

Wildlife (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1

- Clause 1 sets out the purposes of the Act.
- Clause 2 provides for commencement of the Act, other than Part 1, on a day or days to be proclaimed. If not proclaimed before 1 July 1998, it comes into operation on that date.

PART 2

- Clause 3 provides that in this Part, the **Wildlife Act 1975** is referred to as the Principal Act.
- Clause 4 inserts a new section 1A into the Principal Act to specify the purposes of the Principal Act.
- Clause 5 inserts new definitions into the Principal Act to clarify the intention of certain provisions and for the purposes of amendments made by this Act.
- Clause 6 repeals sections 4, 4A, 5, 6 and 7 of the Principal Act, which are now redundant as the matters they relate to are covered by the new sections 28A to 28E.
- Clause 7 amends section 21 of the Principal Act to clarify that the offence of interfering with or altering the flow of water into or out of reserves does not apply to a person authorised to do so under the **Water Act 1989**.
- Clause 8 amends section 22 of the Principal Act to clarify its intention, to remove any duplication of other offences in the Act and to increase the penalty for non compliance with the conditions of a wildlife licence from 50 to 100 penalty units. This clause also prescribes a condition of requiring a licence-holder to allow access by an authorised officer at any reasonable time to any dwelling house specified in the licence to monitor compliance with the Act, the regulations or any conditions to which the licence is subject.

- Clause 9 amends section 22A of the Principal Act to remove any duplication of the offences in Part VII, to extend the grounds on which the Secretary can refuse to issue or renew a game licence and to make provision in relation to the variation of game licences. This clause also makes provision in relation to the administration of game licences, including provision to facilitate the conduct of a ballot to enable licensed persons to hunt game specified in the licence in certain areas. It also increases the period for which a game licence can be issued from three to five years.
- Clause 10 amends section 23 of the Principal Act to extend the circumstances in which the Secretary may refuse to issue or renew a wildlife licence.
- Clause 11 amends section 25 of the Principal Act to enable a licence holder to surrender his or her licence.
- Clause 12 inserts new sections 25A to 25D into the Principal Act and repeals section 26.

Section 25A enables the Secretary to cancel a licence issued under Part III if false or misleading information was provided in connection with the application and, in addition, to cancel any other licence issued to that person under the Act and specify the time within which a person may not apply for another licence under the Act.

Section 25B enables the Secretary to suspend a licence for up to 90 days, if satisfied on reasonable grounds, that the licence holder has been found guilty of an offence under the Act or has breached a condition of the licence and makes provision for the custody, care and management of any wildlife held under the licence to be dealt with in accordance with the directions of the Secretary.

Section 25C enables the holder of a licence, if his or her licence has been suspended, to make submissions to the Secretary in relation to the suspension within a specified period. It further requires the Secretary to review the decision to suspend, having regard to the submissions. The section allows the Secretary to continue, revoke or amend the suspension and requires notification to the licence holder of the outcome of the review.

Section 25D enables the Secretary to cancel a licence if satisfied on reasonable grounds that the licence holder has been found guilty of an offence under the Act or has breached a condition of the licence. It requires the Secretary to notify the licence holder of the intention to cancel the licence and allow the opportunity for the licence holder to make submissions on the matter within a specified period. The section provides that the cancellation has effect from the time specified in the notice of the Secretary's decision and provides for the wildlife to be disposed of in accordance with the directions of the Secretary.

Clause 13 inserts a new Part IIIA (sections 28A to 28F) into the Principal Act.

Section 28A provides for the Secretary to issue authorisations to hunt, take, destroy, buy, sell, acquire, receive, dispose of, keep, possess, control, breed, process, display, take samples from or experiment on wildlife for certain purposes, including where wildlife is causing damage to property or crops, for management or conservation reasons, for education or research, for carrying out aboriginal traditions or education into aboriginal culture, for the rehabilitation of sick, injured or orphaned wildlife, for health and safety reasons or to support a recognised wildlife management plan. This section provides that an authorisation is subject to any conditions, limitations or restrictions that are placed on it by the Secretary, including the condition that the holder must allow access by an authorised officer at any reasonable time to any dwelling house specified in the licence to monitor compliance with the Act, the regulations or any conditions to which the authorisation is subject. It also makes provision about applications.

Section 28B creates an offence of failing to comply with any condition, limitation or restriction of an authorisation and prescribes a penalty of 50 penalty units.

Section 28C provides that an authorisation continues in force for any period not exceeding 3 years that is specified in it and that it may be renewed.

Section 28D enables the Secretary to suspend an authorisation for up to 90 days, if satisfied that there is reasonable grounds to do so and makes provision for the custody, care and

management of any wildlife held under the authorisation to be dealt with in accordance with the directions of the Secretary.

Section 28E enables the holder of an authorisation, if his or her licence has been suspended, to make submissions to the Secretary in relation to the suspension within a specified period. It further requires the Secretary to review the decision to suspend, having regard to the submissions, allows the Secretary to continue, revoke or amend the suspension and requires the Secretary to notify the holder of the outcome of the review.

Section 28F enables the Secretary, if satisfied there are reasonable grounds to do so, to cancel an authorisation and sets out the cancellation procedure.

Clause 14 substitutes sections 41 to 47 of the Principal Act to replace and clarify existing offences in relation to the unlawful hunting, taking, destroying, buying, selling, acquiring, receiving, disposal of, keeping, possession, controlling, breeding, processing, display, taking of samples from or experimentation on wildlife.

Section 41 creates an offence of hunting, taking or destroying endangered wildlife unless authorised to do so. This section also increases the penalty for this offence from 100 penalty units and 10 penalty units for every head of wildlife taken or destroyed to 240 penalty units or 24 months imprisonment or both and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.

Section 42 creates an offence of hunting, taking or destroying notable wildlife unless authorised to do so. This section also increases the penalty for this offence from 50 penalty units and 5 penalty units for every head of wildlife taken or destroyed to 120 penalty units or 12 months imprisonment or both and an additional penalty of 10 penalty units for every head of wildlife in respect of which an offence has been committed.

Section 43 creates an offence of hunting, taking or destroying other protected wildlife (other than game) unless authorised to do so. This section also increases the penalty for this offence from 20 penalty units and 2 penalty units for every head of wildlife taken or killed to 50 penalty units or 6 months imprisonment or both and an additional penalty of 5 penalty

units for every head of wildlife in respect of which an offence has been committed.

Section 44 creates an offence in relation to the hunting, taking or destroying of game during the close season and increases the penalty for this offence from 20 penalty units and 2 penalty units for every head of wildlife hunted, taken or destroyed for a first offence and 40 penalty units and 2 penalty units for every head of wildlife for a second or subsequent offence, to 50 penalty units or 6 months imprisonment or both and an additional penalty of 5 penalty units for every head of wildlife in respect of which an offence has been committed.

The section also creates the offence of hunting, taking, or destroying game during the open season for that game, unless authorised to do so and increases the penalty for this offence from \$100 for game other than deer and 10 penalty units for deer, to 10 penalty units for any type of game.

Section 45 creates an offence of buying, selling acquiring, receiving, disposing of, keeping, possessing, controlling, breeding, processing, displaying, taking samples from or experimentation on endangered wildlife unless authorised to do so. This section also increases the penalty for this offence from 100 penalty units and 10 penalty units for every head of wildlife in respect of which the offence is committed to 240 penalty units or 24 months imprisonment or both and an additional penalty of 20 penalty units for every head of wildlife in respect of which an offence has been committed.

Section 46 creates an offence of buying, selling acquiring, receiving, disposing of, keeping, possessing, controlling, breeding, processing, displaying, taking samples from or experimentation on notable wildlife unless authorised to do so. This section also increases the penalty for this offence from 50 penalty units and 5 penalty units for every head of wildlife in respect of which an offence is committed to 120 penalty units or 12 months imprisonment or both and an additional penalty of 10 penalty units for every head of wildlife in respect of which an offence has been committed.

Section 47 creates an offence of buying, selling acquiring, receiving, disposing of, keeping, possessing, controlling, breeding, processing, displaying, taking samples from or experimentation on other protected wildlife unless authorised to do so. This section also increases the penalty for this offence from 20 penalty units and 2 penalty units for every head of wildlife in respect of which an offence has been committed to 50 penalty units or 6 months imprisonment or both and an additional penalty of 5 penalty units for every head of wildlife in respect of which an offence has been committed.

Section 47A provides that sections 41–47 do not apply to any person or class of persons exempted by the regulations from the operation of those sections.

Section 47B enables the Governor in Council, by proclamation published in the Government Gazette, to declare any taxon of animal to be endangered or notable wildlife.

Section 47C exempts employees of wildlife licence holders, when acting in accordance with the licence, from the operation of sections 41–47. The section also provides that, where an employee of a licence holder is found guilty of an offence, the licence holder is also guilty and liable to the penalty relevant to that offence unless he or she took reasonable precautions to avoid that conduct.

Section 47D creates an offence relating to the unlawful possession or control of wildlife obtained or destroyed in contravention of the Act or a corresponding law of another State or a Territory and increases the penalty from 100 penalty units to 240 penalty units or 24 months imprisonment or both.

Section 47E provides that certain offenders under the Principal Act are not prohibited persons under the **Firearms Act 1996**.

Clause 15 inserts new sections 48, 48A, 48B and 48C into the Principal Act.

Section 48 creates an offence carrying a penalty of no more than 25 penalty units for an owner of a dog or cat who allows their dog or cat to rush at, attack, bite worry or chase wildlife while at large on public land. This section also provides for an

authorised officer to destroy any dog or cat if the officer reasonably believes that an offence under this section is being committed.

Section 48A enables an authorised officer to seize a dog or cat found at large on public land in a Nature Reserve, State Wildlife Reserve, Wildlife Management Co-operative Area, wildlife sanctuary or other area prescribed for the purposes of this section. This section further provides that if reasonable attempts have been made to seize a dog or cat under this section and it has not been seized, the officer may destroy the dog or cat. The section provides that, if the dog or cat has been seized, the officer must deliver it to an authorised officer of the municipal district in which it was found.

Section 48B specifies the procedure to be followed in relation to the notification of the owner of a cat or dog seized under section 48A.

Section 48C makes provision in relation to the recovery by an owner of a dog or cat seized under section 48A or, if not recovered by its owner, its sale or destruction by the Council

- Clause 16 amends section 50 of the Principal Act to increase the penalty in respect of the unlawful import to or export from Victoria, of wildlife, from 50 to 100 penalty units. This section also makes provision for import or export permits to be subject to certain conditions and creates an offence of failing to comply with those conditions, carrying a penalty of 100 penalty units.
- Clause 17 amends section 51 of the Principal Act to increase the penalty in relation to the marking of wildlife without being authorised from 10 to 100 penalty units. This clause also creates an offence for a person to interfere with any mark placed on protected wildlife in accordance with the Act, unless authorised to do so, with a penalty of 100 penalty units.
- Clause 18 amends section 54(1) of the Principal Act to increase the penalty for poisoning wildlife from 50 penalty units or imprisonment for 6 months to 100 penalty units or 6 months imprisonment or both.

Clause 19 amends section 58 of the Principal Act to clarify and extend the provisions relating to the willful injuring, molesting, disturbing, chasing or herding of protected wildlife.

Clause 20 inserts new sections 58A to 58E into the Principal Act.

Section 58A creates an offence for a person to keep false records in connection with any licence, permit or authorisation under the Act, carrying a penalty of 120 penalty units.

Section 58B creates an offence for a person to give false or misleading information in connection with an application for any licence, permit or other authorisation, carrying a penalty of 120 penalty units.

Section 58C creates an offence carrying a penalty of 10 penalty units for a person other than a holder of a game licence or other authorised person to enter or remain in a specified hunting area during prescribed times during the open season for ducks. This section also makes provision for specified hunting areas and the times at which entry to or remaining on them is prohibited or restricted, to be prescribed by regulation.

Section 58D creates an offence carrying a penalty of 10 penalty units for a person to approach a person who is carrying a firearm or is hunting or taking game birds, at a distance of less than 10 metres and provides for exceptions to the offence in certain circumstances.

Section 58E creates an offence carrying a penalty of 20 penalty units for a person to hinder, harass, interfere with or obstruct a person who is lawfully hunting or taking game.

Clause 21 amends section 59 of the Principal Act to extend the provisions relating to the powers authorised officers relating to search and seizure when entering buildings (other than a dwelling house). It provides for officers to take samples of blood or other bodily fluids from wildlife, take photographs and video recordings, mark wildlife or other items, inspect and copy documents and seize items to prevent their concealment, loss or destruction, or their use in committing, continuing or repeating offences. This clause also repeals sections 59(2), (3) and (4).

Clause 22 inserts new sections 59A to 59F into the Principal Act.

Section 59A enables an authorised officer or member of the police force, without warrant, to search any parcel, basket, bag, box, or receptacle. It provides for officers to take samples of blood or other bodily fluids from wildlife, take photographs and video recordings, mark wildlife or other items, inspect and copy documents and seize items to prevent their concealment, loss or destruction, or their use in committing, continuing or repeating offences.

Section 59B enables an authorised officer or member of the police force, without warrant, to stop and search any boat or vehicle and to take samples from take samples of blood or other bodily fluids from wildlife, take photographs and video recordings, mark wildlife or other items, inspect and copy documents and seize items to prevent their concealment, loss or destruction, or their use in committing, continuing or repeating offences.

Section 59C makes provision for an authorised officer to apply to a magistrate for a search warrant in relation to a particular premises if it is believed on reasonable grounds that there is or may be evidence of an offence on the premises. This section makes other provisions in relation to the issue of a warrant and about its execution.

Section 59D makes provision in relation to the announcement before entry to a dwelling house or premises by an authorised officer acting under a warrant, unless immediate entry to the premises or dwelling house is necessary for certain reasons.

Section 59E requires an authorised officer to identify himself or herself to the occupier of the premises or dwelling house and to provide a copy of the warrant to the occupier.

Section 59 F provides for a person to be present during the search under warrant of their premises, but disallows this if that person impedes the search.

Clause 23 amends section 60 of the Principal Act to provide for an authorised officer or member of the police force to do a range of things if he or she believes that an offence has been, is being or

is about to be committed. It provides for seizure of things prohibited by the Act or by a similar Act of another State or Territory, things used in or to assist in contravention of the Act or any thing taken or held in contravention of the Act. The clause also provides for officers to take samples of blood or other bodily fluids from wildlife, take photographs and video recordings, mark wildlife or other items, inspect and copy documents believed to be evidence of the commission of an offence.

Clause 24 inserts new sections 60B to 60E into the Principal Act.

Section 60B provides that, where an authorised officer or member of the police force has seized an item or thing, he or she must make out a receipt to that person for the item and provides for its return to the owner if the reasons for its seizure no longer exist.

Section 60C makes provision in relation to the taking of samples from specimens of wildlife by an authorised officer and requires, if possible, the officer to advise the owner beforehand and to divide the sample into 3 separate parts for giving to the owner, the Department for analysis and for future comparison.

Section 60D makes provision for an authorised officer who reasonably believes that a thing has been taken or held in contravention of the Act or the law of another State or a Territory, to issue a retention notice to a person requiring the keeping of the thing and that it not be sold or disposed of. This section provides that a retention notice has effect for up to 90 days from its issue and may only be extended by the Secretary. This section further makes provision for the notice to be subject to terms and conditions and to be cancelled or extended. This section creates an offence of failing to comply with the notice, carrying a penalty of 120 penalty units or 12 months imprisonment or both.

Section 60E is an evidentiary provision in relation to retention notices. It provides that, in proceedings for an offence under section 60C, evidence that a thing specified in a retention notice as being in the possession of a person is no longer in that person's possession is evidence and, in the absence of evidence to the contrary, is proof that the person has not complied with

the notice. It further provides that a thing specified in a retention notice as being the possession of a person, is evidence and, in the absence of evidence to the contrary, is proof that the thing was in that person's possession.

Clause 25 amends section 62 of the Act to increase the penalty for obstructing an authorised officer acting in the course of duty from 50 penalty units or 12 months imprisonment, or both, to 120 penalty units or 12 months imprisonment, or both. It also creates offences of failing to comply with a direction of an authorised officer to have a firearm unloaded during the course of an interview or to leave or not to enter a specified hunting area under section 58C, 58D or 58E. Failure to comply with such a direction carries a penalty of 10 penalty units.

Clause 26 inserts new sections 63, 64 and 65 into the Principal Act.

Section 63 provides that an act done by an authorised officer which would otherwise constitute an offence against sections 41, 42, 43, 45, 46, 47, 47D, 50, 51 or 76 does not have that consequence if it is done under the written instructions of the Secretary given in relation to a particular case. The section further provides that the Secretary must not give such instructions unless satisfied that the officer has the appropriate qualifications, training and experience to carry out that act.

Section 64 provides that a statement of the Secretary under seal, about certain matters relating to licences, licence holders, premises and tags, is evidence and, in the absence of evidence to the contrary is proof of the facts stated in it.

Section 65 provides that in any proceedings for an offence under the Act involving eggs or parts of eggs, it must be presumed that those eggs or parts of eggs are the eggs of endangered wildlife unless the contrary is proven.

Clause 27 amends section 68 of the Principal Act to extend the application of the provision relating to when a person is deemed to be hunting, to "land". At present it is limited to sanctuaries, wildlife reserves, lakes, swamps, marshes and waters.

- Clause 28 amends section 70 of the Principal Act to make provision to require a person to successfully complete a prescribed test about a class of wildlife before becoming eligible for re-licensing or for a permit or authorisation after a suspension or cancellation of a licence, permit or authorisation by a Court.
- Clause 29 inserts a new section 70A into the Principal Act to provide that, where a person has been convicted of an offence against the Act, the regulations or any proclamation under this Act, the court may order the disposal of seized things. This section further provides that the Magistrate's Court may order any seized thing to be destroyed or disposed of in cases where its owner cannot be found or, in the case of wildlife, if the person apparently in possession of it does not hold a licence, authorisation or permit to do so.
- Clause 30 amends section 75 of the Principal Act to include in the definition of "interfere", reference to approaching a whale at less than the prescribed minimum distance. This section also amends section 75 to provide that any reference to a whale in Part X includes reference to whales whether alive or dead, whether the flesh is raw, cooked, preserved or processed and includes any part of a whale. Whales, in Part X of the Act include dolphins and other cetaceans.
- Clause 31 amends section 76 of the Principal Act to extend the exemption to the offences to the actions of a person under direction of an authorised officer where the action was reasonably necessary for the welfare of a whale.
- Clause 32 amends section 78 of the Principal Act to allow a permit to be issued under Part X to a person to interfere with whales to the extent of approaching whales at less than the prescribed minimum distance, for the purpose of conducting tourist activities and for a fee to be prescribed for such a permit. This section makes provision in relation to the granting or renewal of a permit and requires that the Secretary must not grant a permit if satisfied that to do so would adversely affect a population of whale. The section also provides that a person other than a natural person is not eligible to be granted a permit.

Clause 33 provides that any permit under Part X relating to whales is subject to such conditions as are determined by the Secretary and specified in the permit or prescribed in regulations.

Clause 34 increases the penalty for breaching a condition of a permit under Part X relating to whales from 25 penalty units to 100 penalty units or 6 months imprisonment or both.

Clause 35 substitutes new sections 81, 81A, 81B, 81C and 81D in the Principal Act.

Section 81 enables an authorised officer to direct a person to cease immediately any activity being carried out under a permit relating to whales under Part X and to prescribe a penalty of 50 penalty units for failing to comply with such a direction.

Section 81A enables the Secretary to vary a permit relating to whales granted under section 78(1)(d) or (g) of the Principal Act, upon payment of any prescribed fee.

Section 81B enables the Secretary to suspend a permit under Part X for up to 90 days, if satisfied that there are reasonable grounds to do so.

Section 81C enables the holder of a permit issued under Part X, if his or her permit has been suspended, to make submissions to the Secretary in relation to the suspension within a specified period. It further requires to Secretary to review the decision to suspend, having regard to the submissions and allows the Secretary to continue, revoke or amend the suspension and to notify the holder of the outcome of the review.

Section 81D enables the Secretary to cancel a permit issued under Part X if satisfied on reasonable grounds that the holder has been found guilty of an offence under the Act, has breached a condition of the permit, that the acts authorised by the permit could adversely affect a population of whales or that the holder has been convicted of an offence against particular laws of the Commonwealth, another State or Territory.

Sub-sections (2) to (6) specify the procedure that must be followed by the Secretary in relation to the cancellation of a permit granted under sections 78(1)(d) or (g). It requires the Secretary to notify a permit holder of the intention to cancel a

permit and allow the holder the opportunity to make submissions within a specified period. This section provides that the cancellation has effect from the time specified in the Secretary's notice and provides for the wildlife to be disposed of in accordance with the directions of the Secretary.

- Clause 36 amends section 82(1) and (4) of the Principal Act to ensure that the public notice requirements in relation to applications, variations and cancellations of permits for whales under Part X, do not extend to permits under section 78(1)(d) or (g), which relate to the possession of dead whales for certain purposes and interference with whales for the purpose of conducting tourist activities, respectively.
- Clause 37 repeals section 83 of the Principal Act which prescribes the maximum fees that may be charged for permits under Part X. Fees will be prescribed by regulation.
- Clause 38 amends section 85A of the Principal Act to extend the regulation-making powers to the ability to prescribe conditions and regulate activities undertaken by dolphin tour operators and others under a permit issued under Part X.
- Clause 39 inserts new sections 86B and 86C into the Principal Act. Section 86B extends the time for bringing of proceedings to 2 years, for an offence under sections 22, 41, 42, 43, 44, 45, 46, 47, 47A, 47B, 50, 51, 54, 74E or 80.
- Section 86C provides for application to be made to the Administrative Appeals Tribunal for a review of a decision of the Secretary to refuse to grant or renew or to suspend or cancel a licence, permit or authorisation under the Act.
- Clause 40 makes a range of amendments to section 87 of the Principal Act to widen the regulation making powers to support amendments made by this Act and also to provide or extend the ability to regulate a range of other activities, including game management, use of spotlights and dogs in the hunting, taking or destroying of game, the feeding of wildlife and activities in wildlife habitats or on other lands managed under the Act.
- Clause 41 inserts a new Part XII (sections 88 and 89) to make transitional provisions for licences, permits or other authorities granted

under sections of the Wildlife Act which are to be repealed by this bill.

Section 88 provides that on the coming into operation of the section, a permit or authority issued under sections 4, 4A, 5, 6 or 7 of the **Wildlife Act 1975** that is in force immediately before the commencement of that section, is deemed to be an authorisation to which Part IIIA of the Act applies and continues in force in accordance with that Part.

Section 89 provides that any existing wildlife licence or authority is subject to the conditions set out in sections 22(3)(c) and 28A(4). These conditions require a holder of a licence, authority or permit, to allow access by an authorised officer at any reasonable time to any dwelling house specified in the licence to monitor compliance with the Act, the regulations or any conditions to which the licence, authority or permit is subject.

Clause 42 makes a range of consequential amendments to the Principal Act, including substituting reference to "Director-General" with "Secretary" and replacing references to "species" with "taxon".

PART 3

Clause 43 provides that, in this Part, the **Conservation, Forests and Lands Act 1987** is referred to as the Principal Act.

Clause 44 amends section 83 of the **Conservation, Forests and Lands Act 1987** to clarify its intention in relation to the appointment of authorised officers.

Clause 45 inserts a new section 88A into the **Conservation, Forests and Lands Act 1987** to enable the Secretary to appoint, in writing, a "qualified person" to conduct analyses, examinations or investigations of matters for the purposes of proceedings for an offence under a relevant law. It further provides that, in such proceedings, the production of a certificate signed by a qualified person, with respect to an analysis, examination or investigation, is evidence of the facts and matters contained in it. The section requires that the certificate be given to the defendant at least 14 days before the hearing and, if the defendant requires the qualified person to attend as a witness, the defendant must give

at least 7 days notice in writing. The section also makes provision in relation to the service of a copy of the certificate.

Schedule contains consequential amendments to the **Wildlife Act 1975**.