

Biodiversity Coordination Unit
Department for Environment and Water
GPO BOX 1047
Adelaide SA 5001

Email: biodiversityact@sa.gov.au

RE: Feedback on South Australia's Draft Biodiversity Bill

Dear Madam/Sir,

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

This response is provided on behalf of multiple Landscape Boards of South Australia (Boards). Some Boards will also be providing individual responses which reflect Board views that are relevant to the individual region.

The Boards are statutory authorities established under the *Landscape South Australia Act 2019* (LSA Act) to provide for the integrated management of natural resources. The Boards work with private landholders, community and industry groups, First Nations, and government and non-government organisations (local, state and national) to coordinate landscape management actions and improve landscape condition. As such, the Boards have a strong interest in strengthening biodiversity protections and management.

All Boards that contributed to this response support the sentiment of this Bill to promote a general duty by all South Australians to value biodiversity within the State and to protect biodiversity for future generations. The Boards strongly emphasise that to fully realise the principles stated in the Bill this would require broad implementation and buy-in from all sectors. Policy development along with a communication strategy that raises adequate public awareness of the joint responsibilities that this Bill advocates for will be a crucial step in its implementation.

The Boards' main recommendations and concerns are:

- [Recommendation] Ensure that cultural burning is excluded from the regulations,
- [Recommendation] Ensure that soils are included and protected,
- [Recommendation] Ensure that the general duty of care includes avoidance of harm as the first step,
- [Recommendation] Ensure there is prescribed enforcement for a failure to comply with the Act for repeat-offenders,
- [Recommendation] Ensure a greater emphasis on proactive environmental repair rather than the minimising of harm,

- [Recommendation] Ensure that an offset is possible before the approval of clearance,
- [Recommendation] Ensure critical habitat is protected from all types of development,
- [Recommendation] Ensure greater transparency of key decisions made to reject or approve development and clearance applications,
- [Recommendation and concern] Ensure that a lack of knowledge is not a reason for a lack of protection and consider where this could be a barrier for protection in the Act,
- [Concern] Consideration of the potential disruption of necessary management of problematic native plants from interstate,
- [Concern] Consideration of the clarity of messaging, particularly where this involves the accountability of others,
- [Concern] Consideration of any unintentional limitations to cultural practices, and
- [Concern] Consideration of how political pressure may influence the necessary controls for impact causing native species.

Overall and specific feedback to each of the survey questions, and more broadly on the Bill, is provided below. Please disregard the previous draft submission as this is the final response provided by the Boards.

If you would like to discuss any of the feedback provided, please contact [REDACTED] - Planning, Monitoring and Evaluation Officer, SA Arid Lands Landscape Board on [REDACTED]

Yours Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

Overarching comments on the draft Biodiversity Bill (the Act)

The Boards are generally supportive of the objects, principles and general duties of the Act that advocate for a joint responsibility by all to value and protect biodiversity within the State. The Act provides greater opportunities to protect the State's biodiversity which is welcomed by the Boards. However, the Boards felt that the Act could be further strengthened in several areas. Rather than focusing on protection and minimisation of biodiversity loss, it is suggested that being more proactive on environmental repair in this Act would help better address biodiversity loss and set a clearer direction for its restoration. For example, declared critical habitat should be deemed 'no-go zones' for developers, and targets for urban greening or water sensitive urban design should be set for new developments within urban areas so that they are more climate conscious.

The Act states that it does not derogate from the provisions in other Acts at cl. 1(4)(1). Where *the Planning, Development and Infrastructure Act 2016* (PDI Act) is concerned, there is strong support from the Boards to ensure that the State Development Coordination Bill and Biodiversity Bill are linked so that any major developments, and potential impacts to biodiversity, are appropriately assessed.

Part 1 – Preliminary

1. *Do you support the definition of 'plant' to include fungi and algae to allow for their protection under the Act?*

The Boards are generally supportive of broadening the definitions to protect a greater array of biodiversity. However, it is preferred that fungi and algae are referenced appropriately and referred to separately under the Act rather than together under the interpretations for 'plant' (cl. 1(3)(1)). This better aligns with the SA biological databases. **The Boards also strongly suggest the addition of soil as a protected biodiversity entity under this definition.** Functioning soils are a biodiversity asset, and the mismanagement of soils (e.g. through inappropriate placement of roads) can lead to a variety of natural resource management issues (e.g. soil washout, dust storms, or compaction/covering) which can severely limit other biodiversity assets (flora and fauna) as well as compromising future use.

2. *Do you support adopting the definition for 'native plant' from the National Parks and Wildlife Act 1972, meaning any plant indigenous to Australia can be protected?*

The Boards are supportive of adopting the definition of 'native plant', meaning any plant indigenous to Australia provided there is clarity on how the Boards can deal with noxious or invasive native plants, particularly from interstate. The Act needs to be explicit on the basis for which exclusions or inclusions will be made. It is important that this clarity is provided in the Act which informs the associated policies and regulations.

The Act also needs to provide the ability to respond rapidly to emerging threats from native plants that become invasive, and for those that need to be managed and are not currently declared for control (e.g. *Acacia saligna*, *Pittosporum angustifolium*). **Any disruption to the continuity of management of invasive ‘native plants’ is a risk for the Boards.** There needs to be a clear and immediate process for the control of invasive or potentially invasive native plants that allows for the continuity of management by the Boards and clear messaging for landowners or land managers who need to control these species.

For native plants, that are not known to be or declared as invasive, the Boards are supportive of the broader protections for these species. Native plants that originate outside of SA can provide ecosystem services in the absence of plants that are native to SA (e.g. carbon sequestration, tree hollows, urban cooling, shade trees for livestock). The benefits these species provide, particularly with natural shifts in vegetation communities with climate change, should be recognised and considered before vegetation is cleared. For revegetation projects, the Boards support establishing a strong justification for the ecological purpose of planting native plants not native to SA as an alternative to planting plants that are indigenous to SA. The preference should be to restore plants native to SA in the first instance. Similarly, clearance of vegetation that constitutes remnant vegetation of high conservation significance should be associated with a greater payment or offset than the clearance of native plants that are planted and originate from outside of SA.

Part 2 – Objects, principles and general duty

3. Do you support the proposed objects of the Biodiversity Act?

The Boards are generally supportive of the proposed objects of the Biodiversity Act. **The Boards suggest that the objects go further to address how the Act will expand on biodiversity protections and restoration within the State (e.g. how does the Act address the 30 by 30 targets?).** The Boards appreciate the recognition and respect for First Nations peoples and the fundamental role they have in, and knowledge of, caring for Country. The Boards also appreciate the recognition of climate change as a part of the objects of the Act. As a fundamental part of recognising the impacts of climate change there also needs to be some considerations of how new biodiversity values (e.g. novel ecosystems) are protected. Similarly, the impacts of climate change need to be considered when assessing vegetation clearance and development applications. If climate change was considered, the level of risk to species (e.g. removal of remnant vegetation which is difficult to re-establish) or to the resilience of ecosystems (e.g. the effects of drought are hastened by the removal of vegetation) may be different.

Specific feedback

The Boards suggest considering the addition of biodiversity targets and measurable outcomes as a product of this Act.

Use of the term “appropriate” is vague and should be replaced with “ecological knowledge” at cl. 2(7)(e). This supports the intent that people contribute and regenerate the resource in a way that does not impact the rest of the ecosystem values.

There should also be recognition of the intrinsic value of biodiversity outside of its utility for humans as part of the objects of the Act at cl. 2(7).

4. Do you support the proposed guiding principles of the Biodiversity Act?

The Board supports the guiding principles of the Biodiversity Act. However, the Boards suggest the addition of a principle which states that **a lack of knowledge should not prevent action as it applies to restoration and biodiversity conservation.**

Precautionary measures should apply where scientific uncertainty exists.

Environmental decision making should also be accountable, and not just participatory (as per cl. 2(8)(b)), with clear measures for assessment, enforcement, and compliance. There is strong support from the Boards for cl. 2(8)(a) which states that new and transformative ways of thinking will be embraced, which could be further reinforced in other sections of the Act.

5. Do you support what constitutes ‘harm’ and what is considered ‘reasonable measures’ for the purposes of the general biodiversity duty?

The Boards are generally supportive of what constitutes harm and reasonable measures for the general biodiversity duty with some provisions. **The general duty needs to include avoidance, as per the mitigation hierarchy, as the first step not minimisation of harm.** After all reasonable and practical measures to avoid harm are considered then this should proceed to prevention or minimisation of harm at cl. 2(11)(1). Similar to the principles of the Act, a lack of scientific certainty should not be used as a reason to forestall measures to prevent harm (including to critical habitats). This should be outlined in the general duty as well as the principles of the Act. There are currently no prescribed consequences for repeat-offences or escalation for serious breaches of the Act. **The Boards suggest the inclusion of a clause which specifies that further enforcement actions, including penalties or restrictions on future activities will be applied as prescribed by regulations or policy for persistent failure to comply with the Act.** Further clarity is also required for cl. 2(11)(2)(e) which includes costs as a practicability factor of preventing or minimising harm. Specifically, the Boards would like further clarity on what level of costs would be considered reasonable and in what context. This currently indicates that if the costs are too high to avoid harm to biodiversity this activity would then be permissible. This would create a significant ‘loophole’ for developers wanting to avoid having to take preventative measures.

Activities that cause habitat and land degradation resulting in die-off of native plants should also be considered as a form of 'harm' (cl. 2(11)(2)).

Effective communications to deliver the message of a general duty of care will be critical to its broad acceptance by the community.

Part 3 - Administration

6. *Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established?*

The Boards broadly support the governance framework for the Act with some changes. The Boards strongly suggest prescribing two First Nations members rather than one for the Scientific Committee, Native Plants Clearance Assessment Committee (NPCAC) and for the Biodiversity Council, to provide cultural safety for those members at cl. 3(18)(4) and 3(24)(4). **A role of the First Nations Expert Biodiversity Committee needs to include the development of policies related to cultural practices. This needs to be explicitly excluded as a function of the Biodiversity Council** at cl. 3(16). It is currently unclear in the Act which committees or council have decision-making power or are purely advisory bodies. This needs to be explicitly stated in the Act under the functions of each.

The Boards agree that there is a need for greater transparency on key decisions made by the Scientific Committee and NPCAC. A crucial role of each committee needs to be oversight over statewide developments including regular reporting which publishes the reasons for approval/rejection decisions. The Boards would be grateful for the opportunity to provide input on key decisions relevant to each region before a decision is made by the Scientific Committee or NPCAC.

7. *Do you support committees being appointed based on their skills and expertise?*

The Boards are supportive of the committees being appointed based on skills and expertise. However, there needs to be some consideration to any potential biases in composition of the committees (e.g. due to too many of one organisation), and balance this with what is possible or practical.

8. *Do you support the establishment of a Biodiversity Administration Fund as a means of providing transparency on which funds can be used for the administration of the Act?*

The Boards are supportive of the establishment of a Biodiversity Administration Fund but suggest some considerations for how funds are administered. The Boards agree that

the Significant Environmental Benefit (SEB) scheme needs to better align with interstate requirements. Offset payments, *in lieu* of achieving a SEB, need to be significantly greater than at present for it to be a disincentive for vegetation clearance. For cl. 4(50), **the Boards emphasise the need to establish whether an SEB is possible before approval of payment**. The likelihood of approval of payments could be weighed by the size of the clearance/development. For example, a larger operation/project is more likely to achieve an SEB than a single landowner.

Further clarity is required on how offset payments will be spent and prioritised across different biodiversity objectives. Ideally, the application of these funds will be for the enhancement, re-establishment and management of native vegetation communities whilst not detracting from concurrent investment into threatened species protection. This should not include research (in cl. 3(36)(4)(a)), particularly given this is provided for in the application of funds from the Biodiversity Conservation Fund (at cl. 3(38)(4)(b)). There needs to be explicit exclusion of non-biodiversity-focused outcomes as a possible application of the funds. For example, Agro-Forestry of native plants or any activity which does not re-establish, enhance, preserve or manage native vegetation communities, ecosystems or critical habitats should be excluded. The Boards also emphasise the need for resources for compliance to ensure offsets, once committed, eventuate (e.g. to enact cl. 4(58-60)).

Specific feedback

cl.3(13) – The Boards suggest broader consideration of other Ministers whose portfolio may be in conflict with this Act (e.g. Minister for Infrastructure and Transport, Minister for Housing and Urban Development, and Minister for Energy).

Part 4 – Native plants

9. Do you support the ‘regulated activities’ and ‘unregulated activities’ approach to native plants?

The Boards have several concerns regarding what is currently considered a regulated activity for native plants that needs to be addressed before they can support this approach. As stated at Part 1, Q2, although we support the protection of native plants as all plants native to Australia where they are serving an ecological or other beneficial service, the Act needs to be flexible enough to accommodate the immediate control and management of problematic species as required under the LSA Act, including for currently undeclared or emerging weedy species.

In the draft Bill, cultural burning is still considered a form of vegetation clearance which requires a policy to be developed by the Minister (cl. 10(161)(4)(f)). **The Boards strongly suggest that cultural burning is excluded from the regulations for clearance**. The Act recognises the importance of First Nations land management practises, which includes

cultural burning. However, the Act must go further to remove regulatory barriers that restrict cultural practises such as cultural burning. Regulation of cultural burning is incongruous with what was communicated by First Nations groups as part of early engagement e.g. *“You learn (taking care of Country) by being on Country, being with family. Not having to ask for permission”* (page 3, Biodiversity Act First Nations Engagement Report).

Specific feedback

The regulations need to consider how the removal of dead plant material should be considered a regulated activity where it pertains to critical habitat for species.

10. Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy?

The Boards support the development of a guideline for proponents to apply the mitigation hierarchy. However, the Boards agree that the first step of the mitigation hierarchy (avoidance) needs to consider the avoidance of locations containing threatened ecological communities or entities, and critical habitat, in addition to native plants. This could be included at cl. 1(3)(3)(a). For the mitigation hierarchy to be effectively implemented, it must also be echoed in the PDI Act. The guidelines should also explicitly prohibit clearance of defined locations which relate to threatened ecological communities, and critical habitat. The Boards suggest that the payment or offset should increase for each level of the hierarchy not addressed by the proponent. The Boards emphasise the importance of the first step of the mitigation hierarchy (i.e. avoidance) but where that is not possible or practical proponents should be required (as per offset requirements in Victoria) to submit a plan of how they will replace an ecosystem or vegetation before clearing it. This would mean that if replacement is not possible the clearance would not be approved. This would help minimise the amount of unspent funds that do not eventuate into offsets within the vegetation communities and regions where the impact occurred.

11. Do you support the new measure aimed at protecting planted native plants more than 20 years old, excluding those in people’s gardens or commercial forests?

The Boards support protection for planted native plants but stresses that protections need to be flexible enough to respond to each context. Younger vegetation, less than 20-years old, may be cleared to avoid the permit process which needs to be considered and mitigated. Conversely, landholders revegetating shelterbelts on farms may be disincentivised to plant natives over non-natives when there are restrictions placed on what can be removed after 20-years. Revegetation for long-term conservation needs to

be afforded protections within the 20-year window while revegetation for other purposes should be treated separately. The time window for protections needs to be relevant to the biodiversity entity that it serves to protect. The Boards suggest more of a 'sliding scale' approach rather than a set 20-year threshold.

12. Do you support the ability for the NPCAC to request further information and allow clearance applications to be resubmitted in favour of a more formal review process?

The Boards support the ability of the NPCAC to request further information and the resubmission of clearance applications for a formal review process provided delays in the process are not used as justification for the development or vegetation clearance.

To further support the review process by NPCAC the Boards suggest the following:

- For circumstances where consent to clear is given by the NPCAC (e.g. cl. 4(50)(2), and 4(50)(12)(c)), some guidance on how consent is applied is required for transparency (e.g. is the approval given prior to the establishment of an SEB or payment?).
- To support the delivery of cl. 4(49), the NPCAC and other regulatory bodies (including the relevant Landscape Boards) should be informed of planned developments before it reaches the stage of applying for a native vegetation clearance, particularly for previously undeveloped areas.

Specific feedback

For the control of a declared native plant on a roadside by Landscape Boards or Local Councils no notification to NPCAC is required. However, a notification to NPCAC is required for an adjoining landholder. The Boards recommend removing the need to notify the NPCAC where there is an obligation to control a plant under the LSA Act.

Part 5 – Native animals

13. Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife?

The Boards support the regulated and unregulated activities for protecting native wildlife with some considerations. **The Act should not unintentionally limit First Nations people and cultural practises.** For example, in cl. 5(63)(2) the non-commercial stipulation may limit innovation, empowerment and cultural trade practises that are important to First Nations people. The use of the word 'take' and 'taking' in the Act could have unintended meanings. For example, cl. 5(62)(1)(a) could be interpreted as it being permissible to kill or injure an animal if it is not taken elsewhere. Similarly, at cl. 5(63) the word taking of animals and eggs by First Nations

implies that it is permissible for them to injure a protected animal without killing it. The Boards suggest changing the wording to “catching, restraining, killing, injuring or any other activities causing harm to a protected animal” for both cl. 5(62)(1) and cl. 5(63)(1). This would also address retaliatory killing of wildlife (e.g. an offence to kill wedge-tailed eagles due to a perceived threat to livestock). Protected habitat, at cl. 5(62)(1)(i), needs to also include habitats that protected animals are reliant on which would help capture currently undeclared critical habitat.

Specific feedback

At cl. 5(66)(9), the first letter of genus names for scientific names should be capitalised by convention.

14. Do you support introducing targeted controls for managing impact causing species in favour of an ‘unprotected’ list of species?

Similar to the management of problematic native plants, the Act needs to allow for a clear pathway to manage impact causing native species under the LSA Act. For wildlife not currently on the unprotected list, declaration from the Minister is required. **The Boards main concerns are around the declaration process and potential political pressure that could influence or result in withdrawal of necessary controls.** Conversely, controls may be implemented in situations where this is not necessary. There needs to be additional detail provided in the Act on the declaration and review process and what factors are considered. Clarity on the proposed timelines for the declaration process need to also be clearly outlined. A more efficient process could be to include a Schedule that lists all unprotected animals, and in what regions they are unprotected, which can be amended by the Minister or delegate as required. There also needs to be greater distinctions made between the harvest of a protected animal, the management of overabundant protected animals (e.g. kangaroos, at cl. 5(66)(1) and cl. 5(66)(2)(a)), and the conservation of protected animals. Several currently permitted activities (e.g. kangaroo meat used by landholders for bait manufacture) would be in breach of cl. 5(62)(1) unless adequately covered under the Act or regulations. The Boards also suggest some consideration of who would be responsible for the delivery of the management plan proposed under the Act at cl. 5(66).

15. Do you support the approach of determining trafficable quantities of species with higher penalties?

The Boards support the approach of determining trafficable quantities of species with higher penalties. However, clarity is needed on what basis trafficable quantities of protected animals will be set (e.g. will this be determined by expert opinion? Illegal

market value of each species?). At cl. 8(127)(1), only protected animals are listed, however, the Boards suggest the inclusion of protected plants as well.

Part 6 – Threatened species, threatened ecological communities and other ecological entities

16. Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)?

The Boards are supportive of listing threatened ecological communities. The Boards agree that a consistent statewide assessment process is needed, without which threatened ecological community listings are likely to be somewhat *ad hoc*.

17. Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation?

The Boards support the enabling of a head power to list other ecological entities in the future. Flexibility to recognise ecological entities as information is gathered is important for recognising and protecting biodiversity. However, the removal or de-listing of an ecological entity should be made in consultation with experts and based on all available evidence. If made by the Minister, this provides substantial technical authority to the Minister to declare a de-listing of a species at cl. 6(73)(b). The Boards suggest that the technical authority should be associated with the Scientific Committee.

18. Do you support relying on the existing offences for plants and animals, instead of creating a new offence for threatened ecological communities or other listed ecological entities?

By relying on existing offences for plants and animals to guide offences for threatened ecological communities this may not adequately capture the conservation significance of these communities. This is because threatened ecological communities do not necessarily contain threatened plant species meaning the offence is not commensurate with the conservation significance of the community. The Boards suggest that the clearance of threatened ecological communities, which are critical to the conservation of biodiversity, are avoided altogether (as per comments in Part 4, Q10). If prohibiting clearance is not possible, a stronger disincentive for clearance would be to apply greater offences for impacts to threatened ecological communities relative to other patches of native vegetation.

19. Do you support the ability to apply a ‘provisional listing’ of species and ecological communities where appropriate?

The Boards support the ability to apply for a ‘provisional listing’ with some considerations. Given the current protracted process for the listing of species, there needs to be some interim protections for species, ecological communities and critical habitat before a final decision is reached. Further, some provisions for an extension of the 2-year provisional listing period need to be included (at cl. 6(76)(3)) where a final decision has not been reached. **The precautionary approach is highly recommended, with the absence of detailed information not limiting the provisional listing process.** The current categories for a provisional listing (at cl. 6(76)(1)) do not address species that are at risk of extinction due to developments (e.g. vegetation or habitat clearance) that are progressive in nature and do not necessarily occur ‘rapidly’ (to meet cl. 6(76)(1)(d)). Progressive and significant impacts to a species need to be captured as a reason for protection.

20. Do you support the ability to declare critical habitat to provide increased protections for threatened species, threatened ecological communities, and other listed ecological entities?

The Boards support the ability to declare critical habitat. However, protections for critical habitat could be further strengthened in the Act. **Critical habitat, that significantly contributes to the conservation of threatened species, ecological communities or entities, should be declared as ‘no-go zones’ for development and vegetation clearance.** Where this is not in scope, prohibiting certain areas for clearance/development where critical habitat occurs should be included instead. Expansion of protections of critical habitat for provisionally listed species is also suggested by the Boards.

21. Do you support the ability to develop action plans for the protection and recovery of a threatened species, threatened ecological community, or listed ecological entity?

The Boards support the ability to develop actions plans with some considerations. It is suggested that the development of action plans for the protection and recovery of species should only occur when there is not already a recovery plan/conservation advice established under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) or other jurisdictions to avoid duplication of effort. The Boards also emphasise that funds and resources allocated to action plans need to be adequately balanced with conservation action and not detract from already limited resources (e.g. FTE and funding) for critical recovery activities on-ground.

Part 7 – Conservation areas

22. Do you support renaming Heritage Agreements to 'Biodiversity Agreements' to better reflect their role?

The Boards broadly support the renaming of Heritage Agreements. The Boards are looking forward to the greater flexibility of Biodiversity Agreements as the previous Heritage Agreements were restrictive and often a disincentive for broader adoption of the agreements, particularly for landowners who need to live on a Heritage Agreement (e.g. a tree limb that dropped would be unable to be used for firewood). The Boards suggest some consideration of the previous disincentives (under Heritage Agreements) for landowners for managing the land for conservation outcomes (e.g. burning and in some cases grazing) in the new Biodiversity and Conservation Agreements. The Boards suggest that the change in terminology and any practise change needs to involve clear communication with landowners currently holding Heritage Agreements to ensure that the transition to the new agreements will be a smooth process.

23. Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements?

The Boards support the increased flexibility of the proposed Conservation Agreements and greater mechanisms for protection of biodiversity on private land. However, there needs to be a strong piece to communicate what these Conservation Agreements entail, what restrictions they place on landowners in their management/use, and what supports will be available for landowners in applying for these agreements. The Boards suggest that adequate resources are allocated to ensuring the agreements are monitored and breaches of the agreements enforced. The agreements (Conservation and Biodiversity), where possible, should be in perpetuity. It is currently unclear whether these agreements could be in perpetuity.

Specific feedback

The Minister declarations for land as sanctuaries should also be expanded to areas of water as sanctuaries (cl. 7(90)(1)).

An additional purpose of the Conservation Agreements should be to restore or enhance 'Healthy Country' and First Nations cultural land connection and restoration as well as the native plant restoration currently proposed by the agreements (cl. 7(101)(1)(a)). Similarly, encouragement and support for the protection of important habitat to fauna that is not necessarily native plants should also be included in the agreements at cl. 7(101)(1)(a).

The distinction between Conservation Agreements and Biodiversity Agreements is also not well reflected in their names (i.e. one might expect a Conservation Agreement to be stronger and longer than a Biodiversity Agreement).

Part 8 – Enforcement

24. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act?

The Boards support provisions for enforceable undertakings with some considerations. There needs to be adequate staff and resources to monitor and adequately enforce undertakings for a resolution. The Boards also suggest considering the cross authorisation of Fisheries Officers under the Act.

25. Do you support the proposal to introduce wider standing for people to make an application to the court for civil enforcement of a breach of the Act?

The Boards support the proposal with some clarification. It is currently unclear why the general duty of care is excluded from the provision at cl. 8(114)(1)(g).

26. Do you support the concept of ‘no development’ orders?

The Boards support the concept of no development orders, to eliminate any incentive to bypass the law. However, no development should also include agricultural activities (e.g. sowing pastures, crops, fertilising soils, and grazing of stock). A definition of ‘development’ as it is defined in the PDI Act at s. 1(3)(1)(a) needs to also be included in the Biodiversity Act.

27. Do you support the option of civil penalties for breaches of the Act?

The Boards support the option of civil penalties for breaches of the Act. However, it may be more suitable to address breaches of the Act as criminal offences before civil penalties. Civil matters typically take a long time to resolve while criminal matters have time constraints. The Boards also emphasise the need for any payments generated from the penalties to be directed back in the region or vegetation community where the impact occurred.

28. Do you support the penalties for criminal offences proposed under the Act?

The Boards support and welcome the increase in maximum penalties for criminal offences proposed under the Act. However, the penalties for illegally clearing native plants, remnant native vegetation, and ecological communities, and for breaches of permit need to be increased (at a minimum to reflect indexation). For example, for a breach of permit \$250.00 expiation is likely to be an insignificant deterrent. \$500.00 expiation would be more suitable. The Boards also suggest that the expiation fee needs to be increased for repeat-offenders. To ensure the legislation is adequately enforced,

there needs to be significant improvements in the capacity of authorised officers (including Landscape Board Officers) to undertake monitoring, compliance and enforcement. The State Biodiversity Plan provides an opportunity to consider how this might occur and outline future arrangements with officers currently authorised under the LSA Act to enforce this new legislation.

Part 9 - Permit

29. Do you support the permit provisions proposed in the Biodiversity Act?

The Boards support the permit provisions with some considerations. The permit process needs to be user-friendly, provides clarity to the community on what is and is not permitted (e.g. pets), and achieves the desired outcomes by staff and the customer. The Boards question the need to retain hunting permits as part of the Biodiversity Act. There is a legal requirement under the LSA Act to control declared pest species. The need for a permit creates unnecessary burdens on hunters (if not the landowner or manager) that have written permission from the landowner for use of firearms, to remove declared pest species. The Boards suggest the need for hunting permits to be removed as it relates to management of declared pest species under the LSA Act.

Part 10 – Miscellaneous

30. Do you support the provisions that set the scope of the State Biodiversity Plan?

The Boards support the provisions that set the scope of the State Biodiversity Plan. However, the Boards suggest the consideration of how this State Biodiversity Plan will interact with other state strategies and plans (e.g. State Landscape Strategy, Healthy Country Plans). There also must be some interim arrangements to facilitate the timely protection of species and ecological communities while the plan is being developed. The priorities in the plan should also reflect First Nations perspectives to enable healthy people and community. These priorities would be in addition to listed threatened species, ecological communities or entities.

31. Do you support the recognition of culturally significant biodiversity entities?

The Boards support the recognition of culturally significant biodiversity entities with some considerations. It is currently unclear how dingoes, which are enforced for control under the *Dog Fence Act 1946* and LSA Act, both north and south of the fence, will be protected if declared as a culturally significant biodiversity entity (CSBE). Any harm to a CSBE is enforceable as stated at cl. 8(114)(1)(e). The Boards foresee a conflict in upholding a CSBE in this context. The Boards also suggest that declaration of a CSBE should link to other legislation (e.g. *Native Title Act 1994*).

32. Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account?

The Boards support the requirement for decision makers under the Act to take the State Biodiversity Strategy into account. This creates an opportunity to highlight where the interplay between legislation and the strategy occurs.

33. Do you support the proposal to establish a Biodiversity Register?

The Boards support the establishment of a Biodiversity Register with a request for further clarity on what the register will entail. It is important that the regulatory bodies (including Landscape Boards) have access to relevant information to adequately assess the collective impacts of development approvals and clearances, water affecting activities, and other activities that may impact biodiversity. **Greater transparency of key decisions made to approve or reject development and vegetation clearance applications is strongly supported by the Boards.** Although it would be useful to include all applications with the potential to impact biodiversity, including applications that profess to have a positive impact on biodiversity in this register may lead to perverse outcomes as it may be perceived as an additional hurdle for conservation action (i.e. time spent justifying why it is important).

34. Do you support the framework that the Bill proposes for the regular review of the Act?

The Boards support the framework for the regular review of the Act.

Schedule 2 – Regulated acts or activities exclusions

35. Do you support moving the clearance exclusions into a schedule to the Act so they are in one place?

The Boards support moving the clearance exclusions into their own Schedule of the Act. This makes this information, which is important for landowners and land managers, easy to find as they are all in one place. The Boards, however, question how the loss or impacts of the exclusions are being measured and adequately compensated for.

36. Do you agree with the changes to the unregulated activities in Schedule 2?

The Boards agree with the changes to the unregulated activities provided there is sufficient public education on what these changes mean. Additionally, the Boards suggest replacing the multiple statements related to clearance exemptions for farming

to a single statement that indicates that farming and grazing does not require clearance consent if it does not result in significant degradation (at Schedule 2, cl. 2(26)(1)). Further, it is important that specific use-cases are outlined of when this exemption can be applied. The definition of ‘degradation’ adopted by the *Pastoral Land Management Conservation Act 1989* states that this relates to a decline in the quality of natural resources of the land resulting from human activities on the land. Most farming activities, if not well managed, could result in a decline of the quality of natural resources. The Boards also question what measures will be used to monitor any declines in the natural resources to justify this decision.

Schedule 3 – Principles of preservation of native plants

37. Do you support updating the existing ‘principles of native vegetation clearance’ to ‘principles of preservation of native plants’ to align with provisions in the Biodiversity Act related to threatened species, threatened ecological communities and listed ecological entities?

The Boards support updating the existing ‘principles of native vegetation clearance’ to ‘principles of preservation of native plants’ with some provisions. This Schedule of the Act will dictate what factors are considered for the assessments of the impacts of plant clearance. As such, this should include broader consideration of all factors likely to impact biodiversity. For example, significant water-dependent ecosystems and aquatic environments and water-dependent subsurface ecosystems could also be stated at Schedule 3, cl. (f). Additionally, it should include the importance of urban cooling and greening at Schedule 3, cl. (g) as this addresses more than just aspects of amenity. For Schedule 3, cl. (h) soil or sediment erosion and salinity and soil structure should also be included. At Schedule 3, cl. (i) the relevant water quality parameters should be listed including chemical, pollutant, sediment and nutrient loads, temperature, oxygenation and conductivity, or alternatively, water quality should be defined in the interpretations. Plants along water courses also provide shade/cooling of watercourses (of increasing importance with climate change) which should also be considered. The connectivity of riparian vegetation, or native plants in general, as corridors for biodiversity should also be considered.

The Boards suggest that any clauses (e.g. Schedule 3, cl. (k)) which provide the opportunity for Landscape Boards to comment and provide advice regarding proposed development matters are retained and not removed. Often the Boards will only see development applications once proponents have applied for native vegetation clearance. By retaining Schedule 3, cl. (k) this allows for comment at the planning and approval stage.

Related amendments

38. Do you support the amendments proposed to the National Parks and Wildlife Act 1972?

The Boards support the amendments proposed to the *National Parks and Wildlife Act 1972* with a question for consideration. The Boards suggest some clarification of the requirements for National Parks, and whether they will need to develop separate biodiversity documents to highlight biodiversity assets.

39. Do you support the amendments proposed to other legislation?

The Boards support the amendments proposed to other legislation but emphasise the need to have better alignment and jurisdiction with related Acts (e.g. PDI Act) so that the Biodiversity Act can be effectively implemented across all sectors. This will involve greater sharing of, and a regard to, up-to-date spatial data of threatened species, ecological communities or critical habitat, including information on provisionally listed species, that informs development approvals or impact assessments. There is also an opportunity for the LSA Act to consider water allocation planning and how this is linked to the protection of associated species. Any proposed changes to the LSA Act could potentially alter or change the focus of responsibility. These changes need to be further clarified, particularly if there are changes in the responsibilities for the Boards who are required to enact this legislation.