

29 June 2021

Independent Expert Advisory Panel (the Panel), for
The Independent Review of Victoria's Wildlife Act 1975
Submission by email to: wildlifeact.review@delwp.vic.gov.au

Dear Panel,

BirdLife Australia submission to The Independent Review of Victoria's Wildlife Act 1975.

Thank you for the opportunity to provide a submission to the Wildlife Act review.

BirdLife Australia is an independent non-partisan grassroots charity with over 200,000 supporters throughout Australia. Our primary objective is to conserve and protect Australia's native birds and their habitat. Our organisation is the national partner of BirdLife International, the world's largest conservation partnership.

BirdLife Australia has played a major role in the conservation and monitoring of Australia's birdlife throughout our almost 120-year history. We have invested in long-term threatened bird conservation programs, often in partnership with other organisations and communities, bringing together research, education, on-ground remediation, advocacy, and campaigning. The organisation relies on thousands of volunteers and citizen scientists who play a key role in delivering our bird conservation programs.

We would like to express our support for the recommendations in the joint submission made by Environmental Justice Australia and Humane Society International Australia. In particular, we support their calls for a thorough revision of the current Wildlife Act to help address ongoing biodiversity declines from human impacts, including of Victorian birds.

A future act should focus on ensuring that conservation is guided by the best ecological science, and ecosystem management, while maintaining transparency. There should also be independent oversight, to ensure compliance with the Act, such as an independent regulator.

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Specific mechanisms that we would seek include:

- Include requirements to develop action statements for Victoria's threatened species within two-years of listing.
- Include requirements to develop regional recovery plans, to best coordinate management that can facilitate threatened species recovery, and limit future species declines.
- Recognise and protect critical habitat for threatened species, to maximise the quality of habitat remaining and best ensure species' recoveries.
- Extend the minimum approach distances afforded to marine mammals under Sections X and XA to bird species vulnerable to disturbance, such as beach-nesting Hooded Plovers.
- Establish legal duties that oblige both landowners and State and public authorities to ensure sustainable management of wildlife
- Institute stronger penalties that reflect contemporary attitudes towards wildlife and the seriousness of breaches.

BirdLife Australia looks forward to further discussing potential changes to the Wildlife Act in greater detail as the Wildlife Act Review progresses, to ensure the best act possible for Victoria's birds.

If you require further information about this submission, please contact our Campaigns Manager, Erin Farley (erin.farley@birdlife.org.au).

Sincerely,

A handwritten signature in black ink, appearing to read 'jl'.

Dr. Jenny Lau

Preventing Extinctions Program Leader



The Victorian Wildlife Act 1975 is not fit for purpose, as the ongoing declines of wildlife in the state and ongoing fragmentation of the Victorian landscape highlights. A modern act that better reflects contemporary views on conservation and best practice ecological management has the potential to set Victoria on a path to reverse the environmental damage that has been done in the state's history.

It is essential that we move beyond a view of wildlife as a resource for humans to control, which has led to unsustainable decisions and biodiversity loss across the State. By shifting the paradigm towards duties to wildlife both for the general public, and for the State, Victoria can move away from the anachronism of the current Act, and its focus on fauna as either a resource or a nuisance.

Key to the success of a future act is ensuring that decisions around wildlife are transparent and based on the best available science. Better clarity of what needs protecting will help ensure fewer breaches. Similarly, it is key that the Act establishes penalties that sufficiently address the seriousness of any breaches, including by non-private actors.

Extinction crisis – why reform of the Wildlife Act must strengthen environmental protections and support the recovery and restoration of wildlife and ecosystems.

Biodiversity continues to decline globally, with a higher rate of species loss over the last century than the background rate. Internationally, the looming extinctions of up to a million species were predicted by the UN in 2019 as a result of unsustainable human impacts on the environment. Habitat exploitation for agriculture, extractive industry, and urban development are occurring alongside impacts from climate change and increasingly unstable climate patterns across the world.

For much of Victoria's history, our environment has been subject to habitat clearing and exploitation. The 2011 Victorian Environmental Assessment Commission (VEAC) Remnant Native Vegetation Investigation¹ (the Investigation) examined the extent and condition of native vegetation in Victoria's 28 bioregions. The Investigation reported that 50% of native vegetation has been cleared in Victoria since European settlement, and fragmented landscapes comprised almost 80% of Victoria, making it the most cleared State in Australia.² Temperate woodland made up 42% of Victoria before European arrival, but only 8% by the late 1980s.³ One third of major streams are in poor or very poor condition, two thirds of wetlands have been lost or

¹ <http://www.veac.vic.gov.au/investigation/remnant-native-vegetation-investigation>

² [Remnant Native Vegetation Investigation - Final Report](#), p.8

³ Ibid, p. 20



degraded, and 43% of native plants and 27% of native animals and endangered.⁴ Even in areas of largely intact habitat, extreme weather events and invasive species continue to impact Victoria's biodiversity.

Since European settlement two birds have become regionally extinct, the Chirruping Wedgebill and Night Parrot, while more than 120 birds are listed on the *Advisory List of Threatened Vertebrate Fauna in Victoria 2013*. More the 70 of these are listed under the *Flora and Fauna Guarantee Act 1988* (FFG Act) and 26 are nationally listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Threatened Species Index for Victorian Birds 2018⁵ (Fig. 1) suggests ongoing declines. An average decrease in abundance of 61% was reported for EPBC-listed threatened birds with adequate monitoring data available for calculating trends.

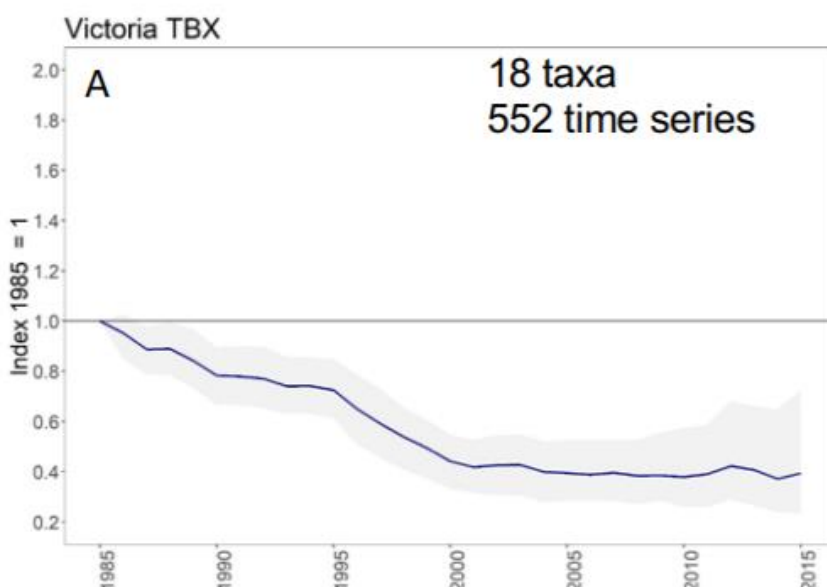


Figure 1. Threatened Bird Index for Victoria⁶

The 2019/2020 bushfires highlight the cost of extreme events for our wildlife, with a conservative national estimate of over 180 million birds being killed by those

⁴ Ibid, p. 8

⁵ https://www.nespthreatenedspecies.edu.au/media/ockgyos5/3-1-tsx-researching-findings-factsheet_vic.pdf

⁶ https://www.nespthreatenedspecies.edu.au/media/ockgyos5/3-1-tsx-researching-findings-factsheet_vic.pdf



bushfires.⁷ In Victoria, species impacted by the fires included already threatened species like the South-eastern Glossy Black-Cockatoo, Eastern Ground Parrot and Masked Owl, and species formerly thought to be secure and not of conservation concern, such as the Superb Lyrebird and Gang-gang Cockatoo.

As extreme weather events become more frequent and severe under climate change, it is urgent that our laws prevent habitat destruction and support action to reverse the trend towards species decline and loss. The Investigation recognised that “preventing habitat loss and improving the condition of native vegetation is, by many orders of magnitude, more cost-effective than revegetation and has significantly better conservation outcomes.” Hence, it is far more efficient to ensure legislation provides strong protection for wildlife and their habitat.

Efforts to shift the onus of environmental management and protection from the Federal to State governments over the past year demonstrate that Victoria cannot expect Federal legislation to protect our ecosystems, and must ensure that our Wildlife Act is robust and effective in protecting our wildlife and their habitats.

What should the Act Do?

The Wildlife Act should be a broad-based biodiversity or environmental law. The overall purpose of the Act should be the conservation, protection and welfare of native wildlife and habitats, including promoting their recovery and restoration.

The Wildlife Act should recognise and protect both the intrinsic value of wildlife and the role of wildlife in ecological processes; the value of wildlife in ensuring the health and resilience of ecosystems and the persistence of native species.

The law must make clear the responsibilities and duties of individuals and public entities in relation to wildlife. Where human and wildlife interests conflict, the legislation should provide a framework to manage these conflicts in a manner consistent with these overarching objectives.

It should do the above based on the requirement for ecological sustainability (including taking an ecosystem approach to wildlife management), under the guidance of best available science.

⁷ [WWF, 2020, Impacts of the unprecedented 2019-20 Bushfires on Australian Animals](#)



Does the Act reflect contemporary attitudes towards wildlife?

The current Act reflects an outdated view of wildlife as a resource, including wildlife as ‘game’ for hunting, or as a nuisance, through the impacts of native wildlife on agricultural production.

Recreational hunting of native birds (waterfowl and quail), sanctioned under the Act, does not meet contemporary expectations for, and values relating to, wildlife in Victoria. Recreational hunting of native birds also fails to:

- meet principles of ecologically sustainable development and biodiversity conservation, being legally permitted despite strong evidence of consistent, long-term declines in waterfowl populations (see Case Study 1); and
- represent contemporary community values relating to the humane treatment and prevention of cruelty to wildlife.

Consistent with our view that the primary purpose of the Wildlife Act should be the conservation, protection and welfare of native wildlife, all native wildlife (including all ducks and quail) should be removed from the game list, and ‘game’ management of non-native wildlife should be removed from the scope and ambit of the Act.

Game management and hunting should be set out under separate legislation wherein invasive species such as deer (which represent a significant and growing threat to the habitats of many species) should be subject to eradication strategies.



Case Study 1: Recreational hunting of waterfowl despite evidence of ongoing declines in waterbird populations.

BirdLife Australia's Waterbird Index analysed over two million waterbird records from 25 databases (including the EAWS and waterfowl and wetland databases from six state and territory departments) spanning as far back as 1971⁸.

The study demonstrated that six of Victoria's eight game duck species have undergone significant long-term population declines. Trends were also detected continuing over the medium-term for three species and short-term trajectories were trending downwards for seven. No game species have shown population recovery. These ongoing, large-scale and long-term declines indicate the need for targeted, national conservation action to recover waterbird species to ensure the persistence of waterbirds in Australia.

Despite strong empirical evidence of declines in waterfowl populations, political support for those with a vested interest in duck hunting means that there is little political will to recognise declines as cause for concern. Natural fluctuations in waterbird populations and unsubstantiated claims of game duck population recovery, often based on annually quoted long-term population averages, are presented as evidence of resilience to the impacts of hunting. The capacity for waterfowl populations to 'bounce back' is over-stated, yet is given as a rationale for allowing the threat from waterfowl hunting to continue unabated.

Additional pressure from climate change, with increasingly frequent and prolonged droughts in south-eastern Australia, as well as the impacts of bushfires, land clearing, and agriculture on water flow and wetland health, mean our waterbird populations are facing persistent, ongoing threats. A declining extent of wetlands forces congregations of ducks into smaller areas, further increasing their vulnerability to hunting or other local pressures.

⁸ Clemens, R., Driessen, J. and Ehmke, G. (2019) Australian Bird Index Phase 2 – Developing Waterbird Indices for National Reporting. Unpublished report for the Department of the Environment. BirdLife Australia, Melbourne.



Could a general duty help?

We agree with the proposal for a general duty for wildlife protection and conservation. This should include a duty on the Crown and public entities, and a duty on landowners, and must impose legal duties on State and public authorities to manage wildlife in a sustainable way.

The imperative for State and public authorities to have a legal duty to manage wildlife in a sustainable way is demonstrated in the management of South-eastern Red-tailed Black-Cockatoo (SERTBC) habitat by State agencies (Case Study 2). While private landowners have been prosecuted for clearing important SERTBC habitat, BirdLife Australia's greatest concerns relate to the management (particularly planned burning) of the SERTBC habitat on public land by State agencies.

Case Study 2: Clearing of Red-tailed Black Cockatoo habitat

South-eastern Red-tailed Black-Cockatoo (SERTBC), *Calyptorhynchus banksii graptogyne* is listed as Endangered under the Commonwealth EPBC Act and the FFG Act, with more than half of its habitat having been permanently cleared since European settlement. The majority of the subspecies' remaining, fragmented habitat is in south-western Victoria.

SERTBCs have a specialised diet, feeding almost entirely on Buloke and two species of stringybark. This nomadic subspecies preferentially feeds in areas that have not been burnt (or crown scorched) for at least 10 years because unburnt forest is more productive (has higher seed yields) than recently burnt forests. They also require trees that are at least 220 years old for nesting, which must be within 5km of feeding habitat.⁹

Their ecology and current limited extent of habitat makes them especially vulnerable to clearing of feeding and nesting trees, and to fires, including prescribed burning. We believe current management of the bird's habitat on public land by State agencies is further endangering and/or limiting recovery of this subspecies by failing to ensure the percentage of SERTBC habitat scorched within a ten-year period remains below 15 per cent and by unnecessary clearing of important feed trees in association with preparations for prescribed burns. On these matters, it is apparent that State agencies are held to a different and lesser standard than private landholders.

⁹ Burnard and Pritchard *Draft National Recovery Plan for the South-eastern Red-tailed Black-Cockatoo, Calyptorhynchus banksii graptogyne* (2016)



In 2015, the Federal Government failed to prosecute the Victorian Department of Environment, Land, Water and Planning (DELWP) for clearing of SERTBC habitat on Dartmoor-Spencers Track, western Victoria. Documents obtained under Freedom Of Information legislation (FOI) showed that the Federal Government investigated but did not prosecute DELWP for the clearing. Previous penalties – discussed in the FOI – against private landholders who cleared SERTBC habitat highlight the disparity in how the laws and regulations apply to private and public actors in Victoria, which cannot be justified when the environmental outcomes are the paramount measure of the actions.

This is not an isolated incident. We have also documented incidents where known, important habitat for the Critically Endangered Glossy Black-Cockatoo has been impacted by planned burning operations in East Gippsland in areas where these cannot be justified on the basis of protection of life and property.

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

The Wildlife Act should increase biodiversity protections, by requiring the use of conservation tools available under the FFG Act to achieve outcomes under the Wildlife Act.

- The Wildlife Act should specify obligations for the preparation of Action Statements for listed species, including a requirement that these are prepared within two years of listing
- The Wildlife Act should specify obligations to include a description of critical habitat Action Statements for listed species
- The Wildlife Act should specify further obligations that a critical habitat determination under section 20 of the FFG Act must be prepared within 12 months after conclusion of an Action Statement

Recognition and protection of critical habitat for threatened species: Habitat that is of high value to species listed as threatened under the FFG Act should be protected, and Action Statements drafted and implemented as a priority, to maximise species' recoveries.

Requirements for detailed regional recovery plans: The ongoing degradation of Victoria's ecosystems requires the development and implementation of regional recovery plans to address pervasive and persistent threats operating at the



landscape-scale. Regional recovery plans would reverse land degradation and prevent the decline of common species. Together, Action Statements and regional recovery plans would ensure the best environmental management.

Our work to protect and recover the Hooded Plover, outlined in Case Study 3, highlights the failure of the Wildlife Act to provide protection for the species and its habitat, or to manage/regulate activities that negatively impact the species. The Case Study clearly illustrates the need for reform of the Wildlife Act, including the need to define and provide strong protection for critical habitat.

Case Study 3: Hooded Plovers

Hooded Plovers are a prime example of a species experiencing crippling human disturbance rates that limit breeding success to the point of population decline. The Wildlife Act should explicitly assist with the protection of wildlife in their habitats so that they can maintain breeding behaviours and sustain population growth, and yet the Act fails to protect this species as outlined below.

Hooded Plovers are a non-migratory, resident shorebird found throughout southern and eastern Australia, with coastal Victoria supporting a population of ~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 under the FFG Act.

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 and native scavengers, beach wrack harvesting and loss of habitat through weed invasions.

Since 2006, BirdLife Australia has driven state-wide recovery efforts for Hooded Plovers through efforts to seasonally sign and fence-off nesting sites as 'protected zones' and to instil 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 across Victoria's coastline works to support BirdLife Australia's efforts, and to educate beach users on the need to give the birds space to breed successfully on beaches. A major focus of this education work has been on leashing of dogs on beaches to mitigate the impacts of predation, nest crushing and lethal disturbance by dogs.

BirdLife Australia has worked with each council, Committee of Management and local Parks Victoria office across the Victorian coast to improve zoning regulations for 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 effectively and independently coordinate actions across multiple jurisdictions, 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.

While the Hooded Plover has an Action Statement (finalised in 1992) under the 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.

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 race horse 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. It could set mandatory requirements for the inclusion of robust science in 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.

Identification and protection of critical habitat is vital to efforts to protect and recover threatened species like the Hooded Plover.

We 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. 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 resided 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.

Reducing human impacts within critical habitat is the best way to ensure recovery of the species, and to support conservation efforts. Where we know where such habitat is, 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 Flora and Fauna Guarantee 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 Flora and Fauna Guarantee Act sets out, such as the designation of critical habitat.

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 FFG Act,



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, that 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 Hooded Plover for example has highly visible and standardised signage used around breeding sites that are a visual cue for assisting beach users in identifying these approach distances. 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 nests 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 cannot 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.

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.

Protection of critical habitat is vital for the conservation of all species, and to the recovery of threatened and endangered species. It should be an offence to damage critical habitat, particularly for threatened and endangered species. Habitat loss and fragmentation are key threatening processes for many native species. If the aim of the Act is to protect and conserve wildlife, the inextricable link between the protection of wildlife and their habitat should be reflected in the inclusion of provisions to protect critical habitat and sanctions against damaging critical habitat.

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

Case Study 4 outlines key inadequacies and gaps in Victoria's management and administration of its Ramsar sites, and the consequences of these inadequacies, that should be addressed in a new Part of the Act.

A new Part of the Act that enacts Victorian contributions to international agreements that benefit, protect and/or conserve wildlife should be considered. Distinct provisions supporting Australia's obligations under the Ramsar Convention (including Victoria's role in administration of those obligations) would extend wildlife protections to certain key migratory species, such as shorebirds, waterbirds and other key fauna integral to the ecological character of wetlands that are dependent on Victorian wetlands. A new Part of the Act would also assist in clarifying and setting out Victoria's key practical and administrative role in those international obligations.



Case Study 4: Inadequacies and gaps in Victoria’s management and administration of Ramsar Wetlands of International Importance.

Victoria has twelve Ramsar Wetlands of International Importance that are important for Australia’s waterbirds, and migratory and resident shorebirds, or both.

Populations of shorebirds and waterbirds in Australia have continued to decline at an increasing rate over the last forty years. Eastern Australia’s waterbird population, including game species, has declined as much as 90% over the last four decades,¹⁰ with Australia’s migratory shorebirds suffering significant population declines over the same period.

The management plans for many of Victoria’s Ramsar wetlands are either outdated or inaccurate. The National Framework and Guidance for Describing the Ecological Character of Australian Ramsar Wetlands (The Framework) requires finalised and published Ecological Character Descriptions (ECD) for Ramsar wetlands,¹¹ which should provide the baseline description of Ramsar Wetlands at the time of their listing. Many of these ECDs have been published late, while the Western Port Phillip Bay and Bellarine Peninsula Ramsar site ECD remains unpublished.

Without appropriate ECDs, environmental assessments of proposed or ongoing activities in Victoria’s Ramsar sites cannot adequately report environmental changes. Further, unpublished ECDs exclude the Victorian public from important information relevant to issues open to public comment. Distinct developments within one region are typically considered independently from one another, so an understanding of their cumulative impact to an ecosystem is vital. For example, either or both of the Western Port Phillip Bay and Bellarine Peninsula Ramsar site and the Western Port Ramsar site are repeatedly indicated as sites for major developments, with the Victorian Government seeking to develop future major freight infrastructure within the next generation.¹² Both sites are internationally significant for critically endangered Curlew

¹⁰ Porter, J.L., R.T. Kingsford and K. Brandis. (2018). Aerial Survey of Wetland Birds in Eastern Australia – October 2018 Annual Summary Report. Centre for Ecosystem Science, School of Biological, Earth and Environmental Sciences, UNSW Sydney. Office of Environment and Heritage NSW.

¹¹ Department of the Environment, Water, Heritage and the Arts (2008). National Framework and Guidance for Describing the Ecological Character of Australia’s Ramsar Wetlands. Module 2 of the National Guidelines for Ramsar Wetlands— Implementing the Ramsar Convention in Australia. Australian Government Department of the Environment, Water, Heritage and the Arts, Canberra.

¹² [Victorian freight plan: Delivering the Goods](#); [Victoria’s draft 30-Year Infrastructure Strategy](#)



Sandpiper, and Western Port is internationally significant for critically endangered Eastern Curlews, and nationally significant for Red Knots.¹³

Limits of Acceptable Change (LAC) are required to ensure that critical components, processes and benefits or services (Critical CPS) are not impaired, which protects the character of Ramsar sites, including their value to waterbirds. These LACs are too often inadequate, for example an LAC for the Critical CPS of the Glenelg Estuary and Discovery Bay supporting a diversity of waterbirds with a total of 95 wetland dependent species, would be triggered in the absence of a list of waterbird guilds (ex. ducks, swans, and grebes) in any three out of five years. If one individual native duck, swan, or grebe were recorded in any three out of five years then the LAC will not be triggered, even though the local waterbird population could see massive declines in abundance in that period.¹⁴

Suitable ECDs and LACs are required to assess ongoing and potential human impacts in Victoria's Ramsar sites. Importantly, the Victorian government has an opportunity to be proactive, and go beyond domestic Ramsar obligations, and proactively manage Victorian wetlands.

A good example of why it is wise to be proactive can be seen with the former Cheetham Saltworks site at Avalon and adjacent coastal environment, which once proved critical feeding habitat for a range of threatened migratory shorebirds, with numerous diverse saline ponds feeding different species of bird. The ponds lost much of their water flow when the Saltworks were decommissioned in the 2000s and are mostly dry and desolate today. As it dried and fell into disuse, little was done to preserve this important section of the Western Port Phillip Bay and Bellarine Peninsula Ramsar site. Works to secure and improve the sites' environmental values have begun (supported by the Port Philip Bay Fund), but years of degradation and uncoordinated management have meant higher investment is required to mitigate the current threats to the site's integrity.

¹³ Weller, D., Kidd, L., Lee, C., Klose, S., Jaensch, R. and Driessen, J. 2020. Directory of Important Habitat for Migratory Shorebirds in Australia. Prepared for Australian Government Department of Agriculture, Water and the Environment by BirdLife Australia, Melbourne.

¹⁴ Lees, D. & Maguire, M. (2019) Monitoring the health of shorebirds within the Glenelg Estuary and Discovery Bay Ramsar Site, March 2018-June 2019. Birdlife Australia.



What mechanisms does the Act need to achieve its objectives?

Minimum approach distances: Many bird species are vulnerable to disturbance (see Case Study 3 on Hooded Plover) and require protection through minimum approach distances, similar to marine mammals under Sections X and XA of the Act.

Updated duties: Establish legal duties within the act that impose guarantees that landowners and State and public authorities ensure sustainable management practices for wildlife, and their habitat. Both a general duty for the Victorian public, and legal duties guiding public servants and State authorities are necessary.

Appropriate penalties: Penalties available under the current Act do not reflect contemporary attitudes towards wildlife crimes. One of the clearest examples of this is the killing of hundreds of Wedge-tailed Eagles at a property in Tubbut, wherein the individual responsible received a 14-day jail term and a \$2,500 fine, and the landowner could not be prosecuted for aiding and abetting or commissioning the offence. The public outrage (including from hundreds of BirdLife Australia's supporters) at the leniency of the penalty relative to magnitude and impact of the crime on individual birds (and to the species as a whole) is a clear demonstration of the inadequacy of current Act.

Does the Act promote transparency and accountability?

The Wildlife Act does not promote transparency and accountability. There is no transparency around how decisions and plans are made, and how Ministers and expert panels come to decisions.

This is evident in our direct experience of the decision-making process for duck season. Prior to the Minister announcing arrangements for duck season, BirdLife Australia and other stakeholders are presented with information compiled by the Game Management Authority (GMA) and invited to make submissions to the Authority outlining evidence relevant to duck season arrangements. The next step, whereby the GMA provides recommendations to the relevant Ministers and Departments, and decisions are made about duck season is opaque and appears highly vulnerable to politicisation.

Part of the solution is for environmental approvals and decision making to include legislated and clear decision steps and criteria - an approach that should be adopted for all decisions relating to wildlife including permitting, listing, and planning.



BirdLife Australia believes the Act should also include provisions for merits review of decisions affecting public resources and environmental concerns. This is a well-established mechanism for accountability, transparency, and best practice in public administration.

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

Yes, independent expert advice should play a greater role in decision-making under the Act, and this advice and subsequent decision-making processes should be accessible to the public. This would improve transparency and reduce opportunities for politicisation of decision-making.

Independent expert advice should also play a greater role in informing management of critical habitat, particularly in relation to State agency activities such as logging and planned burning. BirdLife Australia has long advocated for an evidence-based approach to planned burning, yet our attempts to seek the rationale for burn prescriptions or evidence for the efficacy of planned burning in reducing risk have been largely unsuccessful. An independent panel of scientists with expertise in fire behaviour and fire ecology should be established to scrutinise the veracity of claims about the value of individual burns or regional burn programs, particularly where these may impact on critical habitat.

Are current enforcement and compliance mechanisms adequate?

No. Current enforcement and compliance mechanisms available under the Wildlife Act are inadequate, and those that are available are inadequately resourced (see Case Study 3). This is evident in the lack of enforcement and compliance capacity applied to duck season, and in the outcomes of the prosecution over the illegal killing of Wedge-tailed Eagles at Tubbut.

BirdLife Australia would support the establishment of an independent regulator or statutory body to undertake compliance and enforcement under the Act. The independent regulator would have powers to investigate individuals and State agencies responsible for illegal actions including the deliberate destruction of, or damage to, critical habitat, or for working against wildlife protection.

Case Study 2, outlining the failure of the Australian Government to prosecute the Victorian Government over the destruction of critical habitat for South-eastern Red-



tailed Black-Cockatoo, highlights the need for an independent regulator to investigate the actions of State agencies that may be in breach of the Act.