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Biodiversity Coordination Unit
Department for Environment and Water

c/o: biodiversityact@sa.gov.au

Dear Sir/Madam

I am pleased to provide you with the Premier's Climate Change Council's submission in response to the discussion paper on 'Developing a Biodiversity Act for South Australia'.

The Council is established under *South Australia's Climate Change and Greenhouse Emissions Reduction Act 2007*. The Council is the State Government's key advisory body on matters associated with reducing greenhouse gas emissions, mitigating and adapting to climate change.

The Council welcomes the publication of the discussion paper and is pleased to have the opportunity to have input to this important reform.

Please contact the Premier's Climate Change Council Executive Officer, [redacted] on email: pccc@sa.gov.au or phone: [redacted] if you have any queries or wish to discuss this matter further.

Yours sincerely,

Martin Haese MBA
Chair
Premier's Climate Change Council, South Australia

Developing a Biodiversity Act for South Australia: Submission from the Premier's Climate Change Council

Introduction

The Premier's Climate Change Council (PCCC) was established under the *Climate Change and Greenhouse Emissions Reduction Act 2007*. The primary role of the PCCC is to provide independent advice to the Minister for Climate Environment and Water on reducing greenhouse gas emissions and adapting to climate change.

The PCCC welcomes the publication of the discussion paper on 'Developing a Biodiversity Act for South Australia' and is pleased to have the opportunity to respond.

Comprehensive and effective legislation to protect and enhance biodiversity is strongly supported and will be critical in helping to address the challenges to biodiversity posed by climate change. The biodiversity crisis is inextricably linked with the climate crisis, and the solutions and response to both crises are also inseparable. A 2021 paper by McKinsey Consulting in partnership with the World Economic Forum[1] argues there is no clear path to deliver climate mitigation without investing in nature. Increasing, companies need to avoid and minimise adverse environmental and social impacts to maintain their social license and attract investors.

The crossover benefits between biodiversity and climate change include both climate mitigation and adaptation.

- Mitigation: There is increasing global interest in 'natural climate solutions' as an effective way to draw down carbon in the atmosphere, and prevent further carbon being released. Natural climate solutions include actions such as protection of extant native vegetation, effective forest management, rehabilitation, repair and rewilding of biodiversity rich areas, and restoration of coastal ecosystems. Research published in the Proceedings of the National Academy of Sciences[2] suggests that nature-based solutions can provide over a third of the emission reductions needed by 2030 to keep global temperature increases under 2 degrees Celsius. This potential is estimated to be 11.3 billion tons in 2030—the equivalent of stopping burning oil globally.
- Adaptation: Responding to the biodiversity crisis is also essential for minimising adverse climate impacts and more effective climate adaptation. Examples include improving coastal buffer zones (mangroves, samphire and saltmarsh) to retard the impact of seawater inundation from storm surges and protecting the habitat along urban waterways to reduce the risk of flooding by absorbing rainfall and buffering peak flow. Providing, protecting and enhancing habitat to allow species to migrate in response to climatic conditions is an essential climate resilience measure.

[1] https://www.mckinsey.com/capabilities/sustainability/our-insights/why-investing-in-nature-is-key-to-climate-mitigation

[2] https://www.nature.org/en-us/what-we-do/our-insights/perspectives/natures-make-or-break-potential-for-climate-change/

South Australia has demonstrated global leadership in renewable energy and the circular economy. However, our record on biodiversity and threatened species protection is nowhere near as strong.

The biodiversity law reform underway offers an opportunity to change that story through development of an Act with clear, ambitious and 'biodiversity positive' objects backed by strong management, enforcement, monitoring, education, and adequate resourcing.

Overarching comments

Core themes

A range of recommendations and considerations are raised in this submission which centre around four core themes.

1. The goal of the Biodiversity Act must be biodiversity positive outcomes i.e. biodiversity is improved, not simply protected, or maintained at current levels.
2. The primacy of the Biodiversity Act over other relevant Acts must be provided for in the legislation.
3. The Act should include provisions that require adequate resourcing of departments and organisations responsible for implementation of the Biodiversity Act.
4. Offset schemes and exemptions must be a last resort in the mitigation hierarchy and focus on net gains for biodiversity.

Objects

The objects should be targeted to restore and improve biodiversity condition and recover species including:

- the extent and condition of native vegetation and key biodiversity sites across the state increases and improves
- the number of threatened species is reduced, and the risk profile of currently threatened species is also reduced
- increased climate resilience in the natural landscape.

Summary of key points

While detailed feedback in response to the discussion paper is provided below, the PCCC considers that an effective Biodiversity Act will need to include provisions that:

- Enable biodiversity positive design and outcomes that protect, restore, and improve biodiversity (not simply to protect or avoid harm).
- Support biodiversity conservation and positive biodiversity gains in the context of a changing climate.
- Provide for processes to support early and proactive between project proponents and native vegetation and biodiversity managers with a focus on creative solutions to co-existence, better conservation outcomes and minimising conflict.
- Ensure that biodiversity management requirements are integrated into other relevant legislation and that the biodiversity legislation has primacy over other relevant legislation to avoid the effectiveness of the Act being undermined. This includes specific Acts relating to native vegetation management, land use planning and approvals, mining and hydrogen and renewable energy. Amendments to other legislation may be needed to define the interaction, for example section 6 of the *Hydrogen and Renewable Energy Act 2023* and 10b of the *South Australia Mining Act 1971.*
- Support adequate resourcing for its implementation include for education and awareness, impact assessment, enforcement and compliance, and monitoring, reporting and evaluation.

- Support and adequately provide for the involvement of Aboriginal people and recognise their rights, culture and aspirations.
- Ensure that offsets are only used as the last step in the mitigation hierarchy (avoid, minimise, restore and offset) with a very high emphasis being put on avoiding damage to existing biodiversity and net biodiversity gains. This could include a financial cost applied to offsetting that is equal to or greater than the costs of avoiding the impact.
- Support a landscape focus to managing biodiversity and adaptive capacity, especially with respect to climate change.
- Support third party enforcement.
- Require communication, education and public awareness on the value of biodiversity and its management, including a biodiversity duty of care.

Biodiversity positive design

The PCCC recommends an overarching object of 'biodiversity positive', where biodiversity is protected, restored and improved, and inclusion of provisions that support a biodiversity positive approach (also known as nature positive).

Biodiversity positive design involves a commitment to a net positive approach where landscapes and structures increase the total ecological space and carrying capacity for appropriate biodiverse habitats and ecosystems[3]. Developing biodiversity positive targets that measure outcomes that are more than human-centric can help address the current biodiversity loss emergency that faces South Australia.

Recent studies suggest that the biodiversity loss crisis can be addressed through the careful creation, design and long-term management of biodiverse cultural landscapes[3,4,5.]

In addition to more natural landscapes, our cities, suburbs and regions present creative and innovative opportunities for biodiversity conservation and education by increasing urban and regional green spaces, using biophilic design influences, increasing species diversity and using the principles of green infrastructure to establish connected green corridors and linkages.

The PCCC also recommend inclusion of provisions that require biodiversity outcomes to be considered and improved in all state-funded infrastructure, transport, health, and education projects consistent with a biodiversity positive design approach. This should include a framework to establish measurable outcomes for all projects and reporting requirements. This would stimulate innovation as well as lead to better environmental and social outcomes for our essential roads, railways, hospitals and schools.

It is also recommended that provisions are included to require project proponents to engage early and proactively with state biodiversity experts and managers and state government in site identification and project planning. This would allow required standards to be factored in at all stages of project development and support site selection, project planning and design to avoid adverse impacts and improve biodiversity values, where practical, i.e. looking for win-win solutions before a particular site or approach becomes fixed. Consideration could be given to categorising areas or providing parameters to direct development where there will be least harm i.e. no go zones or areas where development could be fast tracked. To do this well will require investment in improved biodiversity data. Such an approach could support greater social licence as developments could demonstrate minimal or positive impacts.

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[3] Ellis, EC. Sustaining Biodiversity and People in the World's Anthropogenic Biomes. *Current Opinion in Environmental Sustainability 2013*

[4] Ellis, EC.; Antill, E.C.; Kreft, H. *All is Not Loss: Plant Biodiversity in the Anthropocene. PLoS ONE, 2012.*

[5] Birkeland, J. *Nature Positive: Interrogating Sustainable Design Frameworks for Their Potential to Deliver Eco-Positive Outcomes. Urban Sci, 2022*

Feedback aligned with key topics

Biodiversity and South Australia's First Nations people

The PCCC supports the proposals that the new Act will seek to uphold the rights of First Nations peoples by aligning with other Australian jurisdictions and key international commitments.

It is important that the legislation includes provisions to support meaningful engagement to listen and work with First Nations people, who have an enormous wealth of knowledge in managing country. This may require different and culturally appropriate approaches to engagement and research and policymaking.

Avoiding impacts

Integration with planning laws and other relevant legislation

The PCCC recommends integrating better biodiversity protection, conservation, and expansion targets with land use planning especially in the greenfield areas identified for growth. This is one of the most pressing issues in regard to biodiversity loss, impacting water and soil quality, runoff and flooding, loss of landscape qualities and tree canopy cover.

As noted above, provisions for the legislation to influence other state laws that relate to planning and development, mining and renewable energy should be included. This is needed to effectively mitigate the impacts of new buildings, infrastructure and developments. For threatened species and areas of importance the bar should be set high in relation to measures to minimise disturbance and reduce a project's environmental footprint.

Clear parameters and adequate resourcing for assessment of impact

Clear parameters and regulations, including a definition of "minimal impact" will be required. It is also essential that agencies responsible for monitoring compliance and judging impacts are clearly defined, resourced, and supported by the legislation.

Avoiding exemptions

Existing legislation often contains exemptions which prevent effective implementation. For example, the PCCC consider that exemptions under the Native Vegetation Act results in lots of incremental changes that in total reduce the effect of that Act on protecting native vegetation. The capacity for exemptions will need to be minimised as a last resort option if the new Biodiversity Act is to be successful.

Offsets as a last resort only

The PCCC agrees that the Biodiversity Act should ensure that offsets are used sparingly as a last resort and recommends that offsets are disincentivised wherever possible. The cost of offsetting should be increased so that offsetting is never cheaper than preservation. Consideration should be given to 'advance offsetting' where the offset is in place before the vegetation or biodiversity is impacted. The PCCC recognises that offsets are necessary but also problematic, especially if used as a default option rather than as a last resort.

Many biodiversity offset policies have a stated aim of delivering a "net gain" or "no net loss" in environmental values. In reality offsets are extremely unlikely to achieve no net loss or gain. Even good offsets only provide a partial benefit compared with the native vegetation and habitat lost due to time lags, challenges in re-creating nature and declining baselines resulting in inability for flora and fauna to re-populate a site. In addition, it can be a huge challenge to measure baselines and outcomes and to actually establish whether an offset policy is meeting its objectives. Effective offset policy is complex and requires significant resources to make it work effectively.

The PCCC recommends that offset schemes be developed to require a net gain for biodiversity by setting credit obligations for all development and clearing assessed through any biodiversity offset scheme at more than 100% of calculated biodiversity loss.[6] If an offset policy is included then it's implementation must be adequately resource including to secure the necessary underpinning data needed.

Transparent decision-making

PCCC welcomes the proposals to include a commitment to transparent decision making in the proposed Act. Transparency around decision making and information disclosure will be key elements in maintaining public trust and confidence in the processes and actions commenced under the Act.

To have a significant impact the entity responsible for maintaining the public register of decisions must be properly resourced and the register effectively linked to monitoring and evaluation.

Threats to biodiversity

The PCCC recognises the threat posed to biodiversity by loss and fragmentation of habitat and supports proposals to include a threat identification framework and statutory obligations to address these threats to biodiversity. These obligations could be linked to the provisions relating to protection provisions, penalties, and remedies of the *Environmental Protection Act 1993*.

Climate change and natural disasters are a major threat to biodiversity. In addition, biodiversity may be threatened by regional and landscape level changes not simply damage at a particular location. Management may require innovative provisions in the legislation to enable protection to extend beyond a particular location to address exogenous factors that may cause impact. For example, over-extraction in tributaries to significant wetlands. The PCCC recommends that the Act is designed to support a landscape focus to managing biodiversity and adaptive capacity, especially with respect to climate change.

Some measures required for emissions reduction to mitigate climate change can also pose a threat to biodiversity. For example, roll out of renewable energy infrastructure to meet emissions reduction targets. The PCCC recommends the inclusion of renewable energy infrastructure in any proposed threat identification framework.

The identification of threats will also require that adequate resources are provided to the agency responsible for the threat identification framework.

Assessing the risk of extinction

The proposal to create a scientific committee to guide listing, assessment and review of extinction risk is welcomed. The PCCC recognises the need to close the gap between the SA's approach to threatened species and the approach of most other jurisdictions.

The PCCC also recognises the need to take a pro-active and innovative survival-based approach to extinction risk. It is not enough to simply observe extinction data. Assertive action must be taken when required including trying innovative approaches such as translocation of species.

Biodiversity planning and reporting

The PCCC welcomes and supports the proposal to mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on and agrees that the Act should require any state-wide plan or strategy to be regularly reviewed and updated. It will be important that any plan is responsive, and priority focused to enable fast implementation. Any planning should be linked to

[6] The NSW "Independent Review of the Biodiversity Conservation Act 2016 – Final Report" suggests a 120% credit obligation.

relevant planning under other Acts such as regional planning under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

As noted above planning should focus on biodiversity positive outcomes with capacity to implement plans adequately resourced.

The benefits of information

The PCCC agrees that a robust information base will be essential to underpin the effectiveness of a new biodiversity act. The PCCC also recognises the importance of a robust framework for the sharing of biodiversity information to support Government decision making.

Achieving 30 by 30

The PCCC would encourage the inclusion of "30x30" in the state's plans but notes that the state has already technically exceeded some of the 30x30 goals as a large portion of the state's land falls within protected areas.

The PCCC is concerned that there is a possibility that land classified as "protected" may still be at risk of damage. The PCCC recommends pushing to make the 30x30 criteria more specific to comply with the IUCN framework[7]. The other issue to address is how to ensure protected areas are actively managed and adequately resourced.

As one example, the PCCC suggests that mining must be excluded from protected areas or only permitted under strict conditions. The inclusion of mining in protected areas without a high level of certainty regarding minimal impact can reduce international investment in protected areas. Strong provisions to safeguard protected areas from incompatible land use would be attractive to private investors seeking to ensure high integrity biodiversity positive investments. The Queensland model of creating Special Wildlife Reserves[8] could be a useful approach to consider.

An increase to the network of lands managed for conservation purposes and a focus on improving connectivity between these areas is welcomed. The PCCC also welcomes any measures that can be included in the Act to meet the goal of 'encouraging non-government entities and private landowners to conserve and recover biodiversity'.

Independent Review

The PCCC recommend consideration is given to an independent body to undertake regular reviews (for example, every 5 years) to assess progress in achieving biodiversity positive outcomes.

Biodiversity – a shared responsibility

The PCCC welcomes the proposal to create a legally enforceable "biodiversity duty of care". The *Environment Protection act 1993* creates a general environmental duty that could be complemented by the addition of a "biodiversity duty of care" in a new Biodiversity Act. Enabling third party enforcement will be an important requirement if the proposed duty is to be effective (see below).

The PCCC suggests that education about the shared responsibility aimed at the public will be helpful to increase public buy-in to the Act's provisions. In particular, the message that it is ok to call out problems should be reinforced.

[7] IUCN Position Paper on the Post-2020 Global Biodiversity Framework OEWG-5 and CBD COP15 - resource | IUCN
[8] Special wildlife reserves | Environment, land and water | Queensland Government (www.qld.gov.au)

Consequences of doing the wrong thing

The PCCC welcomes the proposal to align sanctions and penalties with those from other jurisdictions and the proposed strengthening of existing sanctions. The PCCC would also support the addition of offences to further protect biodiversity under this section.

Enforcement

The PCCC supports the proposal to consider incorporating civil options instead of only relying on criminal penalties brought by on behalf of the state.

Third party enforcement allowing for community members to enforce breaches of the law or environmental conditions is an important part of successful environmental law regimes. The PCCC recommends consideration of third party enforcement mechanisms as a critical component new Act. Experience from other states that have enacted biodiversity acts suggests that legislation that allows for third party enforcement has a much greater impact than legislation that does not. To be successful, implementation of the Act should include a long term education campaign to help people understand the importance of biodiversity and their duty of care.

Importantly enforcement must be adequately resourced. The PCCC also suggest exploring a role for the Native Vegetation Council, with appropriate increase in enforcement powers and resources, in monitoring compliance with the Biodiversity Act.

Other comments

Green infrastructure

The PCCC suggests the development of a singular framework for protection and enhancement of our river and creek corridors, as well as a collaborative effort to sustain and improve the benefits of connected green spaces in our cities and regions. The PCCC suggests that under this framework our river and creek corridors should be better defined as essential and productive green infrastructure corridors, as part of ecosystem services for human and non-human communities.

Education and communication

The PCCC recommends consideration is given to how the legislation can require communication, education and public awareness programs to be developed and implemented to build understanding of the Act, support entities and individuals to comply and enable effective third party enforcement. This would need to be supported by a requirement for such programs to be sufficiently resourced.

Social Licence and ESG credentials

The PCCC notes that increasingly sustainability and protection of biodiversity are being reviewed by investors and export markets in making investment and trade decisions. Environmental, social, and corporate governance (ESG) risks related to biodiversity loss are being assessed in the investment decision-making process. For South Australia to be able to demonstrate it is walking the talk in relation to its sustainability claims as it seeks to establish a sustainable bonds framework, it will need to address the issue of biodiversity loss. Having strong legislation that is adequately resourced and effectively implemented will surely be a key pillar of South Australia's ESG credentials.