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Environment Institute of Australia and New Zealand Inc.

Date: 1 March 2024

EIANZ-SA Division response to South Australia's new Biodiversity Act – discussion paper consultation

Dear Brett,

Thank you for the opportunity to provide feedback on the *Developing a Biodiversity Act for South Australia Discussion Paper*.

The SA Division of the Environment Institute of Australia and New Zealand Inc. (EIANZ) has completed the Your Say survey. A copy of the response is also provided here.

The Environment Institute Australia and New Zealand (EIANZ) South Australian (SA) Division is pleased to provide feedback on the discussion paper on the proposed Biodiversity Act. The Institute is the leading professional body in Australia and New Zealand for environmental practitioners and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

EIANZ-SA recognises the significant work needed to draft, consult, and review the bill and the various frameworks and policies the discussion paper identifies. Biodiversity loss is a critical issue facing South Australia and it must be urgently addressed. Evidence suggests that pressures on biodiversity are increasing despite the investments in management. The 2020 Samuel Review of the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) found that significant reform of national environment legislation is required to arrest the damage being done. This report indicates that SA if anything, is lagging in biodiversity performance, hence it is important that this new state legislation clearly specifies the biodiversity priority and objectives going forward. The proposed Act and its subsequent implementation resourcing clearly needs to have standing with regard to all other development legislation. We need to shift focus from minimum impact development to nature-positive development. The proposed Act can set a new standard, and then a great deal if ingenuity will be needed to deliver. The EIANZ has a clear interest in environment protection and sustainable development and to applying objective professional standards for the conservation and sustainable use of biodiversity. The EIANZ has published a Position Statement on Biodiversity Policy and Action (June 2021) which sets out its position which is relevant to all of the Topics put forward in the Discussion Paper.

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In response to the specific topics of the discussion paper:

Topic 2: Avoiding impacts

- The Act could seek to prioritise avoidance and minimisation of impacts to biodiversity and make it clear that any negative impacts to biodiversity are the last resort. Definitely agree
- The Act could provide for a framework that includes clear guidance on the requirements to avoid and minimise impacts to biodiversity. Definitely agree
- The Act could require evidence is provided justifying how avoidance and minimisation have first been addressed as per the mitigation hierarchy. Definitely agree
- The Act could make it clear that any action taken having impacts to biodiversity must leave biodiversity in a measurably better state than it was before. Definitely agree

Additional comments:

A single stop for Biodiversity legislative assessments and approvals would help to improve the understanding and consideration for Biodiversity assessments and how they should be considered for future project proposals across all industry sectors. The development of a new Biodiversity Act provides an opportunity to help streamline and improve other regulatory processes in consideration of full Biodiversity assessment outcomes for the State. This could help to streamline the approval requirements for biodiversity related aspects currently contained within multiple pieces of legislation i.e. *Native Vegetation Act 1991*, *National Parks and Wildlife Act 1974* and *Landscape South Australia Act 2019*. Importantly the Biodiversity Act will also require a significant status within the legislation hierarchy if it is intended to have significant influence within development assessments for the State.

The new proposed Biodiversity Act provides a real opportunity to protect conservation significant species. Currently, state-listed species of conservation significance are afforded almost no real protection, with no mechanisms that make them a real constraint to development. For example, when baseline surveys are conducted at a site, and state rare species are identified, they are assessed in the Biodiversity Assessment Monitoring or Rangeland Assessment Monitoring methodologies required under the Native Vegetation Act, and yet have a *very minor* influence on the off-set requirement for the land disturbance for the project. The proponent needs to provide the SEB off-set regardless and takes no further action to avoid impacts to state-listed species. Worse yet, little consideration is given to the adequacy of the surveys (intensity, repeatability, appropriate time of year, surveyor experience), or the importance of the habitat/potential habitat to all species, ecosystem integrity, and ecosystem services. An example is that breeding locations for Peregrine Falcons (rock ledges) are afforded no protection in their own right yet are critical to the species' survival.

Comparatively, in other states and under the EPBC Act, another approval requirement is required if an EPBC-listed species is identified. This means that proponents see this as a project constraint and do all they can to avoid and minimise impacts to avoid the need to refer the project under EPBC Act, avoid getting a controlled action outcome, avoid controlling provisions, and avoid the need for off-sets. As a result, further assessment is almost always undertaken, including detailed habitat mapping, revised footprints of design specifications and placement of clearance to avoid/reduce impact. This results in better biodiversity outcomes.

The proposed Act must ensure proponents demonstrate that the mitigation hierarchy has been followed and that impacts are as low as reasonably practicable. This could be a simple mechanism to ensure the presence of state-listed species is seen as a constraint to development

and, therefore, must be adequately addressed. This requirement should in turn flow through to the assessment requirements under other development legislation including *Planning, Development and Infrastructure Act 2016, Mining Act 1971, Hydrogen and Renewable Energy Act 2023, Petroleum and Geothermal Energy Act 2000*, where there are existing mechanisms in place to enable this (e.g. the Terms Of References under Mining Act, scoping requirements under Planning, Development and Infrastructure Act).

Transparent, standardised measurement processes and guidance should be developed to demonstrate that any action taken impacting biodiversity is leaving biodiversity in a measurably better state than before.

An issue in many development proposals is that project design occurs before or concurrently with baseline surveys. The development of the new Biodiversity Act offers the opportunity to create an appropriate process that includes a staged approach, whereby baseline surveys and identification of ecological constraints occur before project design. Such a process would aid in streamlining the application process, with constraints being identified earlier, proponents understanding requirements earlier, and the end result – biodiversity loss being avoided or minimised.

Avoidance and minimisation are increasingly important due to competing use of land from many industries, making it increasingly difficult to acquire suitable land for on-ground off-sets. This is clearly an issue in all jurisdictions in Australia. Interaction of the proposed Biodiversity Act with other legislation administering land use should be clarified, with the Pastoral Act being of primary importance. The Pastoral Act is outdated and does not readily allow for the use of pastoral stations for alternative land uses such as conservation. The process for the transition of pastoral land to conservation/off-setting needs to be clearly outlined and protected by legislation so that it provides certainty.

The EIANZ has reviewed various offset frameworks across Australia and internationally and recognises the complexity, differences and evolving nature of legislation and policy. Through its actions, the EIANZ has identified areas where biodiversity offset frameworks evolve and new issues emerge. These improvement areas will continue to evolve and, therefore, require periodic review. More information can be found in the EIANZ Position Statement: Offsets.

Topic 3: Transparent decision making

- The Act could require government maintain a public register to ensure decisions made that impact biodiversity are disclosed. Definitely agree
- The Act could require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed. Definitely agree
- The Act could incorporate a clear definition of Ecologically Sustainable Development and ensure a process is created so that application of the ESD principles are required in the context of decision making about biodiversity. Definitely agree

Additional comments:

EIANZ-SA supports transparency under the various regulatory development assessment frameworks as good practice for building greater accountability and trust in government decisions.

Legislative provisions should be made to ensure information and documentation relating to government assessments and decisions as well as compliance activities is made available to the public in a manner accessible for all members of society.

Transparency is a recognised general principle to be followed when undertaking environmental impact assessment. The EIANZ Guideline for Impact Assessment (IA) sets out (in relation to transparency) that *'IA should be undertaken through an established process. The process should have clear content requirements which are easily understood by all stakeholders. Limitations and difficulties should be acknowledged. Assessment methodologies should be fully explained and detailed. Assumptions made during the assessment should be fully detailed.'*

Topic 4: Threats to biodiversity

- The Act could provide for a framework for the identification of threats to biodiversity. Definitely agree
- The Act could include statutory obligations for actions to address threats to biodiversity. Definitely agree

Additional comments:

Topic 4 suggests the proposed Biodiversity Act could provide a framework for the identification of threats to biodiversity, and for there to be statutory obligations to address these threats. Clarity is required on:

- who would be responsible for these actions (firstly identifying the threats, then addressing them).
- whether this will be a state-wide initiative, or regional, or local.
- Where does the funding come from to undertake the new legislative requirement.

Under the broad approach proposed, it is hard to envisage how this would work. Each local and regional environment will have its own mix of environmental threats. One approach could be where the threat identification and response requirement was linked to particular developments. E.g. a mine development is required to identify the threat to biodiversity in the project area, and is responsible for managing, and this requirement is linked to the project approval and ongoing compliance monitoring. Alternative approaches could consider cumulative, regional or strategic assessments of impacts on biodiversity, using contemporary assessment approaches.

Recognised impact assessment processes and standards should be adopted in carrying out biodiversity threat identification and abatement assessments. The EIANZ endorses the IAIA International Best Practice Principles: Biodiversity and Ecosystem Services in Impact Assessment, which embody the need to go beyond "business as usual" to achieve positive and demonstrable outcomes for biodiversity and ecosystems through rigorous application of the mitigation hierarchy (MH) as part of impact assessment at project and strategic level.

A clear mechanism for understanding when risks/impacts of a proposed development are not acceptable is recommended to reduce impacts and encourage proponents to more strictly adhere to the mitigation hierarchy. E.g. the EPBC Act significant impact guidelines (DotE 2013) provide a clear framework for knowing when impacts pose an unacceptable level for risk (or at least pose a risk to the proponent that their project won't be approved). This encourages design change to avoid and reduce impacts.

One of the primary threats to biodiversity is land clearance and degradation. One of the primary mechanisms to deal with this (especially in South Australia) is to make the process of changing land use from pastoralism to conservation easier and clearer to enable the establishment of off-setting areas. This is currently not a well defined process with a certain outcome.

The time frame that on off-set must be maintained following establishment is currently not long enough (20 years?). This is not long enough to allow larger trees to mature or allow recovery of degraded areas, especially in more arid areas. If protection of an off-set area is discontinued and re-utilised following the mandated time then a nett reduction in native vegetation extent and/or quality will result until the impacted area is rehabilitated to a mature state.

The EIANZ Position Statement on Biodiversity Offsets sets out key considerations when setting the policy framework for offsets, noting that offsetting is the last sequential step in the mitigation hierarchy.

Topic 5: Assessing the risk of extinction

- A scientific committee could be established to guide listing, assessment and review of extinction risk of biodiversity. Definitely agree
- The Act could provide greater clarity on the types of native species that can be considered as threatened. Definitely agree
- The Act could require the creation of a formal listing, assessment and review process that establishes clear pathways for nomination, consultation and review. Definitely agree
- The Act could adopt a streamlined process for list amendments to ensure lists remain current. Definitely agree
- The Act could ensure that programs implemented to address biodiversity decline are evaluated. Definitely agree
- Where a new extinction occurs, the Act could establish a requirement to examine and report on the causes and actions that contributed to it. Definitely agree
- The Act could establish a framework to document measures to improve the status of biodiversity assessed as threatened. Definitely agree

Additional comments:

A leading practice monitoring and evaluation process based on scientifically valid data needs to be developed for the implementation of these proposed provisions.

Measurement and reporting – set realistic and meaningful indicators and targets and improve coordinated reporting on protected and off-reserve areas; develop consistent baseline data across users; adopt national systems for assessing the status of biodiversity and ecosystem health.

Monitoring – implement adaptive management; consider a range of spatial and temporal scales and performance measures; develop consistent but flexible ways of evaluating biodiversity change, accounting for the impact of external influences such as climate change.

Suitably qualified experts should be used to guide the listing, assessment and review of extinction risk of biodiversity. Professional bodies such as the EIANZ should be engaged in the assessment and review process.

Indigenous knowledge and values should be recognised as an important contributor to the proposed processes outlined in Topic 5. EIANZ Advocates, in the protection of environmental values and mitigation of harms, adoption of a multiple evidence approach that draws on science

and the knowledge, values and perspectives of Indigenous Peoples (EIANZ Position Statement on Indigenous Peoples' Knowledge and Engagement 2022)

Topic 6: Biodiversity planning and reporting

- The Act could mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on. Definitely agree
- The Act could require any state-wide plan or strategy to be regularly reviewed and updated. Definitely agree

Additional comments:

In view of complexities in ecosystem processes, economic development pressures and regulatory environments, much further research, management tool development and stakeholder awareness, education and consultation is necessary to slow and ultimately reverse the loss of biodiversity.

EIANZ advocates informed decision-making – consider biodiversity from the earliest of stages in all environmental planning and impact assessments; include national or regional decision-making contexts in project and site scales; use consistent decision-making processes at all analysis levels; adopt adaptive management approaches to mitigate inherent risks and uncertainties.

EIANZ-SA supports the goal of developing a state biodiversity plan, setting measurable targets and regularly reporting in terms of tracking progress and setting accountability. However, we note that setting targets and reporting on biodiversity itself doesn't reduce the current level of ongoing decline in the states biodiversity. The plan should be supported by clear actions, mechanisms and legal requirements for proponents (and individuals) to better understand the extent of their potential impacts, and to enforce enacting the mitigation hierarchy to avoid or minimise impacts to state biodiversity (which doesn't currently happen).

Topic 7: The benefits of information

- The new Act could provide for a framework to enable the sharing of biodiversity information with the community and across all levels of government to assist in decision-making. Definitely agree
- The new Act could establish the Department for Environment and Water as the responsible government agency for the management of South Australia's biodiversity information. Neither agree nor disagree
- The new Act could establish requirements for the submission of biodiversity data collected in South Australia to a central repository. Definitely agree
- The new Act could direct the development of a policy that describes requirements for the collection, collation, interpretation and dissemination of biodiversity information. Definitely agree

Additional comments:

EIANZ-SA supports the intent to improve the collation of quality biodiversity data from all sectors into a central repository to inform biodiversity decision-making. Improvements would enable data to flow into a nationwide system, greatly improving access to and re-use of data and enabling a better understanding of species, populations, and ecosystems across the landscape and nation. The data must not be limited to occurrence-only data and must extend into identifying survey efforts and actual monitoring data. This would provide data that not only identifies biodiversity

occurrences but enables better interpretation to identify where biodiversity occurs, provide landscape context, and can be used for determining the impact of threats.

The current statewide scientific permitting system requires consultants and researchers to submit data to the Biological Database of South Australia, providing a mechanism for DEW to store and manage such information. However, this process and the infrastructure are outdated.

The Biological Database of South Australia data is accessible to others through a request for data processing and often forms the initial stages of site understanding. An upgrade using modern technology would enable a far more streamlined process, ensure improved data quality, and provide a quicker response time (ideally working towards real-time turnarounds with field-collected data recorded, verified, and published to the database). The process could be broadened to include other potential data sources, including industry-derived data.

The proposed Biodiversity Act allows the opportunity to modernise the current infrastructure, strengthening SA's biodiversity data in all areas of the FAIR Principles (Findable, Accessible, Interoperable, and Reusable). There is an opportunity to extend beyond a 'robust information base' of scientifically collected data and expand into Indigenous knowledge systems.

Topic 8: Achieving 30 by 30

- The Act could consider broadening or creating schemes to further support the establishment and management of conservation areas on private and other land. Definitely agree
- The Act could seek to enable additional incentives, including the provision of financial and technical assistance, to landholders who have entered into formal agreements for conservation. Definitely agree

Additional comments:

EIANZ-SA supports the target of '30 by 30' and the strengthening of formal protection of representative and adequate examples of species and ecosystems in state and national reserve systems.

Improving the connectivity between intact habitat areas is critical to enable ecosystem function and allow species migration and adaptation along temperature and rainfall gradients. Conservation planning must incorporate a landscape-level approach and connect across different land tenures and land uses, including private lands and Indigenous Estates. Frameworks created under the Act must establish formal protection and enable the provision of ongoing management.

The proposed Act should consider the potential for creating single-proclamation reserves/off-sets that are not subject to further development for instance from renewable energy or mineral exploration activities. The cost of disturbing areas currently used for off-setting is too low and not prohibitive enough. The possibility that a conservation/off-set area will be subject to further impacts from land disturbing activities such as mineral exploration can discourage investment in creating off-sets.

Native vegetation heritage agreements are not widely used in the pastoral region, yet these areas present the best opportunity for increasing land area under conservation. It is unclear why this is the case, but it may be due to restrictions under the Pastoral Act. Facilitating pastoral stations to put an unused or under-used paddock under a NVHA presents a good opportunity to achieve these goals. Many stations appear to have such paddocks.

Topic 9: Biodiversity – a shared responsibility

- The Act could be clear about the respective roles and responsibilities of the community by introducing a 'biodiversity duty of care', which makes the protection of biodiversity a continuous legal and social responsibility. Definitely agree
- If the inclusion of a 'biodiversity duty of care' in the Act is supported, it could be tied to relevant administrative powers and to civil penalties. Definitely agree
- The Act could include provisions so that guidelines and regulations can be made to ensure South Australians understand and comply with a 'biodiversity duty of care' obligation. Definitely agree

Additional comments:

EIANZ-SA supports the new Biodiversity Act seeking to uphold the rights of First Nations peoples by aligning with the *United Nations Declaration on the Rights of Indigenous Peoples* and the *Nagoya Protocol* under the *Convention on Biological Diversity*. Representation of Indigenous Peoples' interests (cultural and spiritual connections with and knowledge about places, natural resources, and the cosmos, their cycles and values, and economic and social interests) must be considered and play an integral part in forming the new Act. Formulation of the Biodiversity Act and the associated frameworks is an opportunity to recognise plants, animals, and ecological communities of cultural significance to Indigenous Peoples, and value them as culturally significant entities.

Further information is available in the EIANZ Position Statement: Indigenous Peoples' Knowledge and Engagement. EIANZ encourages governments to:

- Adopt legislative, policy and program measures that enable Indigenous Peoples to fully contribute to environmental management decisions and practices, especially when these decisions and practices may impact on Indigenous peoples' wellbeing, their places and natural resources;
- Promote the integration and sharing of scientific and Indigenous Peoples' knowledge about the nature and protection of environmental values, the mitigation of environmental harms, and the maintenance of culture.

Topic 10: Consequences of doing the wrong thing

- The Act could apply a contemporary risk based approach to the types of enforcement actions available such as compliance and remediation orders, civil remedies and other alternative penalties. Somewhat agree

Additional comments:

EIANZ-SA supports the aspiration that the proposed Biodiversity Act, regulations, associated frameworks, and policies provide for the design, implementation, and adequate funding that protect and enhance biodiversity, recognising that biodiversity and human wellbeing are inextricably linked.

Penalties should be commensurate with other jurisdictions, however, the priority of the Act should be around avoiding and minimising impacts to SA biodiversity (in particular threatened species (and any new state listed threatened ecological communities)) in the first instance. Currently, substantial impacts to state threatened species occur with approval under *Mining Act 1971*, *Planning, Development and Infrastructure Act 2016* or *Native Vegetation Act 1991* because the *National Parks and Wildlife Act 1974* has no real workable mechanisms to encourage avoidance

in the first place. The only implication for developers from the presence of state listed species is a *minor* increase in unit biodiversity scores and, therefore increased off-set requirement under Native Vegetation Act.

EIANZ-SA recommends that the state adopts a fit-for-purpose regulatory compliance and enforcement framework that acts to promote the mitigation hierarchy. That is, to provide legislative mechanisms that promote or reward the avoidance of biodiversity impacts, whilst discouraging and penalising actions that adversely impact biodiversity.

We thank the South Australian Government for engaging in discussion regarding the discussion paper on the proposed Biodiversity Act and look forward to continuing with the stakeholder engagement process.

Yours Sincerely,



Nathan Zeman

President, EIANZ SA Division

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