



**Victorian
Farmers
Federation**

SUBMISSION

Regulating the protection of Wildlife: Statement of Regulatory Intent

30 August 2021

EXECUTIVE SUMMARY

Thank you for the opportunity to submit in relation to the Regulating the protection of Wildlife: Statement of Regulatory Intent. The VFF will focus on the main interaction of private landholders with the Wildlife Act through the Authority to Control Wildlife (ATCW) system and the role for the conservation regulator to ensure that compliance with the overall focus of the Act is delivered. In recent years many tools such as section 7A unprotected area declarations to deal with the economic impact of overly abundant wildlife have been underutilised, leading to perverse outcomes for farming and the environment.

The introductory statement understands these issues, however the rest of the draft statement is silent on tools outside the Authority to Control Wildlife system and does not clearly focus on how to ensure this system better delivers Act objectives.¹

This submission should be read in conjunction with the submission to the Expert Panel Review of the *Wildlife Act*. This submission will focus on tools within the existing statutory framework that could be better used by the Department in fulfilling its statutory duty. The Conservation Regulator could seek information as to why tools such as declarations are not used, how current authority to control applications are monitored to identify the need for declarations or management plans in order ensure the system protects both threatened species and respects ownership of land and beneficial use of land.

This submission discusses regulator positions in relation to the ATCW system and makes the following recommendations to ensure overabundance and its impacts are included in the administration of the act and the Statement of Regulatory Intent.

1. That in reviewing the ATCW system the Conservation Regulator consider:
 - The difference between land for ecosystem services and farmland;
 - That protection of wildlife on private land for community benefit is not achieved at private cost;
 - Crown responsibilities for avoiding overabundance of native species;
 - Achieving desired outcomes with defined responsibility for funding and management;
 - The appropriateness of a carrying capacity for wildlife on private land;
 - Appropriate types of active management to ensure natural breeding;
 - Consideration of welfare aspects caused by overabundance;
 - Efficient management of abundant species through strategic use of S7A considering understanding of breeding cycles, economic impact and what is reasonable.
2. That in reviewing administration of the *Wildlife Act* the Conservation Regulator examine opportunities to utilise principles of cross tenure management and benefits of wider use of s18 style plans for all reserves with reported overly abundant wildlife.
3. In permission reform the Conservation Regulator seeks to ensure the ATCW system:
 - Considers the difference between land for ecosystem services and farm land is recognised and protection of wildlife on private land for community benefit is not achieved at private cost;
 - Ensures the Crown is responsible for avoiding overabundance of native species;
 - Is focused on the outcome to be achieved with responsibilities for funding and management;
 - Identifies areas for wider use of s7a gazettal of unprotected areas and / or management plans.
4. That the Conservation Regulator includes in the statement of regulatory intent that in relation to overabundance the following considerations in use in South Australia be applied:
 - What is the extent (or likely extent) of the damage, whether environmental or economic?
 - What is the underlying cause of the problem?
 - What is the level of threat to human safety?
 - Are there non-lethal alternative methods, have they been attempted, and how successful were they?
 - Is destruction the most effective method of reducing damage?
 - Would an integrated approach using non-lethal and lethal methods provide the best outcome?

- Is the technique proposed to destroy native animals humane and does it comply with the Animal Welfare Act 1985, codes of practice or animal welfare standards?
 - Will destroying native animals have a detrimental effect on the conservation of the species or the environment?
5. That the Conservation Regulator provide guidance to when to use legislative tools, including s7A, landscape plans and permit systems.
 6. That the Conservation Regulator ensure that education programs, guidance and permission systems are fair and proportionate and easily understood.
 7. That the Conservation Regulator compiles an annual report on the cost of weeds, pests and overly abundant wildlife to the economy and environment, including recommending priority actions to be undertaken on public land to reduce these impacts.
 8. That the Conservation Regulator undertake or recommend the creation of an independent reviewer in relation to ensuring administrative decisions and guidelines are in the spirit of the Act.

OUR POSITION

Statement of Regulatory Intent needs to better reflect Wildlife Act provisions

The *Wildlife Act 1975* (the Act) is not modern in the sense that it has objectives and seeks outcomes which consider risk and achieve triple bottom line outcomes. The VFF believes that although the Act is not specific in its objectives, its structure and content suggests that the authors meant to limit the impact of the Act on private land, especially in regards to economic impacts of abundance and the role of ‘landscape plans’.

Failure to use s7A in recent years, or look at true landscape plans is leading to perverse outcomes that do not help protect species at risk. The Productivity Commission also highlighted the problems of placing burdens on farmers that do not relate to risk, questionable regulator objectives / risk perceptions and poor communication by regulators. ⁱⁱ

Failure to use s7A and not issuing permits to cull kangaroos within 400m of vegetation demonstrates poor administration of the Act that can lead to landholders not wanting to undertake revegetation. Revegetation creates corridors for wildlife movement that can also attract predators. Wildlife using these corridors then forage on crops, predate livestock and congregate around dams. Exclusion fencing is expensive and laborious, limiting its practicality. The current administration of the *Wildlife Act* is having significant financial impacts on landholders, limiting their ability to undertake other on farm environmental actions for biodiversity and productivity.

This is an issue which is not covered in the draft regulatory approach. The Set Standards section does not mention economic impacts on private land. Inform and educate; Support, compliance and collaborate all fail to consider the issues raised in the introductory statements. It is clear that standards should be set that reflect issues of abundance and impact on private land / beneficial use. All guidelines and administration need to reflect those standards and establish a fair regulatory approach.

Priority harms – how the administration of the Act is reducing beneficial outcomes.

Economic loss on private land should be considered. The current regulatory approach is impacting on ‘threatened wildlife’. Losses on farm due to overly abundant wildlife and an ATCW system that is burdensome, slow and not strategically administered has a double impact on threatened species. It increases competition for resources and it decreases on farm actions to improve habitat for wildlife.

The reference to illegal destruction of wildlife raises a potential duplication of legislation. The purpose of this regulation and its application should be reviewed by the Conservation Regulator. The exemptions in the current regulation highlights that it may have been prepared with crown land in mind. For private land

there are native vegetation regulations in place that deal with vegetation on private land including habitat trees.

The VFF has previously called for a whole of landscape approach to other environmental controls, including the *Native Vegetation Regulations* (NVR). This would help deliver social, economic and environmental benefits through integrated management and shared vision.

The *Catchment and Land Protection Act* (CALP) is a model for undertaking a management based / outcome-focused approach that considers benefits derived and at whose cost. ⁱⁱⁱ The Special Area Plan requires consideration of who benefits and who bears the cost. Compensation can be required where there is significant private cost for public benefit. This model would support a simple ATCW process on private land that builds in current s7A considerations and a Special Area Plan for critically endangered species, including compensation for impacts on land use rights.

This process could be used under the current Act through use of:

- s7A^{iv} for abundant species where wildlife is causing *injury or damage to any building, vineyard, orchard, garden or other property; or any crop, grass, trees or other vegetation.* ^v
- Preparation of landscape plans that cross tenures to achieve ACT Nature Conservation Strategy Approach.

The excerpt below shows the key steps in that ‘landscape’ approach.

Table 1: Nature conservation strategy approach

Vision: “Biodiversity rich, resilient landscapes stretching from the inner city to the mountains, where well-functioning ecosystems can meet the needs of people and the environment”	
Outcome 1: Native vegetation and biodiversity is maintained and improved.	
Outcome 2: Landscapes are more resilient, including to climate change.	
Outcome 3: Community health and wellbeing is increased through use and appreciation of natural areas and ‘green assets’ in urban areas.	
<i>Note: progress of outcomes will be measured against targets – see Table 2</i>	
Strategy 1: Enhance habitat connectivity and ecosystem function	
Actions	<ol style="list-style-type: none"> 1. Develop baseline information on landscape function. 2. Undertake fine scale planning for habitat connectivity. 3. Enhance regional connectivity. 4. Assess conservation investment opportunities across public and privately managed lands in the ACT. 5. Fund priority landscape actions.

Source ACT Nature Conservation Strategy

This approach would improve knowledge and provide context for decision. It is a model that considers risk and return on investments (value for investment) more in line with *Biodiversity 2037*. It allows clear assessment of the costs, the benefits and compensation issues. This is also the model for the *Flora and Fauna Guarantee* (FFG) Act in relation to private land outcomes.

If the Act is operating properly, the landholder should not experience any impact on production from abundant species. The Act should focus on rewarding the provision of habitat for endangered species on private land. Currently it often discourages revegetation that creates habitat links.

By focusing on a single species, especially an over abundant one, without an understanding of the wider ecosystem or the wider role and function of that land the Act delivers unfair and perverse outcomes. The Australian Capital Territory legislation seeks to address this issue by understanding the role of public land management in controlling total grazing pressure on crown land. ^{vi}

A statement of regulatory intent should be seeking a true partnership that empowers landholders and understands their business. A landscape plan should address all issues that will affect its success, including stewardship payments, consultation, fencing and other grants, rate relief and land tax relief.

For example, a program in the Murray Sunset National Park addressed issues of kangaroos breeding in the Park and feeding in adjacent farmland. A more natural environment was achieved by limiting access to farmland by a fencing program. Farmers paid for the cost of a normal farm fence and the crown paid the difference for a more kangaroo proof fence.

Recommendation

The Conservation Regulator seeks to ensure the ATCW system:

- Considers the difference between land for ecosystem services and farm land is recognised and protection of wildlife on private land for community benefit is not achieved at private cost;
- Ensures the Crown is responsible for avoiding overabundance of native species;
- Is focused on the outcome to be achieved with responsibilities for funding and management;
- Identifies areas for use of s7a and / or management plans.

Drivers on non-compliance

A wider consideration should be given to non-compliance. This is the opportunity to see whether the regulations are being fairly and appropriately administered. An overly complex system that does not fairly consider issues of overabundance and economic impact may be driving non-compliance due to desperation and frustration.

The Act does seek to protect all wildlife, but it is far from supportive of all species being equal and protection at all costs – and nor should it be. The Act both acknowledged critical species management and streamlining management of overabundance. This is a level of acknowledgement that context and outcomes are important issues. Decisions made by formula without understanding the context can lead to frustration and lost opportunities. ATCW systems, wider use of s7A and fencing at crown costs are examples of how to deliver equitable outcomes.

The following content would demonstrate a regulatory failure. If appropriate use of s7a, active management by the crown (including funding kangaroo fencing) and simple and timely ATCW tools then non-compliance would be minimised. Breaking the law is not supported, however the presence of these tools in the *Wildlife Act* demonstrate that the legislation was intended to be administered in a less onerous way in relation to overly abundant wildlife impacting on lawful land use, public safety and amenity.

- ***Conflicts between wildlife and human activities.*** *This may occur when a protected species is locally abundant and/or develops habits that impact humans, for example: ducks grazing irrigated commercial crops; cockatoos and corellas damaging sporting grounds; and kangaroos damaging agricultural fences. In all these situations, the protection of the animal may be undermined by a person or organisation undertaking an illegal activity (knowingly or unknowingly) to manage economic, infrastructure or amenity loss. These activities may include harassment, destruction or injuring of native species in contravention of the law.*

The Conservation Regulator should also consider where the regulations and guidelines are achieving the system envisaged within the Act. Questions that could be considered are:

- What is “fair” in relation to carrying capacity or management for ‘wildlife’ on private and public land? Noting that even relatively small numbers of ‘wildlife’ can have a significant impact on the rotational grazing of livestock and *Regenerative Agriculture* principles

- What type of active management is required to ensure natural breeding signals? Does the extensive proliferation of farm dams and troughs in SE Australia, entrench the absence of natural breeding signals?
- Should over population affecting endangered species be better addressed?
- Is it fair for the Crown to cost farm businesses over \$100,000 in lost production and management for overly abundant wildlife?
- Should the system better utilise systems that manage overabundance and support stewardship of endangered species?

Recommendation

That the Conservation Regulator provide guidance to when to use legislative tools, including s7a, landscape plans and permit systems.

That the Conservation Regulator ensures that ACTW guidance and consideration includes clear consideration of economic impacts and abundance, including a tiered system and streamlined processing for overly abundant species.

Enforcement

Enforcement issues can be a sign of a poor regulation or poor understanding and communication by the regulator. It would be better to focus on encouraging stewardship on private land and development of landscape plans to protect critical habitat. Where farmers understand the objective and have agency they have an excellent record of delivering outcomes that are good for the environment and the farm. The Act should focus on building based on trust in delivering balanced outcomes with enforcement being for deliberate breaches.

Conservation Regular role in improving understanding of and reporting on the costs of overly abundant wildlife.

Victoria as a jurisdiction does not collect data or report on the problems of abundance, including weeds and pests. In 2018 it was estimated that weeds alone cost the Victorian economy \$900 million per annum. Unless the costs and environmental consequences are collected and reported on it is difficult to justify budget allocation to achieve better management. Failure to manage issues can lead to overabundance, for instance deer or kangaroos. Where breeding is left unchecked control actions become expensive and less effective. This is an example of the *Wildlife Act* failing to meet its wider objectives by protecting a species that threatens others and has a negative impact on farming.

ATCW applications require the landholder to state the economic consequence or other impacts. The Act does not really require these issues to be managed though s7A. Commitment to transparency would see that there was reporting on the cost of abundance and proactive use of legislative tools to reduce economic and environmental harm.

Recommendation

That the Conservation Regulator compiles an annual report on the cost of weeds, pests and overly abundant wildlife to the economy and environment, including recommendations priority actions to be undertaken on public land to reduce these impacts.

What does success look like?

The success section at present is a regulatory stick approach. There is not strategic aim to lead to proactive management of issues so as to protect endangered wildlife and address issues leading to overabundance.

Management systems should also include impacts to mental health and beneficial use of private land in relation to overabundance. A strategic view would also seek to encourage investment in ecosystem services supporting endangered wildlife. Failure to consider impacts of overly abundant wildlife on farms not only

reduces the financial capacity of farmers to participate in Landcare programs but also makes these actions less likely to occur as they encourage movement of overly abundant species.

VFF believes success would be a situation where funded cross tenure programs are supported by all owners in the landscape. That these actions not only reduce the likelihood of overabundance occurring but leads to strategic investment in ecosystem services that provide habitat and linkages for endangered wildlife. Success would see DELWP staff supporting these aims and ensuring fair and practical administration of the Act.

Despite the narrow focus of the Act, there is ample evidence that a more nuanced and balanced outcome is expected.

Recommendation

That the Conservation Regulator includes in the statement of regulatory intent that in relation to overabundance the following considerations in use in South Australia be applied:

- What is the extent (or likely extent) of the damage, whether environmental or economic?
- What is the underlying cause of the problem?
- What is the level of threat to human safety?
- Are there non-lethal alternative methods, have they been attempted, and how successful were they?
- Is destruction the most effective method of reducing damage?
- Would an integrated approach using non-lethal and lethal methods provide the best outcome?
- Is the technique proposed to destroy native animals humane and does it comply with the Animal Welfare Act 1985, codes of practice or animal welfare standards?
- Will destroying native animals have a detrimental effect (or a positive effect) on the conservation of the species or the environment?

That the Conservation Regulator undertake or recommend the creation of an independent reviewer in relation to ensuring administrative decisions and guidelines are in the spirit of the Act.

Permissions Reform

VFF supports the commitment “*ongoing reforms to wildlife permissions, intended to increase clarity of use and application for applicants, provide improved guidance on complying with the law, ensure appropriate wildlife protection and welfare, and supporting consistent, transparent decision making.*”

In relation to a comprehensive review of the Authority to Control Wildlife system it reforms mentioned are not considered comprehensive. The VFF seeks the opportunity to expand on the issues discussed in this submission to ensure that a comprehensive review is undertaken and that the activity reporting is improved to provide greater understanding of issues and their management.

CONCLUSION

The VFF seeks to work with the Conservation Regulator to ensure that the statement of regulatory intent not only recognises that *wildlife can cause damage to property, crops and pasture, impacting on people’s livelihoods* but seeks to ensure the tools within the current Wildlife Act are used to minimise this damage, especially in relation to overabundant wildlife.

ⁱ Wildlife can cause damage to property, crops and pasture, impacting on people’s livelihoods. In urban areas, wildlife can become aggressive and potentially dangerous to people or cause serious road collisions. Some legal activities can negatively impact wildlife, such as vegetation removal. Overabundant wildlife can also have negative impacts on biodiversity, recreation and amenity values. Across Victoria in 2019-2020, 1990 Authorities to Control Wildlife were issued to manage human-wildlife conflict, through destruction, disturbance or relocation, where wildlife was damaging property, crops or pasture, or impacting human health and safety *pg 2 Regulating the Protection of Wildlife SRI*

ⁱⁱ <https://www.pc.gov.au/inquiries/completed/agriculture/report>

ⁱⁱⁱ (1) A special area plan must—

(a) identify the land management issues to be dealt with in the plan; and

S. 30(1)(ab) inserted by No. 23/2019 s. 125.

(ab) have regard to Aboriginal cultural values and traditional ecological knowledge of management of land and water resources of the special area to which the plan applies; and

(b) state the program of action to be taken to deal with those issues, and the costs and benefits of that action; and

(c) state the targets to be achieved by that action; and

(d) allocate responsibility for taking that action and for bearing the costs of taking that action; and

(e) provide for the review of the plan.

(2) A special area plan may—

(a) specify the most suitable land uses for the special area, having regard to the public interest; and

(b) state what land in the area can be used for what purpose; and

S. 30(2)(c) repealed by No. 51/2013 s. 8(1).

* * * * *

(d) identify the need for land use conditions under Division 3.

S. 30(2A) inserted by No. 51/2013 s. 8(2).

(2A) A special area plan must not impose any requirement on a municipal council in relation to noxious weeds or pest animals on a roadside if that roadside is subject to an approved roadside weed and pest animal management plan.

(3) If a special area plan identifies a need for land use conditions it must—

(a) give a general description of the properties to which they are to apply; and

(b) state the general nature of those conditions; and

(c) give a general estimate of the total cost of compliance with those conditions, including any decrease in the value of land or financial loss likely to result as a direct reasonable and natural consequence of compliance; and

(d) provide a method for apportioning the total estimated cost of compliance between land owners and other persons or bodies who will directly benefit from the implementation of the plan and for apportioning that part of the cost to be borne by land owners between the properties to which the conditions are to apply.

^{iv} 7A Governor in Council may declare protected wildlife to be unprotected in an area of Victoria (1) Whenever it appears to the Minister that a taxon or kind of protected wildlife is causing injury or damage to—

(a) any building, vineyard, orchard, garden or other property;

(b) any crop, grass, trees or other vegetation;

(c) any taxon or kind of animal (including fish)— in an area of Victoria, the Governor in Council may upon the recommendation of the Minister by an Order published in the Government Gazette declare that taxon or kind of wildlife to be unprotected wildlife in the area and for the period specified therein.

(2) An Order of the Governor in Council declared pursuant to subsection (1) shall specify the area, conditions, limitations and restrictions including the persons authorized and the methods that they may use to kill, take or otherwise control the taxon or kind of wildlife declared unprotected.

(3) Upon the making of the Order the Secretary shall cause notice of the making of the Order to be published in a newspaper circulating generally in the area to which the Order applies and the Secretary may take any other measures that the Secretary considers are necessary to publicize the provisions of the Order.

(4) Notwithstanding any other provision of this Act, the killing or taking of wildlife in accordance with the provisions of an Order declared pursuant to this section shall not constitute an offence against this Act or be unlawful by virtue of any of the provisions of this or any other Act. (5) Any person who contravenes or fails to comply with any provision,

condition, limitation or restriction contained in an Order under this section shall be guilty of an offence against this Act. Penalty: 50 penalty units.

^v ibid

3. Manage total grazing pressure on ecosystem function in reserves

Overgrazing by both native and pest species can harm sensitive ecological communities such as grasslands and grassy box–gum woodlands.

As a priority, the ACT Government will monitor the impacts of grazing on vegetation condition so it can respond to overgrazing impacts on natural ecosystems to maintain or improve ecological function, species diversity and vegetation condition. The government will continue to draw upon research related to grazing pressure that is underway in the Mulligans Flat woodland experiment.

The development and implementation of the Pest Animal Management Plan for Rabbits and the Kangaroo Management Plan are the key actions to manage total grazing pressure in reserves. Actions to manage the impacts of kangaroos and rabbits will be based on the best available science and understanding of impacts.

Ecological modelling of the link between kangaroo population densities and the conservation impacts of kangaroo grazing will inform future kangaroo management.

The use of strategic stock grazing in reserves to manage fuel loads will be informed by best available knowledge of the ecological impacts.

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