biodiversity goals. Its stated purposes no longer reflect contemporary values related to wildlife. Nor do they progress the rights of Traditional Owners and Aboriginal Victorians to self-determination with respect to wildlife. And the permissions and compliance and enforcement mechanisms under the Act are outdated and need to be modernised.

### What a new Act should achieve

Currently Victoria’s biodiversity ambitions are addressed through a complex matrix of legislation and other interventions that have developed over time. Rather than revise the current Wildlife Act, we propose a new Act that better protects and conserves wildlife. Our vision is to recognise the intrinsic value of wildlife and its ecosystems, and better provide for its protection and conservation.

To achieve this vision, a new Act must be framed differently. We must move beyond seeing fauna primarily as a resource or something to be managed or controlled for our convenience. And it is not sufficient or effective to respond only when species are threatened.

We propose a framework that recognises fauna’s intrinsic value and provides for the inherent rights of wildlife to exist without undue interference or impingement on quality of life. Human interactions with fauna, including use or control, should aim to avoid harming their ecosystems. The new legislation must formally recognise the interests, expertise and rights of First Nations peoples in wildlife beyond cultural purposes, and better combine Traditional Ecological Knowledge with emerging scientific understanding and restoration practices. This legislation must also build community understanding and trust by providing for transparency and community participation around principle-based processes, decisions and compliance actions.

We recommend a vision for a new Act that focuses on 4 outcomes.

Figure 1: A vision for a new Act that focuses on 4 outcomes



Table 1: A vision for a new Act that focuses on 4 outcomes.

| Vision | Outcomes |
| --- | --- |
| The new Act must address the serious harms indigenous wildlife are now facing. It must recognise their intrinsic value and provide for enlightened conservation and build resilience into their ecosystems.To do this the new Act must move beyond seeing wildlife primarily as a resource or something to be managed or controlled for our convenience. It should ensure that human interactions with wildlife, including use or control, do not harm their ecosystems by better utilising Traditional Ecological Knowledge blended with emerging scientific understanding and restorative technologies.To succeed, it must also build community understanding and trust in how the new Act is administered through transparency and participation around principle-based processes, decisions and compliance actions. | The vision for a new Act can be achieved through 4 main outcomes:* **Outcome 1:** Diverse, healthy and resilient wildlife populations and their ecological communities.
* **Outcome 2:** Self-determination of Traditional Owners and Aboriginal Victorians about their interactions with wildlife.
* **Outcome 3:** Better outcomes for wildlife.
* **Outcome 4:** Public understanding and trust of wildlife management.
 |

## Part II: Recommendations for a new Act for fauna

Our recommendations for a new Act seek to achieve our vision and outcomes for fauna. This is achieved by: reframing purposes, principles and definitions in the Act; recognising and protecting the rights and interests of Traditional Owners and Aboriginal Victorians as they relate to fauna; providing a framework in the Act for achieving the Act’s purposes; enacting better practice permissions; and reforming the Act’s compliance mechanisms.

### Introduce contemporary, appropriate and clear purposes

The purposes of the current Act do not adequately focus on achieving the best outcomes for native fauna in Victoria. They do not recognise the intrinsic value of fauna or its inherent right to protection.

They do not recognise the links between fauna and healthy environments, or consider management using a whole-of-ecosystem approach. Nor do they recognise the rights and interests of Aboriginal Victorians relating to fauna, or contribute to the realisation of self-determination in Victoria.

We recommend a revised set of purposes that support our proposed outcomes for native fauna. Specifically, the purposes of the Act are to establish a legal and administrative framework that:

* recognises and promotes the intrinsic importance of fauna and the environment and the value of ecosystem services to human society, individual health and wellbeing
* provides for the conservation, protection and welfare of indigenous animals, including promoting their recovery and restoration
* contributes to protecting, restoring and enhancing ecological communities and processes of which fauna is an intrinsic component

as far as possible and in accordance with this Act and other laws, accommodates Aboriginal Victorians’ rights to self-determination relating to fauna.

We also propose naming this new legislation the Fauna Act, to reflect its focus on Victoria’s native fauna. This new Fauna Act should include the following principles that guide decision making:

* Fauna has an inherent right to exist without undue or arbitrary interference.
* Fauna can experience positive and negative sensations and therefore warrants humane treatment.
* Fauna must be managed within the context of its ecosystems.
* Decision making should be based on the best available scientific knowledge and Traditional Ecological Knowledge.
* Decision makers should apply the precautionary principle to avoid harms.
* First Nations peoples and Traditional Owners must be engaged in implementing the Act.
* Managing fauna requires good animal welfare and must ensure ecological sustainability and integrity.
* Information and reporting on decisions made under the Act should be publicly accessible.

Economic or social impacts of fauna should be managed in compliance with these principles.

These principles should also support decisions, policies, programs and processes that remove barriers to self-determination for Aboriginal Victorians.

A new Act also needs a new definition for fauna. The definition of ‘wildlife’ in the current Act creates confusion and is not comprehensive. It does not include some indigenous vertebrates (fish) and invertebrates (marine or non-threatened terrestrial species), which means they are not subject to the Act. At the same time, it includes non-indigenous species that should not be defined as fauna (e.g. deer and some game bird species). This protection for non-indigenous animals places the Act at competing purposes. For example, deer proclaimed to be wildlife under the Act can destroy the habitat of indigenous wildlife, undermining the Act’s goals to support diverse, healthy and resilient indigenous wildlife species. The recent Parliamentary Inquiry into ecosystem decline in Victoria also found inconsistent definitions about animals in the Wildlife Act, the *Flora and Fauna Guarantee Act 1988* (FFG Act) and the *Catchment and Land Protection Act 1994* impede the effective control of pest animals.

For these reasons we propose a new definition of fauna, one that encompasses any animal-life indigenous to Australia, whether vertebrate or invertebrate and in any stage of biological development, but not including humans.

### Recognise and protect the rights and interests of Traditional Owners and Aboriginal Victorians as they relate to fauna

The tenet of caring for Country is ubiquitous to all mobs. Understanding a First Nations’ worldview requires understanding that Country binds the living and inanimate parts of a landscape through spirit. As noted above, protecting fauna involves ensuring all elements of Country are healthy – the people, the animals and the ecosystems.

A new Act is an opportunity for the State of Victoria to signal what self-determination means in the context of contemporary land management. With an eye to the process of Treaty and the First Principles Review of the *Traditional Owner Settlement Act 2010*, we recommend broadening the rights and acknowledging the responsibilities of Aboriginal Victorians. We consider it is time to recognise that all Victorians should show the ancient lore and system of Country Management of Victoria’s First Nations the respect it is warranted, to cede responsibility to groups where possible, and to look to build the capacity of other groups where required.

A new Act should be as inclusive as possible, not solely relying on bodies such as Registered Aboriginal Parties and groups who hold native title, but actively seeking out the right voices for Country. Traditional custodians should also be delegated the authority to extend the rights and responsibilities as they relate to fauna to Aboriginal Victorians living on their Country, and by doing so re-establish a cultural practice.

The Act should engage all Victorians in supporting this vision through its ongoing operation. A new Act can contribute significantly to the path of self- determination by recognising and embedding Traditional Owner access to and care of fauna.

### Establish a framework for achieving the Act’s purposes

Having set a vision and developed the foundational elements of a new Act, the next step is to establish a framework for achieving the Act’s purposes. We examined whether the Act’s regulatory framework supported the purposes, especially considering recent and anticipated changes to other legal frameworks and policy settings. This review was an opportunity to identify any gaps or inconsistencies in the wildlife management framework within the context of recent changes to the FFG Act, the current review of the *Prevention of Cruelty to Animals Act 1986* (POCTA Act), the current review of Victoria’s public land legislation (which will be incorporating the Wildlife Act’s provisions on wildlife reserves, sanctuaries and cooperatives) and the recently completed Parliamentary Inquiry into ecosystem decline in Victoria.

We propose several mechanisms that clarify responsibilities for fauna and support better planning and management related to fauna.

We recommend establishing a general duty on Ministers and public authorities to consider fauna and biodiversity outcomes when conducting activities. We do not propose extending it to all Victorians.

We also propose a more comprehensive planning framework for fauna. We recommend the production and release of a Victorian fauna strategy and fauna plans. The strategy and plans may be used when the condition and trend of fauna is not being assessed comprehensively, following significant events (e.g. bushfire or flood), where there is risk of local extinctions of a species, or where there is concern about the level of control for a species.

Importantly, strategies and plans must be supported by expert knowledge (scientific knowledge and Traditional Ecological Knowledge) and stronger reporting requirements. We also propose mechanisms for making mandatory codes, standards or guidelines.

### Enact better practice permissions

Permissions are a key part of the legislative framework of the current and new Act. Our examination of the current permissions system, and the feedback from participants and experts, suggests the current Act cannot deliver the outcomes we want for Victorian fauna. For example, while the current Act categorises some permissions based on the level of risk, generally low-risk activities are subject to the same regulatory burden (for the regulator and the licence holder) as high-risk activities. This means regulatory resources are disproportionately used to manage lower-risk activities, leaving fewer available to manage higher- risk activities.

We propose modernising permissions by introducing a risk-based approach to human interactions with fauna that is consistent with the risk framework outlined in Chapter 1 (Figure 2). This approach will be more efficient if it targets regulatory effort where it has the most impact in terms of reducing harm to fauna. Under a risk-based approach, higher-risk activities would face some combination of stricter application assessment, more conditions (such as reporting requirements) and more frequent audits and requirements for licence renewal.

While this approach may impose more regulatory burden on those engaging in more risky activities, if regulation is well-directed this extra burden should be justified by the enhanced benefits for fauna and the community. There should be less regulatory burden for lower-risk activities and those producing conservation outcomes. There should also be regulatory burden relief for mature high performing duty holders.

This risk-based approach can be implemented through a broader range of permission types and conditions, and by reallocating the burden of proof from regulators to applicants seeking a permission. Having a broader range of permission types gives the regulator greater flexibility to tailor permissions to the circumstance at hand and increases its capacity to control high-risk activities. Shifting the burden of proof aligns the Act with the general approach in Victoria that places the burden of proof on the applicant.

Importantly, our proposed approach retains mechanisms to appropriately control management of fauna. It considers the positive effects for fauna communities and ecosystems of permitting some activities (e.g. controlling overabundant species) as well as the negative effects (e.g. overusing a species). The permissions system also recognises legitimate and licensed uses of fauna (e.g. via commercial licences and authorisations for Aboriginal Victorians and Traditional Owners).

### Reform compliance mechanisms

To complement our proposed changes to permissions, we examined ways to encourage compliance with the Act, including whether offences and penalties are appropriate to punish and deter crimes involving fauna. Criticisms of the current framework include that it focuses too heavily on prosecuting harms once committed, rather than providing mechanisms that deter and avoid harms in the first place.

Our recommendations support several step changes in a new Act to create a modern compliance framework that better delivers our vision for fauna in Victoria. To achieve this, we focus on mechanisms that avoid harms, rather than on prosecuting harms.

We recommend a new Act that modifies fauna offences to:

* address new harms
* include new provisions for attempted offences and aiding and abetting offences
* extend the statute of limitations
* modify the penalties and sanctions to support a more graduated range of administrative, civil and criminal penalties and sanctions
* include sentencing guidelines for the courts and define harm

reform powers of authorised officers to investigate and intervene in offences.

## Part III: Recommendations supporting a new Act for fauna

To this point, our recommendations relate to creating a new Act that achieves better outcomes for fauna and better reflects Victorians’ expectations and aspirations for fauna. But a new Act is only one part of Victoria’s framework for protecting fauna and biodiversity. As part of this review, we also considered other ways to support better outcomes for Victoria’s native fauna and its ecosystems.

Use other mechanisms to promote outcomes Regulation through administration of an Act is only one way to achieve better outcomes for fauna in Victoria. In many situations, non-regulatory measures may work better, or will complement, regulatory measures in the Act. Considering these complementary mechanisms is important for several reasons:

* First, complementary measures can increase awareness and understanding of Victoria’s native fauna and its ecosystems, which is important for improving outcomes. Many Victorians may never be aware of the provisions of the Act unless they breach them, and their breach is detected and enforced.

Second, even a new Act will have limited influence on the activities of private landholders in Victoria. There is much this group can do to support better outcomes for Victorian wildlife, given private land accounts for two-thirds of Victoria’s total land area.

We support current plans by the Victorian Government to raise the awareness of all Victorians about the importance of our natural environment, and to foster positive attitudes towards our environment and the fauna that is integral to it. We propose supporting such activities by implementing a long-term strategy to measure community attitudes and behaviour towards fauna specifically, and Victorian biodiversity more generally. We also recommend promoting communication and awareness campaigns about Victorian biodiversity and fauna to a large number and cross-section of Victorians.

A significant group that can influence outcomes for wildlife and habitat in Victoria are private landholders. Because private land occupies around two-thirds of Victoria’s total land area, improving outcomes for fauna must involve supporting landholders to increase the amount of land that is protected for biodiversity purposes. It must also involve changing how productive land is managed for the benefit of fauna.

The existence of fauna and habitat on private land can yield benefits to private landholders – but usually these are not easily valued or are difficult to convert into direct or short-term financial benefits. As a result, ecosystem services are underprovided. To address this issue, we identify a range of ways landholders can be encouraged to invest in conservation on private land. The type of incentives used depend on the mix of private and public benefits created and sustained over time.

Finally, we consider ways to improve the capacity of regulators, including the Office of the Conservation Regulator (OCR) and local councils, to monitor or investigate breaches of the Act, including higher-risk breaches.

### Consider longer-term directions

Our recommendations for a new Act and complementary measures are actions that can be implemented in the shorter term. Over the longer term, there are other changes the Victorian Government could explore that we consider will further improve outcomes for fauna and their ecosystems in Victoria.

The first is examining the merits of combining the *Wildlife Act 1975* or the new Fauna Act with the FFG Act. A consolidated Act would have the following advantages:

* A combined Act that applies to common and threatened fauna (wildlife), flora, invertebrates and ecological communities and incorporates provisions to protect habitat would enable a more harmonised and ecosystem-based approach to managing and regulating flora and fauna.
* A consolidated Act with a clearer and harmonised purpose and principles guiding decision making communicates to the community and regulated parties the Victorian Government’s priorities relating to biodiversity conservation in a single instrument.
* Amalgamation would avoid the need to amend the FFG Act following reform of the Wildlife Act. This reduces issues of legislative leap-frogging, and potential misalignments due to leads and lags between them.
* Regulatory and administrative functions could be streamlined under a combined Act.
* A consolidated Act may enable a more contemporary and holistic legal framework for Traditional Owners relating to biodiversity and could more effectively provide for self- determination of First Nations peoples about their interactions with Victoria’s flora and fauna.

A consolidated Act also increases consistency with other jurisdictions that have consolidated biodiversity statutes. This may increase scope for cross-jurisdictional collaboration and learning.

However, we recognise combining the Acts would be a significant task that requires assessing the costs and benefits.

The second is considering the merits of establishing the regulator as a standalone agency (separate to the Department of Environment, Land, Water and Planning) with responsibility for the Fauna Act (or Biodiversity Act if created), as well as other conservation regulatory functions as currently occurs.

# Review recommendations

## Introduce contemporary, appropriate, and clear purposes and principles

### Recommendation 4.1

Enact a new Act that focuses on halting further decline in Victoria’s wildlife populations and maintaining diverse and healthy wildlife populations and their ecological communities. It should support 4 outcomes:

* Diverse, healthy and resilient wildlife populations and their ecological communities
* Self-determination of Traditional Owners and Aboriginal Victorians about their interactions with wildlife
* Better outcomes for wildlife

Public understanding and trust of wildlife management.

### Recommendation 5.1

Enact a new Act called the Fauna Act. The purposes of the new Act are to provide a legal and administrative framework that:

* recognises and promotes the intrinsic importance of fauna and the environment and the value of ecosystem services to human society, individual health and wellbeing
* provides for the conservation, protection and welfare of indigenous animals, including promoting their recovery and restoration
* contributes to protecting, restoring and enhancing ecological communities and processes of which fauna is an intrinsic component

in accordance with this Act and other laws, accommodates Aboriginal Victorians’ rights to self-determination relating to fauna and strengthens the connection between Traditional Owners and Aboriginal Victorians and Country.

### Recommendation 5.2

Include principles that provide guidance for decision makers:

* Fauna has an inherent right to exist without undue or arbitrary interference.
* Fauna can experience positive and negative sensations and therefore warrants humane treatment.
* Fauna must be managed within the context of its ecosystems.
* Decision making should be based on the best available scientific knowledge and Traditional Ecological Knowledge.
* Decision makers should apply the precautionary principle to avoid harms.
* First Nations peoples and Traditional Owners must be engaged in implementing the Act.
* Managing fauna requires good animal welfare and must ensure ecological sustainability and integrity.
* Information and reporting on decisions made under the Act should be publicly accessible.
* Economic or social impacts of fauna should be managed in compliance with these principles.

## Introduce contemporary, appropriate, and clear definitions in the Act

### Recommendation 5.3

Define 'fauna’ to mean any animal-life indigenous to Australia, whether vertebrate or invertebrate and in any stage of biological development, but not including humans.

### Recommendation 5.4

The Victorian Government should pursue a declaration to list all deer as a pest animal under the *Catchment and Land Protection Act 1994.*

### Recommendation 5.5

No longer prescribe duck season to occur automatically.

Duck season can occur each year only if the Minister for Energy, Environment and Climate Change is satisfied duck populations are stable or improving and hunting will not jeopardise their conservation.

The Minister(s) responsible for deciding on duck season arrangements must publish a statement of reasons for their decision each year.

### Recommendation 5.6

Include consistent definitions relating to the representation of Traditional Owners and Aboriginal Victorians:

* Aboriginal person – when referring to individual Aboriginal people
* Aboriginal Victorian – when referring to any Aboriginal person in Victoria
* Native title holder – when specifically referring to groups with recognised native title rights under the *Native Title Act 1993* (Cth)
* Specified Aboriginal party – when referring generally to Traditional Owner groups
* Traditional Owner – when referring to Aboriginal people who have traditional connection to an identified geographical area of Country

Traditional Owner group entity – when specifically referring to groups appointed under the *Traditional Owner Settlement Act 2010*.

### Recommendation 5.7

Define the terms habitat, conservation, biodiversity and community in a new Act:

* habitat is the place in which fauna lives, has lived or could live, and includes the physical and living components that provide for its shelter and wellbeing
* conservation means ‘to restore, enhance, protect and sustain the diversity and health of native wildlife species in Victoria’

biodiversity and community are consistent with definitions in the *Flora and Fauna Guarantee Act 1988.*

### Recommendation 5.8

Remove the terms for and mechanisms to protect and unprotect taxa or species, including unprotection orders.

## Recognise and protect the rights and interests of Traditional Owners and Aboriginal Victorians as they relate to fauna

### Recommendation 6.1

Include a preamble to the new Act that acknowledges the strong spiritual connection of Traditional Owners and Aboriginal Victorians to Country, including fauna.

### Recommendation 6.2

Provide for collaborative governance arrangements between Traditional Owners and Aboriginal Victorians, government and community in the new Act, including processes that allow Traditional Owners and Aboriginal Victorians to participate in decisions about protecting, using and managing fauna.

### Recommendation 6.3

Provide for the listing of culturally significant species, the development of management plans, and the making of guidelines that set out how to consider any effects on these species.

### Recommendation 6.4

In a new Act:

* create a right for Traditional Owners and Aboriginal Victorians to access any Crown land to collect and use for cultural or other purposes the bodies of deceased fauna
* create a right for Traditional Owners who have entered into a Traditional Owner Settlement Agreement, or who have native title, to take wildlife resources for any purpose on specified lands
* where a Traditional Owner Settlement Agreement does not exist, develop a process for a specified Aboriginal body to negotiate an agreement with the land manager that allows for the take of fauna for any purpose on Crown land
* allocate a specific proportion of a commercial harvest quota to Traditional Owners when commercial rights to harvest fauna on any land tenure are granted.

### Recommendation 6.5

Create a permitting system administered by Traditional Owners that allows for Aboriginal persons to undertake certain activities as agreed for example to permit Aboriginal Persons to take fauna on specified land.

### Recommendation 6.6

Include a ‘savings provision’ that ensures no current rights of Aboriginal Victorians are inhibited by a new Act, to remove any doubt about the effect of the revised provisions relating to the rights of Traditional Owners and Aboriginal Victorians.

## Establish a framework for achieving the Act’s purposes

### Recommendation 7.1

Establish a general duty that requires Ministers and public authorities to give proper consideration to the purposes of the new Act when performing functions that may reasonably be expected to affect fauna, and provide for the Minster to make guidelines around how a general duty can be discharged by the duty holder.

### Recommendation 7.2

Establish an expert advisory committee that will advise the Minister for Energy, Environment and Climate Change, the Department of Environment, Land, Water and Planning and the Office of the Conservation Regulator on fauna conservation and management matters.

Committee members should have qualifications in animal ethics and welfare, social science, Traditional Ecological Knowledge, and animal health and behaviour and ecology.

### Recommendation 7.3

Include provisions to require the production and release of a Victorian fauna strategy and fauna plans.

### Recommendation 7.4

The Victorian Government should establish fit-for-purpose fauna data collection procedures. Data should track the long-term status and trends of fauna in Victoria, and the effectiveness of fauna management activities through on-ground outcomes. Data collection must be long term, accurate, consistent, and sufficiently regular to support these objectives.

### Recommendation 7.5

Provide for the Minister or the Department of Environment, Land, Water and Planning or the Office of the Conservation Regulator to make codes of practice or standards relating to fauna.

### Recommendation 7.6

Allow for fees to recover costs associated with the administration of a new Act.

### Recommendation 7.7

Create a statutory role called the Chief Conservation Regulator and confirm and clarify roles, responsibilities and authority including regulatory oversight of the portfolio department (the Department of Environment, Land, Water and Planning).

## Enact better practice permissions

### Recommendation 8.1

Introduce a risk-based approach to permissions that allows for differences in risk levels, consequences, fauna uses, and animal welfare needs. It should also provide the regulator with sufficient powers of approval, refusal, and removal in accordance with the risk framework.

### Recommendation 8.2

Codify a risk-based approach to decisions about permissions that has regard to any fauna plans in place at the time.

### Recommendation 8.3

Introduce a broader range of permission types and conditions that reflect the regulatory effort applied to low- and high-risk activities.

### Recommendation 8.4

Allow the regulator to prescribe eligibility criteria for a fit and proper person and put the onus on applicants to demonstrate they comply with criteria.

### Recommendation 8.5

Allow the regulator to develop and publish mandatory criteria and guidelines that it will apply in making decisions about permissions.

### Recommendation 8.6

Provide for an internal review process of permission decisions by the regulator.

## Reform compliance mechanisms

### Recommendation 9.1

Include new offence provisions relating to:

* attempting fauna offences
* aiding and abetting fauna offences
* destruction of habitat
* feeding animals in the wild

fauna trafficking.

### Recommendation 9.2

The Victorian Government should explore the application of strict liability to appropriate offences in a new Act.

### Recommendation 9.3

Extend the statute of limitations to lay charges for offences to 3 years.

### Recommendation 9.4

Include a broader, more graduated schedule of administrative, civil and criminal sanctions that:

* includes notices and orders that can be tailored to the circumstances of the offending
* specifies maximum penalties that are consistent with other jurisdictions, differentiated to reflect the status of fauna and the type of offender, and commensurate with culpability of the offender and the harm
* considers other remedies such as restorative and reparative justice.

### Recommendation 9.5

Expand legal standing to third parties to seek merits reviews for certain strategic decisions, such as approving a fauna plan.

### Recommendation 9.6

Ensure authorised officers have the appropriate powers to undertake their compliance and enforcement duties and the new Act provides for appropriate delegations.

### Recommendation 9.7

Develop an indicative sentencing guide or matrix for the regulator and the courts for fauna offences.

## Use other mechanisms to promote outcomes for fauna

### Recommendation 10.1

The Victorian Government should:

* implement a long-term strategy to measure community attitudes and behaviour towards fauna specifically, and Victorian biodiversity more generally

develop a sustained dedicated communication and awareness campaign to promote Victorian biodiversity and fauna to Victorians.

### Recommendation 10.2

The Victorian Government should review and implement approaches to target monitoring

and surveillance efforts where gains from effort are likely to be largest. This review should consider ways to undertake and resource surveillance efforts.

### Recommendation 10.3

Allow a new Act to harness incentives, education and technology to improve fauna outcomes on private land.

## Consider longer-term directions

### Recommendation 11.1

The Victorian Government should consider the merits of combining the *Wildlife Act 1975* or a new Fauna Act with the *Flora and Fauna Guarantee Act 1988*.

### Recommendation 11.2

The Victorian Government should consider the merits of establishing an independent and structurally separate regulator, responsible for the Fauna Act, or a new Biodiversity Act and related conservation regulatory functions as relevant.

# Publication information

## Acknowledgements

The Panel 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.

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

The Panel was 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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