



Native Vegetation Council

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18 February 2025

Biodiversity Coordination Unit
Department for Environment and Water
GPO BOX 1047
Adelaide SA 5001
Email: biodiversityact@sa.gov.au

RE: South Australia's Draft Biodiversity Bill

Dear Biodiversity Coordination Unit

Thank you for the opportunity to provide comments on South Australia's draft Biodiversity Bill.

The Native Vegetation Council (Council) is an independent statutory body established under the *Native Vegetation Act 1991* (NV Act), and is responsible for keeping the condition of native vegetation in the State under review; encouraging the preservation, enhancement and management of existing native vegetation, and the re-establishment of native vegetation; and promoting associated research. The Council is also responsible for considering applications to clear native vegetation, determining offsets, and enforcing compliance with the NV Act.

The Council provides the following comments on draft Biodiversity Bill:

- The Council is very supportive of South Australia developing an Act to provide for the conservation, enhancement and restoration of biodiversity in our State. While the NV Act has been very successful in stopping broad-scale clearance of native vegetation, a more inclusive piece of legislation is needed to reverse the decline of our biodiversity.
- Inclusion of provisions for the protection of critical habitat is strongly supported.
- The Council welcomes increased penalties as well as expanded enforcement tools to deal with breaches of the Act.
- Protection and restoration of biodiversity is everyone's job, and the Council supports the inclusion of a general duty into the new Act.
- The Council strongly believes that in order to not only halt but reverse the decline of our biodiversity, South Australia requires a uniform and aligned approach to conserving, enhancing and restoring biodiversity. This can be achieved by having one peak body (Biodiversity Council) administering the powers and functions of the new

Biodiversity Act, supported by its committees with delegated powers and advisory committees, and reporting to the Minister responsible for the Biodiversity Act.

- The Council advocates for a demarcation of the roles and responsibilities, particularly regarding the Biodiversity Council's role in setting the offsetting formula and the accompanying significant environmental benefit (SEB) policy, which should remain within the remit of an independent body rather than the Minister's.
- The Council recommends including the Precautionary Principle in the Biodiversity Bill.
- The Bill could be improved to highlight the need for a landscape-scale approach to biodiversity conservation, focusing on the cumulative effects across broader ecosystems rather than isolated areas or species.
- As previously raised, preservation of natural resources in South Australia remains underfunded. The increased scope of the Biodiversity Bill (compared to the NV Act) will require significantly increased funding. It is time to explore innovative approaches to funding.
- While the draft Biodiversity Bill brings together the provisions of the NV Act and wildlife provisions of the *National Parks and Wildlife Act 1972*, the Council is of the view that these provisions require stronger integration. Rather than considering applications for clearance of native vegetation, the new Biodiversity Council should be assessing impact on biodiversity. There is an opportunity to create a one stop shop, avoid duplication of procedures and integrate application and assessment process relating to the impact on both flora and fauna.

More detailed comments can be found in the attachment.

Thank you again for the opportunity to provide comments on the draft Biodiversity Bill.

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Yours sincerely

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cc: Hon Susan Close MP, Deputy Premier, Minister for Climate, Environment and Water,
OfficeOfTheDeputyPremier@sa.gov.au

Attachment 1 – Native Vegetation Council Comment on the Draft Biodiversity Bill

Section of the Bill	Description	Comments
3—Interpretation	It is proposed to change from 'native vegetation' to 'native plant'. It is also proposed to include all species that are indigenous to Australia, not only South Australia.	The Council has worked extensively on educating the public and stakeholders about native vegetation and its value. The Council is concerned about the impact of changing the terminology to 'native plants' as one may interpret the scope to be narrowed. In regard to inclusion of species that are indigenous to Australia, further work needs to be done to measure the impact of this decision on the operation of the Act, particularly the process of assessments of applications for clearance. Significant consideration should be given to the benefits of this change versus perverse outcomes. Additional work and consideration are required to achieve the desired outcomes, without unintended consequences.
3—Interpretation	Definition of an 'owner' is changed.	It is important to ensure all current owners are included as this definition impacts a number of provisions of the Act such as entering into biodiversity agreements.
3—Interpretation	SEB 'scheme' introduced.	Significant environmental benefit is not a 'scheme' – it is a condition that a proponent must comply with in order to clear. Terminology should be changed to remove word 'scheme'.
3—Interpretation	Definition of significant environmental benefit.	The definition for SEB in this Bill is less descriptive than the one proposed in the <i>Native Vegetation (Miscellaneous) Amendment Bill 2024</i> . Careful consideration should be given whether the expanded version should be used instead.
3(2)—Interpretation	Definition of intact stratum.	Since native plants include species indigenous to Australia, the impact of this change in the context of defining significantly intact stratum needs to be considered and assessed further to understand potential for perverse outcomes.
6—Operation of the Act	(5) The Governor may, by proclamation, declare that this Act, or a provision of this Act specified in the proclamation, will not apply— (a) within a part of the State specified in the proclamation; or	This section gives the Governor a broad power to 'switch off' any provisions of the Act without due Parliamentary process The Council is not supportive of this section. If similar provision is required, the Native Vegetation Act has provisions requiring Regulations

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	(b) at any time or during periods specified in the proclamation; or (c) to a specified species of plant or animal (whether generally or in a specified part of the State) or to any other specified circumstance or thing, and the operation of this Act will be modified accordingly.	to be made. This is preferable as Regulations can be disallowed in Parliament.
6—Principles	This section sets out principles that a person or body engaged in the administration of this Act must seek to give effect to.	The Council recommends consideration be given to including the Precautionary Principle in section 8.
11—General duty	Under general duty, an entity must not undertake an activity that harms or has the potential to harm biodiversity unless all practicable and reasonable measures are taken to prevent or minimise the harm.	This section should clarify whether an 'entity' includes an entity engaged in the administration of the Act such as the Biodiversity Council.
15—Composition of Council	Subsection 2(b) lists skills, knowledge and experience of Biodiversity Council members.	'Scientific research' should be more clearly defined as 'scientific research related to biodiversity'.
16—Functions of Council	This section sets out Biodiversity Council's functions.	The new Biodiversity Council should be the peak body for preservation, enhancement and restoration of biodiversity in South Australia. This independent body should have the powers to determine applications that impact on biodiversity; administer the Funds and undertake compliance, for example. The Biodiversity Council should also be able to provide advice on biodiversity policies to the Minister on its own initiative, and not only at the request of the Minister.
17—Establishment of NPCAC and 18—Composition of NPCAC etc	Section 17 establishes the Native Plants Clearance Assessment Committee (NPCAC). Under section 18, NPCAC is appointed by the Minister.	Currently the Council has a Native Vegetation Assessment Panel (NVAP), Council's committee with delegated powers. NVAP is appointed by the Council, with Terms of Reference approved by the Council. This is very important in order to have a uniform and aligned approach. It is also easier to administer as Council has flexibility to amend the Terms of Reference, or appoint members in a responsive manner. The Council believes this arrangement should continue.

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		The proposed name of the committee is limited. The committee should be tasked with assessing impact on biodiversity, including fauna, not just plants.
19—Functions of NPCAC	This section sets out NPCAC functions.	As previously discussed, to ensure a uniform and aligned approach, these functions would better fit under the Biodiversity Council, with the Council delegating them as needed.
22—Functions of FNEBC	This section sets out functions of the First Nations Expert Biodiversity Committee (FNEBC).	This committee should be a committee of the Biodiversity Council, reporting to Council, with the Council providing comprehensive advice to the Minister.
25—Functions of Scientific Committee	This section sets out functions of the Scientific Committee.	This committee should be a committee of the Biodiversity Council, reporting to Council, with the Council providing comprehensive advice to the Minister.
26—Other committees and advisory bodies	Under this section, the Council may establish committees with the approval of the Minister.	Statutory boards at times depend on its committees to perform its functions and powers, and also for advice. Ability to quickly establish and dissemble committees is important as some of the work given to committees may be time sensitive. It is recommended to remove the requirement for the Minister to approve Biodiversity Council's committees (with the Minister keeping the power to approve remuneration, if any.)
27—Ability to establish trusts	The regulations may establish a trust.	This provision is supported.
33—Annual reports	This section requires Biodiversity Council, NPCAC, FNEBC and Scientific Committee to prepare individual annual reports.	As per above, the Council believes that NPCAC, FNEBC and Scientific Committee should be Biodiversity Council's committees. This would eliminate the need for their separate annual reports as they would all be included in Biodiversity Council's annual report. This is a less administratively burdensome approach.
34—Delegation	The Biodiversity Council may, with the approval of the Minister, delegate any of its functions. If the instrument of delegation so provides, delegations may be further delegated by the delegate.	While currently this Council has the same requirement to seek approval of its delegations from the Minister, this from time to time has led to inefficiencies in Council's governance arrangements. The Council recommends removing the requirement for the Minister to approve the delegations. The ability of the delegate to sub-delegate is not supported.

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36—Biodiversity Restoration Fund	This section outlines how the Biodiversity Restoration Fund may be applied.	The new Act must be clear that ‘payments made in lieu of a requirement to achieve a significant environmental benefit’ (‘offset money’) and court orders may only be used for offset projects. This is the only way to ensure significant environmental benefit is achieved. This fund should not be used for research. Currently the Council is required to use the money from the fund in the same region where clearance occurred, or in another region if the benefit will be higher than in the region (please refer to sections 21(6) and (6a) of the NV Act). It is important to keep this requirement.
38—Biodiversity Conservation Fund	The Biodiversity Conservation Fund is subject to the management and control of the Minister.	For the best biodiversity outcomes, the Biodiversity Council should administer and control this Fund, in addition to the Biodiversity Restoration Fund.
39—Biodiversity Administration Fund	The Biodiversity Administration Fund is subject to the management and control of the Minister.	It would be helpful for the Biodiversity Council to be able to use this Fund to assist with the administration and operation of the Act.
Section 48—Application for consent	Explains the application for consent.	It should be clarified whether section 48(2) will work as intended with pastoral land: pastoral leaseholders should be able to make applications for clearance themselves rather than the Minister doing it for them.
49—Matters NPCAC must have regard to when determining applications	In deciding whether to consent to an application to clear native plants, the NPCAC must have regard to the principles of preservation of native plants in so far as they are relevant to that decision.	The Biodiversity Council, NPCAC and the Minister should not only have regard to the principles of preservation of native plants, but should not make any decision that is seriously at variance with the principles. Under section 49(2), NPCAC should be required to give regard to applicant’s desire to facilitate the management of other <u>native</u> plants (not all plants).
50—Circumstances in which consent may be given etc	Subsection (6) outlines when NPCAC may give consent if application is seriously at variance with the principles of preservation of native plants.	The conditions to be met for NPCAC to give consent to applications that are seriously at variance are too broad. The Council recommends guidelines be developed for this section, and also removing the subsection that refers to payment being made into the Fund.
50—Circumstances in which consent may be given etc	Subsection (12) lists specified circumstances: these are activities that currently require approval under the <i>Native Vegetation Regulations 2017</i> .	The Council notes that an option to have a standard operating procedure replacing Council’s approval has been removed. These procedures enable government agencies such as SA Water to efficiently undertake

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		their work. The lack of an ability to approve SOPs will add additional administrative burden to the clearance approvals process.
52—Conditions of consent	This section outlines conditions NPCAC may impose on the consent to the clearance of native plants.	NPCAC should be able to draw upon the principles of preservation of native plants under Schedule 3 when imposing conditions of consent (please refer section 52(2)(g)).
61—Guidelines	This section sets out guidelines that the Biodiversity Council must prepare and adopt, and the process for their development including consultation.	Minor amendments to guidelines should be exempt from consultation.
82—Declaration of critical habitat	The Minister may, by notice in the Gazette, declare habitat of a threatened species, threatened ecological community or listed ecological entity to be critical habitat.	In line with other comments, these matters should be within the remit of the Biodiversity Council. These matters cannot be considered in isolation, and therefore it is important that one body (Biodiversity Council) is responsible for all of them.
92—Biodiversity agreements	The Minister may enter into a biodiversity agreement with the owner of land for the protection, restoration or enhancement of native plants on the land.	This definition should be expanded as these are biodiversity agreements, not native plant agreements. For examples, critical habitat and ecological features should be included.
101—Financial and other assistance	This section is currently under Conserved areas. It allows assistance to purchase land.	Financial and other assistance is more than just about ‘Conserved areas’ (for example research can be funded). It is suggested to move this section to another part of the Bill. It should be clear that any land purchased with financial assistance must be protected in perpetuity. It should also be clarified that where land is being purchased from the funds from the Restoration Fund, it may be purchased for the public protected area estate such as conservation parks or National Parks.
161—Biodiversity policies	The Bill proposes that the Minister makes the SEB Policy.	An independent Biodiversity Council should set the offsetting formula and accompanying SEB policy to achieve the formula that reflects the true cost of offsetting clearance.
Schedule 2, Clause 4-- Native plants within 3 m of prescribed building	Permits clearance of native plants that are growing or situation within 3 m of an existing prescribed building.	The Council supports the reduction from 10 m to 3 m for maintenance of a building.

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Schedule 2, Clause 5—Maintenance of infrastructure	An option to develop a standard operating procedure has been removed.	Not having a standard operating procedure approved by the Council to maintain infrastructure may impact the work of some government agencies and increase the administrative burden of administering the Act.
Schedule 2, Clause 13—Mining operations	A person does not need to provide an on-ground offset they have made a payment into the Biodiversity Restoration Fund of an amount considered by the NPCAC to be sufficient to achieve the significant environmental benefit that would otherwise be required by the SEB scheme.	The proponent should first demonstrate that it has explored on-ground options (including use of credits and third party provider) before payment into the Fund is accepted.
Schedule 2, Clause 14—Mining explorations	Subclause (1) refers to guidelines, whereas subclause (3) refers to industry standards.	Mining sector industry standards are approved by Council and used instead of guidelines. This way an already existing standard is used, saving on time and resources developing new guidelines. It is recommended that this section refers to industry standards only.
Schedule 2, Clause 19—Fire hazard reduction	Permits clearance of native plants where the native plants are growing or situated within 20 m of an existing dwelling and clearance is for the purposes of reducing the risk that bushfire poses to life or property (other than where the native plant consists of a tree that has a trunk circumference (measured at a point 1 m above the base of the tree) of 1 m or more).	It is proposed to reduce from 20 m to 10 m (with a consequential amendment to Clause 20).
Schedule 2, Clause 26—Ongoing grazing practices	Permits ongoing grazing practices.	Currently ongoing and changed grazing practices are dealt by two different regulations under the <i>Native Vegetation Regulations 2017</i> . The current Bills is silent about changed grazing practices.
Schedule 5, Part 8—Amendment of <i>Dog and Cat Management Act 1995</i> ; Clause 12—Amendment of section 63—Power to destroy cats	Sets out proposed amendments to the <i>Dog and Cat Management Act 1995</i> .	The power to destroy (feral) cats by authorised officers should be extended beyond sanctuaries, to include biodiversity agreements, conservation agreements, and conserved areas.
NA	Future transitional provisions	All remaining legacy clearance consents, that is, consents granted under the NV Act, should be extinguished after a certain amount of time after the passage of the Bill (for example, after 5 years of passage).