The Nature Conservancy Australia

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Biodiversity Coordination Unit
Department for Environment and Water
Email submission: biodiversityact@sa.gov.au

Dear Biodiversity Coordination Unit Team,

RE: Developing a Biodiversity Act for South Australia

The Nature Conservancy Australia (TNC) welcomes the opportunity to provide a submission to the South Australian Government on the *Developing a Biodiversity Act for South Australia* consultation document.

The Nature Conservancy (TNC) is a global environmental non-profit non-government organisation working to create a world where people and nature can thrive. Founded at the grassroots level in the United States in 1951, TNC has grown to become one of the most effective and wide-reaching environmental organisations in the world, with over 4000 staff including more than 400 scientists, and impacting conservation in 76 countries across six continents.

Here in Australia, we have supported conservation efforts across more than 127 million hectares, and remain focussed on protecting, restoring and managing our unique ecosystems through a scientific, collaborative approach. TNC's Australia program was formed in 2002, with our projects serving as living laboratories where new ideas to protect nature are tested, refined and perfected. We engage businesses, governments, other NGOs, Indigenous groups and local communities and individuals to deliver on-the-ground results, and work to change the way society values our natural resources. TNC is also actively involved in developing advice and submissions at the state and federal level in Australia to help influence the development and implementation of sound and effective legislation that protects and restores nature.

Recently, TNC, in collaboration with partners WWF-Australia, Pew Charitable Trusts and the Australian Land Conservation Alliance, released the *Pathways to 30×30 Report* on how Australia can meet its commitment to protecting at least 30% of its land by 2030 (30×30). The report is available online here: Pathways to Protection Report – Protecting Australia's Nature (30by30.org.au). It includes a range of recommendations that the South Australian government should consider as part of its reform of biodiversity legislation and its wider biodiversity management work.

We welcome the proposed introduction of new biodiversity legislation for South Australia to ensure improved conservation and protection of biodiversity and to support the state to transition to a sustainable, productive and healthy future. We are pleased to see the explicit link between biodiversity and a strong economy that is smart, sustainable and inclusive. Specific comments on the topics raised in the discussion paper and other areas that we propose be covered in this legislation are outlined in the Attachment.

Thank you once again for the opportunity to provide a submission on this important proposal. If you have any questions please contact me on [redacted]

Yours sincerely,



Michael O'Neill
Director Policy and Government Relations

Attachment A – Feedback on Developing a Biodiversity Act for South Australia consultation document

Overall proposal/Goals for a Biodiversity Act

- TNC supports the introduction of a strong and cohesive Biodiversity Act for South Australia. In doing so, we recognise that South Australia has existing legislation, including the *National Parks and Wildlife Act 1972*, *Native Vegetation Act 1991*, *Landscape South Australia Act 2019*, and *Wilderness Protection Act 1992*, that, in many cases, provide effective protection for aspects of biodiversity in South Australia.
- While a standalone Biodiversity Act has potential to increase coherence and remove gaps, **TNC recommends that** the South Australian government ensure that aspects of these Acts that are currently working well are not lost or impacted. In keeping with reviews of conservation legislation in other states, it will be important to ensure that a new Act has primacy over other legislation to ensure that its objectives are not undermined.
- **TNC recommends that** a new Act should clearly align with, and contribute to, national legislation (including the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and *Nature Repair Act 2023*) and Australia's commitments internationally, in particular, with the Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework.
- The Global Biodiversity Framework sets a pathway towards a nature positive future. **We recommend that** the South Australian Biodiversity Act should reflect this ambition with a clear focus on a nature positive objective, committing to the protection, restoration and enhancement of biodiversity. This should include commitment to:
    - halting and reversing biodiversity loss and ecosystem collapse
    - restoring species and ecosystems, including building resilience and adaptive capacity
    - ensuring the integrity of ecosystem services and cultural values, and preserving opportunities for future generations
    - zero human-induced extinctions
    - a standard of net gain
- **TNC recommends that,** coupled with the implementation of the Biodiversity Act, the state commit to increasing funding for biodiversity. Without long term sustained funding, a new Biodiversity Act will not be sufficient to turn the tide on the loss of biodiversity. Additional state funding should focus on adequately resourcing the development and administration of the new Act along with on-ground programs that achieve nature positive outcomes and targets.

Topic 1 – Biodiversity and South Australia's First Nations people

- TNC supports the strong focus on increased involvement of First Nations people and recognition of their rights, culture and economic aspirations.
- **We recommend that** self-determination and partnership with First Nations peoples should be integral to the objectives and implementation of the Biodiversity Act. This will include providing ample opportunity and time for First Nations people to partner with the SA Government in the design and implementation of the Act.

Topic 2 – Avoiding impacts

- TNC agrees that the Biodiversity Act should legislate use of the mitigation hierarchy, with a requirement that harm is first avoided then minimised. As proposed in the discussion document, clear guidance about how this will work in practice will be needed. Essential to achieving the avoidance and minimisation of biodiversity impacts would be that these are considered early in the assessment and approval process for any development.
- Management of impacts should follow the precautionary principle and take into consideration cumulative impacts on biodiversity ("death by a thousand cuts") and loss of ecosystem connectivity.
- **TNC recommends that** consideration be given to how a mitigation hierarchy for biodiversity would interact with the *Native Vegetation Act 1991* to ensure that it does not undermine the outcomes delivered under that Act.

- **TNC recommends that** South Australia legislate a process whereby areas of high conservation importance or where activity would cause unacceptable impacts are proactively identified and labelled as 'no go zones' for development or extractive activities. This could occur through a regional planning, or similar process, and would allow all parties to understand an area's biodiversity values in advance, saving time and resources for applications that will not be approved.
- **TNC recommends the following** in design and delivery of an offsets scheme:
    - Following application of the mitigation hierarchy, any offsetting should be required to deliver a net gain for biodiversity. This is in line with best practice globally.
    - Offset payments should be a last resort, only available in limited instances and where appropriate like for like offsets have already been identified. Consideration will need to be given as to how to determine 'like for like' in relation to biodiversity, which will need to go beyond the vegetation communities used in offsetting under the Native Vegetation Act.
    - Any offset funding must be sufficient to adequately cover the restoration and enhancement cost in order to achieve a net gain for biodiversity. Offsets should be protected in the long term through legal means.

Topic 3 – Transparent decision-making

- TNC supports the matters for consideration proposed, in particular the proposal for disclosure and ongoing monitoring of offsets. **TNC recommends that** this process should have adequate funding.

Topic 4 – Threats to biodiversity

- As proposed, the Biodiversity Act should require identification of current and future threats to biodiversity.
- **TNC recommends that** this should be undertaken periodically through a formal process. This process should focus not only on threats to species, but also identified ecological communities or habitats. Models from other states could be useful here, for example Action Statements under the Flora and Fauna Guarantee Act (Victoria) and the Biodiversity Conservation Program (NSW). While a requirement to identify threats is important, a requirement to undertake actions to address these threats would significantly strengthen the Act.
- **TNC recommends that** monitoring the success of these actions through a regular State of the Environment (or similar) process that reports on status and trend of biodiversity will be crucial.
- **TNC recommends that** the Act should proactively address climate change impacts on biodiversity and ecosystems.

Topic 5 – Assessing the risk of extinction

- TNC generally supports the matters for consideration proposed. Formalising a process for listing, assessment and review of threatened species will be essential, as will be the alignment with the EPBC assessment methods.
- South Australia is still the only state that has not signed up to the Australian Government's Common Assessment Method for threatened species.
- **TNC recommends that** the state adopts the common method for the assessment and listing of nationally threatened species in Australia and adequately resources its implementation.
- TNC would welcome the expansion of the current state listing to better reflect the state's biodiversity and would recommend that the relevant sections under the National Parks and Wildlife Act should be considered in scope for a new Biodiversity Act.

Topic 6 – Biodiversity planning and reporting

- TNC notes that there is currently no biodiversity strategy for the state and this has been a significant gap since the introduction on the No Species Loss Strategy in 2007.
- **TNC recommends that** a new Biodiversity Act should mandate a state-wide biodiversity plan or strategy with measurable targets, independent regular review, and formal response process from the Minister, underpinned by transparent reporting. In order to be successful, the biodiversity strategy must be adequately resourced and financed over the long-term.
- **TNC recommends that** a biodiversity plan or strategy should set out a vision and plan to reach a Nature Positive objective (i.e. halt and reverse biodiversity decline) and should align with the National Biodiversity Strategy and Action Plan (NBSAP) and global frameworks, particularly the Global Biodiversity Framework.

Topic 7 – The benefits of information

- Data collection, storage and distribution is crucial for effective management of biodiversity and decision making by all parties. There is a central role for the South Australian government to be the 'point of truth' for biodiversity data. This includes gathering, aggregation and distribution of data. Quality assurance of data is key.
- **TNC recommends that** caution should be taken if including this requirement in legislation to ensure that there is flexibility to adopt new technology and approaches. This could be addressed through the Act setting out the requirement for the government to provide up to date guidance for data collection, storage, security and distribution, through a data standard or similar. This should align, where appropriate, with the proposed Commonwealth Government Data and Information Standard.
- In particular, the requirement for data collection and ongoing monitoring of offsets is vital to ensure that there is no net loss and, indeed a net gain, of biodiversity achieved through this mechanism.

Topic 8 – Achieving 30 by 30

- TNC is pleased to see the emphasis on land protection including the focus on under-represented habitats and ecosystems and restoring connectivity. If Australia is to reach its goal of protecting at least 30% of its land and waters by 2030, all states will need to contribute. While we commend South Australia for having already protected more than 30% of its land area, increased protection, particularly in the 7 bioregions with currently less than 10% protection, will be important to protect these unique landscapes and biodiversity. This is in line with the nationally agreed principles of building a comprehensive, adequate and representative protected area system.
- TNC strongly supports the proposed inclusions in the Biodiversity Act, including the focus on increasing the network of lands managed for conservation purposes as well as increasing incentives to support privately protected areas. To be effective, this will need to be adequately funded.
- **TNC recommends that** an increase in funding for land acquisition and support for privately protected areas commensurate with the need to develop a comprehensive, adequate and representative protected area network is urgently delivered.
- Recently, TNC, WWF-Australia, Pew Charitable Trusts and the Australian Land Conservation Alliance (ALCA) jointly released the Pathways to 30×30 report on how Australia can meet its commitment to protecting at least 30% of its land by 2030 (30×30). The report is available online here: Pathways to Protection Report – Protecting Australia's Nature (30by30.org.au). While the report predominantly provides recommendations for the Commonwealth government, there are many recommendations applicable to the South Australian government.
- **TNC recommends that**:
    - The Biodiversity Act should include a commitment to increase ecosystem representation in the state's protected area network including identifying and protecting land in alignment with the comprehensiveness, adequacy and representativeness (CAR) principles. In order to achieve this, the South Australian Government should:
        - Provide dedicated funding for land acquisition to purchase properties with high ecological importance to add to the public protected area estate.
        - Provide support for Traditional Owner ambitions and aspirations to create additional IPAs across the state.

        - Systematically review Crown land to identify areas of high conservation significance and subsequent protected and or restore these areas.
        - Support an expansion of private land conservation covenants and the allocation of state outreach resources, funding and incentives to private land managers to achieve biodiversity outcomes.
    - The South Australian Government should legislate the creation of an enhanced protection conservation covenant, which excludes extractive activities. This covenant will allow for greater protection for biodiversity, and importantly also support the attraction of large-scale private conservation investment.
- We would be very happy to brief you on the report and its application for South Australia.
- In addition to protection targets, Australia has also signed up to ambitious restoration targets – to restore 30% of degraded lands by 2030. Direct funding and incentives for management and restoration will be crucial to progress towards this goal.
- **TNC recommends that** the South Australian government prioritise a significant increase in biodiversity restoration and management funding.

Topic 9 – Biodiversity – a shared responsibility

- TNC generally supports the matters for consideration proposed, including a duty of care tied to administrative powers and penalties. In developing this, the South Australian Government could consider how similar arrangements are implemented and enforced in other jurisdictions, including for example the General Environmental Duty in both Victoria and Queensland.

Topic 10 – Consequences of doing the wrong thing

- Strong and consistent compliance provisions, significant penalties for non-compliance and ongoing effectively-resourced enforcement activities are crucial to the success of good environmental regulation.
- TNC generally supports the matters for consideration proposed, including aligning penalties for similar offenses within the state and with other jurisdictions.
- **TNC recommends that** the South Australian Government implement penalties commensurate with the significance of an offense, in many cases this may require increasing current penalties and sanctions.
- **TNC recommends that** the South Australian Government effectively resources and delivers compliance activities.