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Friday 1 March 2024

**Re: Submission to Discussion Paper for South Australia's new Biodiversity Act**

Dear Biodiversity Coordination Unit,

The Nature Conservation Society of South Australia (NCSSA) appreciates the opportunity to provide a submission to the Discussion Paper for South Australia's new Biodiversity Act.

The NCSSA is one of South Australia's leading not-for-profit conservation organisations that, since 1962, has been a strong advocate for the protection of biodiversity in South Australia with particular attention being paid to nationally and state listed threatened plants, animals and ecological communities and the management of protected areas.

The NCSSA's advocacy is based on **evidence of the alarming decline in our biodiversity**. Examples of projects that the NCSSA has run or supported in recent years include surveying high priority sites for the endangered Eyre Peninsula Southern Emu-wren; contributing to the recovery of the endangered Southern Brown Bandicoot through partnering on the 'super highway' project; and working with the local community, landholders, volunteers and other stakeholders to assess the post fire response of Kangaroo Island's unique threatened vegetation.

Whilst these short-term projects can address specific needs for threatened biodiversity, **long-term monitoring** is critical for identifying trends in biodiversity over relevant timeframes, and the NCSSA is proud to support long-term monitoring (20+ years) of woodland birds in the Mount Lofty Ranges that has revealed worrying trends, including that smaller insectivorous and frugivorous birds are becoming less common and that more than half of all species (38 out of 65) have declined. The NCSSA also implemented standardised monitoring of bushland health (condition) at various sites in South Australia using a methodology that can be repeated to identify trends, as required, and has trained others to do the same.

The NCSSA concurs with the Discussion Paper that our individual, social and economic wellbeing are all underpinned by healthy biodiversity, but that **biodiversity is currently in crisis**. Therefore, the NCSSA **strongly supports** the development of a new Biodiversity Act for South Australia as overarching legislation to secure nature and biodiversity, conserve and restore ecosystems, better protect endangered species, populations and ecological communities and critical habitats and prioritise the protection of biodiversity, as described in the Discussion Paper.

However, the NCSSA is deeply concerned that the vision for the new legislation, as outlined in the Discussion Paper, is **not sufficiently ambitious or bold enough** to meet the depth and extent of the current biodiversity crisis.

The Discussion Paper outlines a proposed framework very similar to current national settings for biodiversity protection and recovery under the *Environment Protection and Biodiversity Conservation Act 1999*. That framework

has been reviewed twice since its introduction,[1,2] and has been found to be ineffective and is currently being rewritten.[3]

Therefore, whilst the introduction of an Act with the mechanisms outlined in the Discussion Paper – such as identifying species for listing as threatened with extinction via a scientific committee – would update South Australia's biodiversity law to current national standards, it remains a to-date failed framework for attempting to slow the decline in biodiversity, rather than a proven set of mechanisms for its proactive protection and recovery.

Developing this new Act should be based on a **review of evidence** regarding what has and hasn't worked for biodiversity protection and conservation through various laws in the past, which the Discussion Paper does not indicate has happened to date. This review should include currently used legal mechanisms for biodiversity protection and recovery but also extend to emerging fields such as recognising the legal rights of nature.[4]

As outlined in more detail in the attached comments, key areas which require further exploration prior to the development of a draft Bill for this new Act include:

- The **principles** on which this new Act will be built, including but not limited to the principle of 'ecologically sustainable development', which it has been argued is no longer fit-for-purpose as a 'balance' of economic, social and environmental considerations gives insufficient weight to the interests of future generations,[5]
- Options for **resourcing** for this new Act, which is not an issue covered in the Discussion Paper but that will be fundamental to its success,
- **Primacy** of this new Act over other, potentially competing Acts such as mining and land-use planning, since this will also be fundamental to the new Act's success, and
- Options available for the new Act to provide for **large scale ecological restoration** in South Australia, in particular of bio regions for which less than 30% of their original extent remains.

The release of the 2023 State of the Environment for South Australia by the Environment Protection Authority on 23 February, as this submission was being prepared, provided a sobering reminder of the depth, breadth and urgency of the biodiversity crisis for South Australia. It states:

> "We have historically adapted the environment to suit our needs. The moment is long overdue *for us to now adjust to and meet the demands of our environment*" (emphasis added). [6]

This new Biodiversity Act must seize the moment to adjust the *status quo* – it must be constructed so the needs of nature are prioritised. The NCSSA supports and encourages the Department for Environment and Water, and the Malinauskas Government, to boldly provide the leadership in nature protection in South Australia that is so clearly needed.

If you would like to clarify or discuss this submission, please contact me on [redacted] or via email at [redacted]

Yours sincerely,



Kirsty Bevan
CEO, NCSSA

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[1] https://www.dcceew.gov.au/environment/epbc/our-role/review/epbc-review-2008#final-report
[2] https://epbcactreview.environment.gov.au/resources/final-report
[3] https://www.dcceew.gov.au/environment/epbc/epbc-act-reform
[4] https://www.earthlaws.org.au/aelc/rights-of-nature/#:~:text=When%20we%20talk%20about%20the,right%20to%20exist%20and%20flourish.
[5] Page 4, https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf
[6] https://soe.epa.sa.gov.au/files/documents/SOER-Summary-Report.pdf

**NCSSA comments on the Discussion Paper for new Biodiversity Act for South Australia**

*Overall response*

The NCSSA strongly supports the development of a new Biodiversity Act for South Australia but urges the Department for Environment and Water (DEW), and the Malinauskas Government, to be **bolder and more ambitious** in developing this legislation to put 'protection of biodiversity for the long-term at the centre' of our laws, as per the Government's pre-election policy, Plan For Biodiversity Protection.

The NCSSA acknowledges that a new Biodiversity Act for South Australia comprised of the mechanisms outlined in the Discussion Paper – such as identifying species for listing as threatened with extinction via a scientific committee – would update South Australia's biodiversity law to current national standards as reflected in the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Whilst this is arguably an improvement over current settings in South Australia, such an Act would be a framework for attempting to slow the decline in biodiversity, rather than ensuring its proactive protection and recovery.

Notably, the EPBC Act has been reviewed twice since its introduction,[7,8] has been found to be ineffective and is currently being rewritten.[9] Numerous audit reports, undertaken over a number of years, document various issues with administering the EPBC Act in detail.[10,11,12,13]

It therefore does not necessarily provide a robust template for South Australia's new Act, and adopting its mechanisms should only be done once the reasons for their lack of success to date explored and addressed.

*South Australia's new Biodiversity Act will need resourcing (funding)*

One fundamental issue not addressed in the Discussion Paper is **resourcing** for the new Biodiversity Act.

Arguably, a key failing in the implementation of the EPBC Act has been the systemic, chronic under-funding of the administration of its provisions. Examples of the impact of this include delays in listing species and ecological communities as threatened, delays in decision-making under the EPBC Act and a failure to implement actions to recover threatened species. For example, in a submission to a Senate Inquiry into the operation of the EPBC Act undertaken in 2009, the Wilderness Society described the situation as follows:

> "Since its inception, the processes mandated under the EPBC Act have been chronically under-resourced resulting in backlogs in processing and assessing threatened species listings, and there have been only a couple of successful prosecutions under the Act."[14]

The NCSSA therefore strongly urges DEW to seek to ensure **adequate funds** are made available to implement the provisions of any new Biodiversity Act. The NCSSA urges DEW to explore, with the support of Crown Solicitor's Office, whether it is possible to set up a quarantined, statutory fund, or otherwise earmark or quarantine State Government funding, for the new Act's delivery. Sources of such funding could include mining royalties and/or profits from the renewable energy and hydrogen industries that the NCSSA understands are set to boom in South Australia.[15]

A complimentary approach would be inserting accountability mechanisms into the Act itself. These could include inserting a requirement for a **review of the Act** at regular intervals (for example, every 5 years with a report to be tabled in Parliament, including specific details of resourcing provided), and the requirement for **audits of performance** on key biodiversity issues, such as threatened species protection and recovery, as has been undertaken by the Queensland Audit Office[16] and is planned for New South Wales.[17]

A specific area of support that will be required under a new Act is for biodiversity conservation on private land, and the NCSSA supports the Australian Land Conservation Alliance's call for the establishment of an **independent**

[7] https://www.dcceew.gov.au/environment/epbc/our-role/review/epbc-review-2008#final-report
[8] https://epbcactreview.environment.gov.au/resources/final-report
[9] https://www.dcceew.gov.au/environment/epbc/epbc-act-reform
[10] https://www.anao.gov.au/work/performance-audit/referrals-assessments-and-approvals-controlled-actions-under-the-epbc-act
[11] https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_19.pdf
[12] https://www.anao.gov.au/work/performance-audit/management-threatened-species-and-ecological-communities-under-the-epbc-act
[13] https://www.aph.gov.au/parliamentary_business/committees/senate/environment_and_communications/completed_inquiries/2008-10/epbcact/index
[14] https://www.aph.gov.au/~/media/wopapub/senate/committee/eca_ctte/completed_inquiries/2008-10/epbc_act/report/report.ashx
[15] Big players sign on to South Australia's clean hydrogen future | Energy & Mining (energymining.sa.gov.au)
[16] Protecting our threatened animals and plants | Queensland Audit Office (qao.qld.gov.au)
[17] https://www.audit.nsw.gov.au/our-work/reports/threatened-species

**statutory conservation trust** that could facilitate the purchase of land for conservation purposes, including with partners such as the Federal Government, private sector and environmental not-for-profits. This trust should form part of a broader resourcing commitment to this new Biodiversity Act.

The NCSSA will provide further commentary against the 10 topic areas outlined in the Discussion Paper.

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

The NCSSA understands that DEW are not taking comment on this topic area, however, wishes to express its support for the central role of South Australia's First Nations people in caring for Country, and for biodiversity as a component thereof.

A new Biodiversity Act which recognises this central role and provides for the safeguarding of biodiversity with cultural value as well as a framework that enables First Nations peoples' perspectives to be heard and appropriately incorporated, is therefore supported by the NCSSA.

**Topic 2 – Avoiding impact**

The NCSSA supports the introduction of a more modern environmental assessments framework to South Australia to 'promote avoidance and minimisation of impacts to biodiversity' as current settings are inadequate, for example actions that will have direct, negative impacts on species listed as threatened with extinction are not specifically regulated for that impact.

However, the approach outlined in the Discussion Paper omits the key issue of **primacy** for this new Act and also foreshadows the use of decision-making tools and mechanisms – namely the mitigation hierarchy and a reliance on 'offsets' - that have demonstrably failed biodiversity in other contexts.

For this new Act to be truly effective across the various contexts for State Government decision-making, it must have **primacy** over other, potentially competing legislation, such as land-use planning and mining. The NCSSA's experience in relation to the *Native Vegetation Act 1991* is that certain projects are given special status (such as 'major development' or 'crown sponsored' actions under land-use planning legislation) which enables them to bypass consideration of their impact on native vegetation, or for those impacts to be less stringently assessed. Ken Henry's review of the NSW *Biodiversity Conservation Act 2016* found that Act was being undermined by a range of other legislation including land use planning and approvals.[18]

It is therefore essential that the new Biodiversity Act for South Australia avoids this pitfall and is drafted in a manner that confers strong decision-making powers to the Minister administering it, so that they are able to refuse or insist on modifications to proposals that would harm biodiversity.

The NCSSA's experience with the use of the 'mitigation hierarchy' under the *Native Vegetation Act 1991* is that it is difficult to demonstrably apply in practice. Particularly, the first step – "avoid" – is almost never demonstrably adhered to, as by the time consideration of native vegetation impacts are made, the development site has been selected and the major elements of the design of the project decided upon.

The NCSSA acknowledges some improvement has been made since the introduction of the Native Vegetation Overlays in the land-use planning system, since this triggers earlier consideration of impacts on native vegetation by proponents. However, the rate of native vegetation clearance is still unacceptably high in South Australia and therefore the requirement to 'avoid' it needs to be more stringently enforced. The NCSSA urges DEW to explore whether there are additional legal mechanisms that could be included in this new Act that would allow for the 'avoid' step of the mitigation hierarchy to be more closely followed.

The NCSSA is also deeply concerned about the foreshadowed reliance on 'offsets' due to the lack of evidence that they provide the purported benefit to biodiversity.[19,20,21] The NCSSA is not aware of any demonstrably effective biodiversity 'offset' schemes. Rather, all the available evidence is of failure, for example an audit of the NSW

[18] Page 3 - https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf
[19] https://hsi.org.au/blog/nature-laws-explainer-why-biodiversity-offsets-are-failing-wildlife-part-2/
[20] https://www.sciencedirect.com/science/article/abs/pii/S000632071730349X
[21] https://www.sciencedirect.com/science/article/pii/S2590332222002664

'offsets' scheme in 2022 concluded that it needed a complete overhaul,[22,23] and the national scheme was described as follows in the most recent independent review:

> "Offsets have the potential to aid environmental restoration, but the current EPBC Act environmental offsets policy (DSEWPAC 2012) contributes to environmental decline rather than active restoration."[24]

Due to the lack of evidence that 'offsets' provide the purported benefits to biodiversity – either via on-ground delivery or through payment into a fund – the NCSSA believes they should not form part of this new Biodiversity Act. However, if 'offsets' are to form part of a new environmental assessment regime, they should be an absolute last resort, and the language used about them should reflect the actual truth of the practice (i.e. any payments into a fund should be "biodiversity destruction payments").

However, the NCSSA is encouraged that the Discussion Paper identifies that there are many situations where "offsets" are not appropriate solutions. To that end, a concept that should be introduced in this new Act is one of "**unacceptable impacts**", where actions that are going to have serious consequences for biodiversity can simply be refused outright. The NCSSA notes that this was a recommendation from DEW's own submission to the Natural Resources Committee (NRC) review of the *Native Vegetation Act 1991*, as follows:

> "Despite the application of the Mitigation Hierarchy, which seeks to minimise impacts to the greatest possible extent, there is no upper threshold at which clearance is deemed unacceptable. This means that the Regulations are facilitative of development, but it also means that areas of high conservation and biodiversity value could be impacted as a result of clearance under Regulations. The NRC may wish to consider how unacceptable clearance may be better defined in the context of the Regulations."[25]

The NCSSA understands that the concept of 'unacceptable impacts' is also under consideration for being introduced at the national level, as part of EPBC Act reform.

**Topic 3 – Transparent decision making**

The NCSSA supports strong provisions in a new Biodiversity Act to ensure transparency in decision-making and agrees that this would better enable the public to hold decision-makers to account.

However, the NCSSA is concerned that the Discussion Paper foreshadows the construction of the Act upon the series of principles collectively known as 'ecologically sustainable development' (ESD). Whilst the Discussion Paper acknowledges the need for clear definition of ESD and would seek 'the proper application of the principles of ESD', the NCSSA is concerned that this foreshadows an ongoing commitment of 'trading off' biodiversity impacts in favour of the (usually much shorter term) social and economic gains that a proposal may offer.

Ken Henry's review of the NSW *Biodiversity Conservation Act 2016* raised serious concerns about the ongoing use of 'ecologically sustainable development' framing that sought to 'balance' economic, social and environmental considerations, stating:

> "In the past few years, a consensus has emerged that this balancing act gives insufficient weight to the interests of future generations. The present generation is the principal beneficiary of government efforts to promote economic activity and address obvious social issues, whereas the burden of any consequential environmental damage, especially that which is irreversible, such as species loss, is overwhelmingly borne by future generations."[26]

The NCSSA therefore urges DEW to undertake a thorough review of common principles in environmental law, including ESD and the associated precautionary principle, to analyse how they have served the purpose of biodiversity conservation and whether they remain fit-for-purpose for the biodiversity crisis we are experiencing in modern times.

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[22] https://www.parliament.nsw.gov.au/lcdocs/inquiries/2822/Report%20No.%2016%20-%20PC%207%20-%20Integrity%20of%20the%20NSW%20Biodiversity%20Offsets%20Scheme.pdf

[23] https://www.theguardian.com/environment/2022/aug/30/utterly-damning-review-finds-offsets-scheme-fails-to-protect-nsw-environment

[24] https://epbcactreview.environment.gov.au/resources/final-report/chapter-8-planning-and-restoration/83-government-driven-investment-restoration

[25] Page 17 of the Native Vegetation Council and Department for Environment and Water submission to the SA Parliament's Natural Resources Committee's review of the *Native Vegetation Act 1991*, October 2021.

[26] Page 4, https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf

**Topic 4 – Threats to biodiversity**

Broadly, the identification of threats to biodiversity as a component of a new Biodiversity Act is supported. However, critical to the success of this approach will be **resourcing**, both of the threat identification process and the threat abatement process.

The NCSSA notes that 'key threatening processes' to biodiversity can be identified and listed under the EPBC Act, however, that review of the Act in general[27] and of the management of threatened species in particular[28] found that this was not effective or comprehensive but rather ad hoc and lacking in strategic purpose. In fact, since 2017, the Federal Environment Department has informed the Threatened Species Scientific Committee that 'given the limited regulatory influence of the list of key threatening processes, and the limited capacity of the Department to support complex assessments, it does not recommend any key threatening processes to be proposed for assessment'. [29]

Therefore, in addition to securing appropriate resourcing, DEW should consider what the appropriate parameters for threatening processes to be recognised under the Act should be (e.g. geographic scale, time period) and focus efforts on those threats for which listing and abatement would be most impactful.

Two key threats to biodiversity that the NCSSA wishes to highlight that would benefit from a well-crafted and adequately resourced threat identification and management scheme under a new Biodiversity Act are:

- a recognition that overabundant macropods represent a conservation (and welfare) issue and that proactive management of kangaroo numbers below thresholds where they cause environmental harm should be the accepted norm for National Parks and other public land, and
- proactive cat management is required to reduce (and ideally eliminate) their impact on wildlife, i.e. all pet cats should be registered and contained to owner's yards, especially in high conservation value suburbs and peri-urban areas. Further, the onus should be on pet cat owners to have their cat identifiable, rather than requiring government staff to hold unidentified cats for many days in case they are claimed.

**Topic 5 – Assessing the risk of extinction**

Broadly, the identification of species at risk of extinction as a component of a new Biodiversity Act is supported. However, critical to the success of this approach will be **resourcing**, both of the identification process and the recovery process. Similar to the identification of threats to biodiversity, these type of listing provisions exist under the EPBC Act, yet the best available evidence shows that Australia's threatened species continue to decline.[30]

Specifically, the NCSSA wishes to draw DEW's attention to a 2013 Senate Committee review of the effectiveness of threatened species listing under the EPBC Act, and particularly noting the following:

> "The committee heard a range of concerns about the following aspects of the process for listing threatened species and ecological communities:
>
> - lengthy delays between nomination and listing of species and communities;
> - the lists are incomplete, inaccurate and are not reviewed;
> - heavy reliance on public nominations;
> - problems with listing where there is insufficient data;
> - taxonomic bias in the lists;
> - duplication and inconsistency between the EPBC Act lists and state/territory lists (and the IUCN2 Red List of Threatened Species);
> - lack of emergency listing provisions (noting that they are proposed to be introduced as part of EPBC Act reform legislation3 ); and
> - the role of the Threatened Species Scientific Committee (TSSC)."[31]

[27] https://epbcactreview.environment.gov.au/resources/interim-report/executive-summary
[28] https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_19.pdf
[29] https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2021-22_19.pdf
[30] https://tsx.org.au/tsx2023/?type=all&tgroup=All&group=All&subgroup=All&state=All&statusauth=Max&status=NT_VU_EN_CR&management=All&refyear=1985
[31] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Completed_inquiries/2010-13/threatenedspecies/report/~/media/wopapub/senate/committee/ec_ctte/completed_inquiries/2010-13/threatened_species/report/report.ashx

The NCSSA therefore urges DEW to design a listing process that avoids these pitfalls. A specific suggestion is to include a provision in the new Act to keep the lists up-to-date so that decision-making is less likely to be delayed. Such a provision once existed in, but has been removed from, the EPBC Act.

It is not clear from the Discussion Paper if the decision-maker for whether or not to list a species would sit with the Minister administering the Act (as per the EPBC Act) or with the scientific committee. The NCSSA's strong view is that the decision regarding whether or not to list is a scientific one based on an assessment of the available evidence, and therefore it should be the scientific committee's decision. The subsequent impact of that decision, for example with regard to allocating resourcing for developing and implementing a recovery plan and the deciding on whether or not to approve actions that impact on that species, could rest with the Minister.

The NCSSA believes that this process should also cover ecological communities: they are mentioned on page 4 but are not specifically included under Topic 5 and should extend to all species (fish are excluded from the list of organism types that could be covered).

**Topic 6 – Biodiversity planning and reporting**

The NCSSA generally supports the new Act including a requirement for a statewide biodiversity plan, as recommended by the 2018 State of the Environment Report for South Australia. However, critical to the success of this approach will be **resourcing**, both for the development of the Plan and also its implementation.

**Topic 7 – The benefits of information**

The NCSSA strongly supports efforts to improve the information available on our biodiversity and agrees that a robust information base is essential to underpin the effectiveness of a new Act.

The NCSSA notes and supports the 2023 State of the Environment Report finding, based in the Expert Paper provided by the Biodiversity Council, that:

> "Current reporting on the state of the environment is heavily constrained by a lack of data, and government does not have the resources to collect this on its own. It must build on existing endeavours, partner with others (for example, citizen scientists), be a part of nationally funded programs, capture advances in technology, and invest in research most likely to inform and engage people to change policy and management, using 'Value of Information' analysis."[32]

The new Act should provide a strong framework for these collaborations, for example, by providing for an independent standing committee to advise the state on future biodiversity monitoring and research using a value-of-information lens.[33]

**Topic 8 – Achieving 30 x 30**

The NCSSA supports an increase to the network of lands managed for conservation purposes and supports the Australian Land Conservation Alliance's submission seeking for 'enhanced protection conservation covenants' to be established that exclude extractive activities like mining as a stronger form of private land conservation.

However, the first step for a new Act is to genuinely protect our precious natural places which are already recognised as 'protected'. The NCSSA believes that in recent years there have been too many examples of protections for our National Parks and other protected areas being over-ridden in South Australia, for example to build private, luxury accommodation within Flinders Chase National Park or a rocket launching facility within a private conservation area (a Heritage Agreement). These two examples above are both situations where land-use planning provisions have 'trumped' protections under the *National Parks and Wildlife Act 1972* and the *Native Vegetation Act 1991*, respectively.

The Discussion Paper does not address this critical issue of genuine protection for our existing, designated precious natural areas or proper resourcing for their management. Stronger provisions are required than what is currently in place, and the new Act needs primacy over other Acts, as stated earlier.

Another key issue that the Discussion Paper does not adequately address is that for some regions in South Australia, there no longer remains 30% of habitat to be protected. The Discussion Paper briefly mentions restoration, but the NCSSA believes this should be a much greater focus of the new Act. Large scale ecological restoration is needed,

[32] https://soe.epa.sa.gov.au/files/documents/SOER-Summary-Report.pdf
[33] https://soe.epa.sa.gov.au/files/documents/Expert-Paper-Biodiversity.pdf

particularly in the parts of South Australia that have been most modified since European arrival, including the Mount Lofty Ranges and the wetlands of the south-east.

The new Act needs to set **an ambitious restoration target** and require a plan for its delivery, within a changing climate.

Resourcing will also be required for this ecological restoration work (as well as its ongoing management and monitoring). Whilst the NCSSA believes the State Government should directly contribute to this, another potential resource is the established and emerging market mechanisms for investment in biodiversity. Therefore, this new Act will need to provide a robust framework for such investment, and interact in a supportive way with legislation also set up for that purpose, such as the *Nature Repair Market Act 2023*

**Topic 9 – Biodiversity: a shared responsibility**

The NCSSA concurs that biodiversity is a shared responsibility and generally supports the introduction of a duty of care to biodiversity but needs more information about how it would operate in practice. The NCSSA further notes that while biodiversity is a shared responsibility, this Act should focus on the specific role and responsibility of the State Government to protect and recover biodiversity, which is unique and different from the role of individuals and the broader general community.

**Topic 10 – Consequences of doing the wrong thing**

The NCSSA broadly supports the proposals in the Discussion Paper for introducing stronger penalties and more options for enforcement for people doing the wrong thing in relation to biodiversity.

In particular, the NCSSA strongly supports a new Act allowing for third parties to bring proceedings in the public interest. In the NCSSA's recent experience, a Supreme Court review of a government decision to approve an action that the NCSSA believes would harm biodiversity was restricted to judicial review (i.e. that there had been an error of process in the decision making). The NCSSA believes that the new Act should allow third parties access to **merits review** (i.e. a review of the substantive content of decisions made, in this case relating to its impacts on biodiversity).

The NCSSA notes, however, that lengthy, expensive and inequitable legal battles could be avoided if the State Government takes responsibility for enforcing its own legislation and making decisions in line with the intent of biodiversity protection and restoration.

The NCSSA understands the desire for effective and proportionate compliance mechanisms, however, cautions against the potential for a regime that could inadvertently encourage wrong doing if proponents are aware of the lack of criminal consequences and may perceive a after-the-fact "remedy" as cheaper and easier than following the rules to begin with.