

Dear Expert Advisory Panel,

Thank you for the opportunity to participate in the review of the Wildlife Act 1975. I have worked in environmental science my entire life and in particular marine science. I am passionate about our environment and native wildlife.

I am a volunteer with BirdLife Australia Beach Nesting Birds Program and belong to the "Friends of the Hooded Plover - Bellarine (FoHPB)". I am also a member of the Swan Bay Environment Association (SBEA). I am passionate about birds and in particular beach nesting birds, this is why I am making a submission as they need protecting along with their habitat.

The Hooded Plover (*Thinornis rubricollis*) is a species of beach nesting bird experiencing crippling human disturbance that reduces breeding success to the point of population decline. The Wildlife Act is legislation that should protect wildlife in their habitats so that they can maintain breeding behaviours and sustain population growth, and yet the Act fails to protect this species for a range of reasons.

The parts of the Act that concern me are:

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

- 2.1 There are overlaps and gaps in the broader legislative framework.
- 2.2 Managing wildlife populations that span jurisdictions and land tenures is difficult under the Act.
- 2.3 The current legislative framework does not preserve and conserve habitat.

Part 4: Does the Act promote transparency and accountability?

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

Part 5: Are current enforcement and compliance mechanisms adequate?

- 5.1 It is not clear whether the Act creates the appropriate offences.
- 5.2 Do maximum penalties deter or sufficiently reflect the seriousness of offences?
- 5.3 Continuing offences and additional penalties could be strengthened.
- 5.4 Authorised officers may not have the necessary powers to enforce the Act.

Background:

Hooded Plovers are a non-migratory, resident shorebird found throughout southern and eastern Australia, with coastal Victoria supporting a population of approximately 700 adult birds. The species is exclusively dependent on ocean beach habitats, and habitat suitability is defined by a range of dune, beach and intertidal/subtidal features. Hooded Plovers are nationally listed as Vulnerable under the EPBC Act and are listed as Vulnerable on the Victorian Advisory List.

Hooded Plovers maintain relatively large breeding territories (approximately 1km length of beach) to which they exhibit high fidelity. Their breeding success, and survival, depends on these large breeding territories being undisturbed. The primary threats of disturbance come from human activities, including beach recreation, off-leash domestic dogs, recreational vehicles, and horse training. As well as causing lethal disturbance to breeding pairs, these activities can result in the crushing of eggs and chicks. Other threats include predation by invasive species (foxes and cats) and native scavengers, beach wrack harvesting and loss of habitat through weed invasions.

BirdLife Australia has been driving a state-wide recovery effort of Hooded plovers for 15 years in Victoria. From 2006 onwards, efforts to seasonally sign and fence nesting sites off as 'protected zones',

begin instilling a cultural shift for beachgoers. These have been used consistently across the Victorian coast by a diversity of land managers (Parks Victoria, council, Committees of Management, DELWP) ever since, with best practice advice governing size of the fenced zones, placement of signage and standardised signage design.

A community of citizen science volunteers (which I am one of) across Victoria's coastline works to support BirdLife Australia's efforts, and to educate local and tourist beach users of the need to give the birds space to breed successfully on beaches. Volunteers do the bulk of the work with monitoring, collecting data, entering data, erecting signs and rope fences and manning the area (from 7 am to 9 pm every day for 35 days). The work for one breeding pair alone can be well over 500 hours manning the area from when the eggs hatch until the chick/s fledge. This recent breeding season the FoHPB (about 15 people) spent approximately 1500 hours collectively monitoring 10 pairs along a stretch of approximately 30 km of coastline, we could only man 2 locations (due to lack of volunteers) which had successful outcomes with a chick fledging at each location.

A major focus of the beach user education work has been on leashing of dogs on beaches to mitigate the impacts of predation, egg crushing and lethal disturbance by dogs. In combination, BirdLife Australia has worked with each council, Committee of Management and local Parks Victoria office across the Victorian coast to improve regulation zoning of Hooded Plover breeding beaches and to improve and guide investment in compliance patrols. These efforts have helped to arrest the rate of decline of Hooded Plovers in Victoria. BirdLife Australia has acted in this role because there is currently no authority who can coordinate actions across multiple jurisdictions effectively and independently, and because current departmental responsibilities are highly fragmented and under-resourced.

Despite positive outcomes at the population level, success has halted, and the Victorian population of Hooded Plovers is likely to continue to decline with increased pressures from a growing human population, coastal development and climate change.

The Current Wildlife Act:

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

While the Hooded Plover does have an Action Statement (finalised in 1992) under the Flora and Fauna Guarantee Act (FFG Act) with "intended management actions" and the ability to declare breeding areas as critical habitat, this mechanism for protection has not been enacted and there is currently no overarching or consistent state-wide management framework for addressing key threats to the species.

For example, mitigating impacts of the threats posed by off leash dogs or horses are currently approached at the local government or individual Park/Reserve Management Plan level, through gazetting of territories to provide enforceable restrictions. These are subject to change over time (e.g., public pressure, new councillors elected) and provide no stability in site protections.

2.3 The current legislative framework does not preserve and conserve habitat.

The Action Statement is outdated and does not address the cumulative impacts of habitat loss and degradation. For example, since the Action Statement was finalised, the Victorian Government has continued to approve actions that have resulted in the loss of local breeding territories through coastal armouring (i.e., rock walls), sand extractions, and allowing high impact threats (i.e., commercial racehorse trainers) beach access. The loss of local Hooded Plover breeding pairs and territories through these actions results in a cumulative loss for the Victorian population. The Wildlife Act could

ensure a formal and transparent process for decision making and assessment of threatening actions/processes, including internal decision making by the Victorian State Government.

Identification and protection of critical habitat is vital to efforts to protect and recover threatened species like the Hooded Plover. Birdlife Australia can identify historic and contemporary occupied territories with high confidence due to the investment in long-term population counts, habitat mapping and monitoring. Therefore, it is possible to define critical habitat, both breeding and critical non-breeding habitat, for Hooded Plover and designate it under the FFG Act.

Ensuring that critical habitat is kept as unimpacted by human activity is the best way to ensure that species can recover, and to support conservation efforts. Where such habitat is known, it is incumbent upon conservation efforts to include protections for that habitat and the surrounding area, to ensure the best long-term outcomes. The Wildlife Act could provide the impetus for Acts such as the FFG Act to be implemented, by setting mandatory requirements for threatened species Action Statements, implementation, reviews and adaptations. Stringent timelines could be set for ensuring timely interventions. The Wildlife Act could and should mandate tools for threatened species management that the FFG Act sets out, such as the designation of critical habitat.

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

This designation would ensure greater protection for Hooded Plovers regardless of where they are located (i.e., tenure and local government jurisdictions). Critical habitat determinations would be relatively easy for Hooded Plovers, as the beach-nesting species reside almost entirely on Crown Land and can hence be managed by a state-wide plan relatively easily. Decisions such as ensuring dogs remain on leashes, keeping horses off the foreshore in critical habitat, or designating more remote critical habitat areas as dog-free beaches, can all be coordinated state-wide. As a volunteer it is difficult to get the public to comply with our requests to keep out of an area or keep their dog on leash as the local laws regarding beach use change between land managers (e.g., different councils), this is particularly difficult where there are breeding pairs located on the boundary of different land managers.

The Wildlife Act itself could also provide the inter-jurisdictional framework and standardised protections the Hooded Plover requires through a mechanism similar to Part X Protection of Whales and Part XA Protection of Seals. Whereby minimum approach distances are set for wildlife such as the Hooded Plover who are highly prone to disturbance, which can thereby have a lethal impact on breeding capacity. This would ensure, that if in future the species recovers and is removed from the Advisory List, that its conservation dependency and need for threat mitigation at breeding sites could continue to be legislated. There are multiple avian species in Victoria, which are highly prone to negative consequences from disturbance, which could benefit from minimum and enforceable approach distances including (but not restricted to) breeding Hooded Plovers, Pied Oystercatchers, Fairy Terns, Little Terns, Crested Terns, Caspian Terns, Red-capped Plovers, Sooty Oystercatchers, Black-fronted Dotterels, Masked Lapwings and White-bellied Sea Eagles, etc.

The Act would help volunteers immensely if they became publicly well known (such as those for whales and seals) and enforced. There would be a substantial decrease in the workload for the volunteers, manning every breeding pair from 7 am to 9 pm during the breeding season is an impossible task for a limited number of volunteers. If the Act were enforced the public would soon learn the rules and stay away from those locations or at least keep their dog leashed.

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

The Wildlife Act should set mandatory requirements for the inclusion of robust science into decision making, and where such robust science is lacking, create momentum for the design and implementation of citizen science programs to address key knowledge gaps. Birdlife Australia and other experts such as Dr Michael Weston Associate Professor at Deakin University should be consulted in regard to beach nesting birds.

5.1 It is not clear whether the Act creates the appropriate offences.

The volunteers and land managers erect highly visible and standardised signage around breeding sites that are a visual cue to inform beach users to not enter areas and give the birds space, so they are not disturbed. Entry in to the protected (signed/fenced) zone is currently not prohibited under any legislation and yet should be penalised as a direct breach of the Wildlife Act because it is wilful disturbance where signage and fencing has been breached to enter a zone that has highly vulnerable eggs and chicks of wildlife. Entering the zone causes separation of the adults from their eggs or chicks. It can lead to crushing of the eggs or chicks. It disturbs the birds so that they cannot defend from predators and cannot regulate the temperature of their eggs or chicks, resulting in lethal exposure.

However, despite the science to show the mechanism of impact to wildlife and despite the infrastructure to assist the public in recognising the threat they pose and describing the disturbance that will occur, the legal advice to date has been that it will be impossible to prove intent and that the disturbance was 'wilful' in a court of law.

Even direct vandalism of the signed/fenced protected areas is not able to be enforced through the Wildlife Act. Instead, vandalism must be reported to local police who are unclear of how to prosecute this crime, seeing it relegated to destruction of a sign or some fence posts rather than a wildlife crime.

These examples reveal that Section 58 around wilful disturbance ('wilfully disturbs, chases or herds protected wildlife or wilfully causes protected wildlife to be disturbed, chased or herded; and wilfully separates protected wildlife from its young or causes it to be so separate) in the Wildlife Act are inoperative. Further to this, Section 48 of the Wildlife Act, 'If a dog or cat rushes at, attacks, bites, worries or chases wildlife while at large on public land, the owner is guilty of an offence and liable, upon conviction, to a penalty of not more than 25 penalty units' is also challenging to uphold in practical terms because for example, a Hooded Plover experiences chasing and 'worry' (i.e. flushing from their nests and separation from their young) on a regular basis, to the point of some sites experiencing such high levels of chasing/disturbance by dogs, that they have become breeding sinks.

I witnessed on a number of occasions dogs chasing hooded plovers and reported it to crime stoppers however nothing ever comes of reporting a crime. A large increase in the number of Forest & Wildlife Officers from the Office of the Conservation Regulator is required to make a presence on our beaches. Currently there is 6-8 officers who patrol from Geelong to the South Australian Border, that is hopelessly under resourced.

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

5.3 Continuing offences and additional penalties could be strengthened.

Over this year's breeding season one site that was signed/fenced and also manned during daylight hours was continually vandalised (at night) and chick shelters stolen. We know the person that does this he is a local man who for some reason has a dislike of us putting signs up and protecting the hooded plovers. We know who he is because he was previously caught on a camera set up to monitor

predators approaching the nest. I reported him to the police, but they were unsure of how to report it, it was reported as theft and vandalism. They said he has been charged before but when brought in front of the court the judge did not know what to do with him and gave him an insignificant fine, which has not deterred him from continuing the same behaviour every breeding season. The police advised me to ask the local council to set up cameras to catch him in the act. However, I have been told that this cannot occur because of privacy laws. If this person is caught again, he should receive a harsh penalty under the Wildlife Act. The removal of the signs has a direct impact on the hooded plovers causing lethal disturbance. By removing signs beach users are not alerted to the presence of hooded plovers, and the potential for the eggs and chicks to be crushed by being stepped on is high. It is also scientifically shown that when shelters are used the success of the chicks becoming fledged increases by 30%. The theft/removal of the shelters has a direct impact on the survival of the chicks. This is a continuing offence, and the penalty should be one that stops him and deters others from harming the hooded plovers.

5.4 Authorised officers may not have the necessary powers to enforce the Act.

There is currently a distinct lack of resourcing and standardised approach to enforcement and compliance of Sections 48 and 58 across Victoria. Enforcement under the Wildlife Act is archaic. Criminal proceedings are the only mechanism for enforcement, and these are prohibitively costly and risky when successful prosecution hinges on proving intent. There is no overarching strategy for enforcement or a plan for prioritising how limited resources will be assigned to enforcement. Furthermore, there is no avenue to increase resourcing for compliance issues that are escalating within Victoria, e.g., dogs off leash disturbing Hooded Plovers. The Wildlife Act desperately needs appropriate resourcing, capacity and multiple mechanisms for enforcement. Forest & Wildlife Officers from the Office of the Conservation Regulator need to have their enforcement powers extended.

Over the breeding season while manning a breeding site I called DELWP as I had witnessed an off-leash dog chasing the Hooded Plovers on the beach. There happened to be a Forest & Wildlife Officer in my vicinity who was able to attend. However, by the time the officer arrived at the beach the person and dog were long gone. I spoke to the person about the fact that there were signs at every entrance to the beach informing owners that dogs were required to be on leash and were only allowed on the beach at certain time periods. The person had broken 3 rules, dog was on the beach outside of the allowed hours, the dog was off-leash and it was also chasing the hooded plovers. The person was abusive towards me and had little regard for the local rules placed there by the land managers or care for the hooded plovers. This is actually a common attitude by many people, particularly dog owners. We need a strong Wildlife Act that supports the work done by volunteers. While the Forest & Wildlife Officer was with me, we witnessed another dog owner with their dog off leash in a section of the beach which had been signed by the land manager to be dog free from the 1st of December until the end of April. The officer said her hands were tied and she could not fine or charge this person, as the dog was not chasing the hooded plovers. Officers need to have greater powers so that if they witness a person breaking a local law that does not fall within the “disturbing, chasing, or worrying wildlife “- but has the potential for that to occur when the officer is not present - to be penalised.

Other issues of concern to me:

- Protections for exotic invasive species like deer need to be removed.
- The Act needs to increase protections for wildlife and wildlife habitat by providing new tools such as “wildlife protection zones” and “wildlife protection orders” and by upgrading to legislation the current regulation that a person is “not to damage, disturb or destroy any wildlife habitat”.

- Native timber harvesting operations should not be exempted from damaging, disturbing or destroying wildlife habitat.
- All native wildlife should be defined and protected as native wildlife, including our native ducks and quails, currently open for recreational hunting.
- The idea of a “general duty of care” should be supported – a duty to “avoid harm” to wildlife could help to minimize incidences of wildlife being treated as collateral damage.
- Indigenous vertebrates (fish) and invertebrates (marine or non-threatened terrestrial species e.g., insects, bees, butterflies) should be included in the Act’s definition of wildlife and thus protected.

Thank you for taking the time to read my submission.

Reference:

Please note: Some content has come from Dr. Grainne Maguire Program Leader (Coastal Birds) Birdlife Australia. Remaining content is my observations and experiences while volunteering.