Reference: HFLB-D000355

Biodiversity Coordination Unit

Department for Environment and Water

GPO Box 1047

Adelaide SA 5001

Email: **biodiversityact@sa.gov.au**

01 March 2024

Dear Madam/Sir,

Re: Biodiversity Act for South Australia - Discussion Paper consultation

Thank you for the opportunity to provide input to the development of a new Biodiversity Act for South Australia.

This response is provided on behalf of the landscape boards of South Australia. Some landscape boards may also provide their own response with specific input and board views relevant to their region.

Landscape boards are statutory authorities established under the *Landscape South Australia Act 2019* (LSA Act) to provide for the integrated management of natural resources. Landscape 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, landscape boards have a strong interest in strengthening biodiversity protections and management, and agree that more needs to be done to reverse biodiversity declines, Australia-wide, and in South Australia.

We support the stated goals for biodiversity - to *protect, conserve, recover, adapt*. We also support the broad intent of all ten of the topics.

However, as well as the mitigation hierarchy presented in Topic 2, more stringent rules to *protect, conserve* and **avoid impacts** on biodiversity altogether are required, with permitting of impacts only in exceptional circumstances.

We also find relatively little in the Discussion Paper about the *recover* and *adapt* goals. We would like further consideration of how the Biodiversity Act will **support and incentivise nature repair and reconstruction of habitats** at the scale needed to enable biodiversity to *recover* and *adapt*.

We are broadly supportive of the proposals ('matters for consideration') identified in the Discussion Paper, which are important steps to addressing known shortfalls or gaps in current legislation that allow activities causing biodiversity declines to occur.

Our main questions (and concerns) about the effectiveness of a Biodiversity Act as proposed relate to:

- **How will the Biodiversity Act interact with existing legislation?** For example, will legislation such as the *Planning, Development and Infrastructure Act 2016*, *Mining Act 1971, Hydrogen and Renewable Energy Act 2023,* and *Pastoral Land Management and Conservation Act 1989* take priority and precedence over the Biodiversity Act? Acknowledging the shortfalls and loopholes that currently exist in existing legislation, how would a Biodiversity Act provide greater protections or benefit to biodiversity than would be achieved by strengthening these existing Acts? For example, strengthening the *Native Vegetation Act 1991*, *National Parks and Wildlife Act 1972, Fisheries Management Act 2007, Planning, Development and Infrastructure Act 2016*, *Mining Act 1971, Hydrogen and Renewable Energy Act 2023, Pastoral Land Management and Conservation Act 1989,* and *Landscape SA Act 2019* could provide much of the regulation required to achieve the principles of the Biodiversity Act. It is currently unclear what a new Biodiversity Act will offer above and beyond strengthening these other acts.
- **How will implementation of the Act be funded?** It is unclear how **compliance** with a new Biodiversity Act will be resourced to *protect* and *conserve* biodiversity and prevent further loss, and who will fund the *recovery* actions required to reverse on-going declines?

Landscape boards have existing relationships with community, work with landholders at a grassroots level, and help landholders understand their land management responsibilities under state and federal legislation. We recognise that public consultation on the discussion paper has been sought to help understand community expectations about biodiversity protection and reforms. However, as key stakeholders who will likely have a role in communicating and potentially implementing parts of a Biodiversity Act, landscape boards request that they are given the opportunity to provide input to the drafting of the bill.

Specific feedback on the Discussion Paper, including reference to specific 'matters for consideration', is provided below in Attachment 1.

If you would like to discuss any of the feedback provided, please contact **Andrew Meddle, General Manager Murraylands and Riverland**, [redacted]



Yours faithfully

David Greenhough
Chair of chairs, Landscape Boards of South Australia

Topic 1- Biodiversity and South Australia's First Nations People

SUPPORT

We agree that ongoing targeted engagement and consultation with First Nations peoples is important in the development of a Biodiversity Act.

First Nations relate to Country as biodiversity, their relationship is one of a deep and abiding respect to care, value and sustainably manage the natural resources that maintain life and cultural values. First Nations have significant historical knowledge of biodiversity that is integral to their involvement in future management and understanding. This goes beyond the proposal in the discussion paper to "recognise and safeguard biodiversity that has cultural value or importance'.

How opportunities identified for the new Act could be strengthened:

The current description of how culturally significant species and landscapes will be protected is mostly in passive terms, and can be made stronger by emphasising the need to co-design conservation with First Nations. Existing processes such as Healthy Country Planning could be considered as part of the framework for decision making with First Nations people.

The legislation needs to articulate how it will ensure equitable protection of biodiversity with cultural value across the state, including on Indigenous Protected Areas (IPAs) and lands with Native Title status.

The Discussion Paper is unclear on how the legislation would be applied to IPAs. Land within IPAs in South Australia will grow (re: 30 by 30 targets), so a clear framework needs to be established that sees these IPAs protected, with investment and capacity building for the Traditional Owners.

Topic 2 – Avoiding impacts

SUPPORT

1. *The Act could seek to prioritise avoidance and minimisation of impacts to biodiversity and make it clear that any negative impacts to biodiversity are the last resort.*
2. *The Act could provide for a framework that includes clear guidance on the requirements to avoid and minimise impacts to biodiversity.*

We support the mitigation hierarchy and changes needed to ensure biodiversity impacts are a ***last resort*.**

- A shift from presumed clearance permission to avoidance of clearance will require cross government support. There is likely to be significant resistance from the development industry (both private sector and state government agencies). Strong political will is needed to implement the new Act to ensure its intent and integrity is maintained and to resist or reduce the potential for a large number of exemptions/regulations to be added.
- A legislated requirement to avoid and minimise impacts to biodiversity will require amendment to the Planning and Design Code under the *Planning, Development and Infrastructure Act 2016* (PDI Act) and Regulations, the *Native Vegetation Act 1991* (NV Act) and potentially the *Landscape South Australia Act 2019* (LSA Act) and *Fisheries Management Act 2007*. The landscape board are supportive of development of a clear framework that ensures loopholes are avoided and outcomes are realised.
- The Act should consider and account for potential cumulative impacts of developments on biodiversity, so that impacts of individual developments are not considered in isolation. Otherwise biodiversity will continue to suffer 'death by a thousand cuts'.
- Biodiversity values in modified urban environments need to be recognised and included in assessments.

3. *The Act could require evidence is provided justifying how avoidance and minimisation have first been addressed as per the mitigation hierarchy.*

We strongly support this.

- More rigour and transparency is needed in how the mitigation hierarchy is applied in development assessments. Many development proposals mention that there are 'no alternative options' without a requirement to share what other options may have been considered. There should be a clear requirement to demonstrate that alternative options have

been reasonably considered and explored. Clear criteria for how evidence is to be provided is needed, with a consultative pathway that enables feedback on the adequacy of the data and assessment.

- The current clearance mitigation hierarchy under the NV Act has offsets as the lowest preferred option, however the comparison with alternative options is often overstated, implying that the preferred option is the best outcome for the environment. For this to be improved there needs to be defined criteria and specific guidelines to change expectations for clearing options. Proponents should be required to design more creative and innovative approaches to development to avoid clearance. These may be more expensive options, and the process for approval should not consider increased cost to be a justification for greater impacts.
- The assessment of the proposed development should include consideration of the value of the project, against the habitat that will be lost. Clearing and offsetting should only be allowed for projects deemed *essential*, where clear criteria are developed to provide transparent assessment pathways.
- The framework should present realistic values for mitigation or offsetting, so that the real costs are accommodated. Avoidance measures may then be more appealing than paying for offsets.
- The feasibility of providing an offset gain should be considered before allowing any clearance/offset allowed. If there is no suitable like-for-like vegetation available as an offset, or there is vegetation available but it is not technically feasible to manage the area to create an improvement, then there should be no clearance.

4. *The Act could make it clear that any action taken having impacts to biodiversity must leave biodiversity in a measurably better state than it was before.*

We support this proposal. This is integral to the implementation of improvements in biodiversity and is welcomed. It goes beyond 'neutral or beneficial effect' toward 'biodiversity net gain' and should enable nature positive outcomes.

- It is recommended that some thought be given to working with PLUS to develop guidance around what nature positive outcomes might look like for different scenarios. Having a 'toolkit' of options will provide a starting point for meeting this requirement.
- The Act could consider the use of a biodiversity metric to measure a habitat or development's impact on biodiversity. The metric calculates a biodiversity value of habitats before and after a proposed development, land use change or proposed activity. It can account for the habitat's size, location, quality and type, as well as the difficulty of recreating or enhancing that habitat, the time it might take to reach a target condition and the distance of a recreated habitat from where the habitat has been lost. These are all critical factors in supporting nature positive change at a landscape level. An existing tool for biodiversity is already in use in the UK - **https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development**
- Where restoration and offsetting of biodiversity losses are permitted - for *essential* developments, sites need to be maintained and monitored for multiple years to ensure outcomes are being achieved.
- It is recommended that the development of the Act considers performance of similar legislation in other jurisdictions. Reviews of the EPBC Act and of offsetting in Victoria have found that offsetting has not been delivering the intended outcomes. The Act should discourage the use of offsets and not view them as a replacement for natural vegetation.
- In relation to the wording "The pathway to offsetting requires careful management and control. In many situations, offsets are not appropriate solutions, especially for species at risk of extinction and ecosystems at risk of collapse, which makes it essential to establish limits to their use. For this to be successful, the requirements would need to be strictly applied and documentation made readily available to the public. A new Biodiversity Act could establish a framework with clear guidance on these requirements." We agree that limits on the use of certain ecosystems or areas that contain certain species would be very beneficial.

Other issues for consideration

Offsets

- We recognise the intent of offsets to facilitate development with 'no net loss', but we **do not support the inclusion of offsets as part of SA's biodiversity strategy**. The use of offsets (financial payments into a scheme in compensation for biodiversity losses) is not producing satisfactory outcomes for biodiversity, and we need a change from business as usual. Compensation for loss via offsets aims to ensure 'no net loss', but conservation in exchange for losses is resulting in overall biodiversity declines. We should be striving towards a 'nature positive' future.

- If offsets are to persist, the following should be considered
    - The new Act should require that decisions about the mitigation hierarchy (prioritising avoid and minimise) be assessed at a larger scale than the project site. The Act or supporting Regulations could recognise that some properties have few biodiversity values and some have good biodiversity values. In some situations it is preferable to permit clearance in already fragmented areas to increase protection for the more intact areas. The system of environmental 'overlays' in Victoria was good at facilitating this.

    - In most cases it is not possible to recreate intact native ecosystems (even if it were affordable or feasible). As such, offsets should only be considered back-up plans may not deliver the outcomes required. Continuing to use the term 'offset' implies that an equivalent result will be delivered. Different terminology should be considered.

Exemptions

- How will fire management for hazard reduction purposes be treated? Will fire management for biodiversity improvement be an exemption under the Act?

Mining developments

- Currently the only requirements for consideration in mining developments seem to be listed species (EPBC/NPW Act), and there is no consideration for other species or significant negative impacts to the overall ecosystem and biodiversity. Can more considerations be required in these applications to biodiversity as a whole, rather than just single listed species

- Mining exclusion zones could be identified based on the presence on endangered species that hold exclusive range in these zones.

- A legislative framework could include advice on minimum requirements or specific methodologies for animal conducted for development applications.

Topic 3 – Transparent decision-making

SUPPORT

5. *The Act could require government maintain a public register to ensure decisions made that impact biodiversity are disclosed.*

We support this proposal. A public register with mapping component would provide a better understanding of the rate of loss. Landscape boards are regularly asked to comment on development applications or native vegetation clearance applications, without awareness of the bigger picture of cumulative impacts from similar or other developments nearby. Having an adequately resourced public register that can provide that information together with mapping for offset or habitat improvement measures will be useful in assessing impacts of new proposals.

6. *The Act could require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed.*

We support mandatory reporting, as this could help improve recognition of cumulative impacts on biodiversity.

At present, there is very little visibility on these matters. Greater accountability of applicants for any repair/offsets and greater transparency to consumers (e.g. 'green energy' projects requiring vegetation removal) would help deter some impacts on biodiversity and reduce the compliance burden for government.

This should include a requirement for an assessment of offset sites at the 10 year mark, including rescoring of 'biodiversity units', with information made publically available. The true outcomes of offsetting should be transparent and easily accessible. Knowing it will be measured after 10 years will encourage genuine plans for achievement from proponents. The biodiversity management community will learn valuable lessons from successes and failures – which is essential for development of effective management.

7. *The Act could incorporate a clear definition of Ecologically Sustainable Development and ensure a process is created so that application of the ESD principles are required in the context of decision making about biodiversity.*

Supported.

Topic 4 – Threats to biodiversity

SUPPORT

8. *The Act could provide for a framework for the identification of threats to biodiversity.*

We are supportive of the Act listing threats to biodiversity and the consideration of statutory obligations for actions to address threats. Administering the Act to ensure statutory obligations are met will be a significant task that needs appropriate resourcing to be effective.

- The Act should consider all aspects of biodiversity, including invertebrates and marine systems and species. Provisions for protection must be equally applied across land and aquatic environments. This will include aquatic threats such as noise impacts on marine mammals and water quality and water availability impacts on aquatic environments. It will be important that the Act includes soil health as an integral element of biodiversity which also requires protection and enhancement.
- The discussion paper uses the terms 'biological diversity / Biodiversity' which is a very broad label and essentially covers anything that is alive. Decisions and distinctions about 'native' ecosystems and species are needed. There will need to be some strong definitions for the various types of biodiversity. In particular, we need a definition for a 'patch' of native vegetation. While we are getting further away from using pre European conditions as our benchmarks and including novel ecosystems, urban biodiversity etc. there needs to be a greater focus on largely native ecosystems.
- Indirect threats need to be incorporated. And threats at different scales. For example, broad scale application of herbicides and pesticides are affecting biodiversity, but it is difficult to ascribe this to particular areas of land.
- Other potential threats include disease, passive loss of woodlands due to lack of tree recruitment, and over-abundant native animals and plants.

9. *The Act could include statutory obligations for actions to address threats to biodiversity.*

We support this proposal.

Points for consideration:

- How would the Act interact with the EPBC Act (and proposed reforms)? Will the framework align to nationally listed Key Threatening Processes? It is important that there is commonality between the proposed Act and federal guidance regarding threat abatement and responsibilities, which this new legislation could provide.
- Waiting until extinction risk is reached is too late for implementing actions. Many ecosystems in the state are declining, not just those listed under the EPBC Act. Listing new ecosystems is onerous and slow, and there is not enough data to investigate the trajectory of many of these ecosystems. While threats and responses are clearly

articulated in recovery plans for many EPBC- and NPWS-listed species, there are still many threatened species and ecological communities without national recovery plans.

- Illegal clearance investigations often focus on trees, at the expense of the understory being lost - it is hoped that the new Act will redirect focus to the ecosystem and its elements.
- Soil health is integral to biodiversity and should be included in development/planning decisions. It should support proposals that protect soil from damage and that minimise soil sealing and enhance soil quality.

SUPPORT

Topic 5 – Assessing the risk of extinction

10. *A scientific committee could be established to guide listing, assessment and review of extinction risk of biodiversity.*

We strongly support the formation of scientific committee to guide the listing and review process.

- Assessment will require definition of ecosystems in a way that will allow comparison of the same types of vegetation and to determine their trajectories.
- The process for listing and assessment needs to be simple, and decisions made in a timely manner. Rigorous standards of assessment are important, however if assessment processes and requirements for the development of recovery plans is too onerous, lists will not be updated, and more time will be spent on plans than their implementation. Windows of opportunity for funding and implementation of recovery actions are often short, so the framework for species assessments needs to be allow these to occur quickly.

11. *The Act could provide greater clarity on the types of native species that can be considered as threatened.*

We support consideration of how the Act could support the protection of all native species.

- There are a great many species that have not been defined or described, particularly for fungi, invertebrates and other soil biota. The Act could consider ways to protect these groups of undescribed species.

12. *The Act could require the creation of a formal listing, assessment and review process that establishes clear pathways for nomination, consultation and review.*
13. *The Act could adopt a streamlined process for list amendments to ensure lists remain current.*
14. *The Act could ensure that programs implemented to address biodiversity decline are evaluated.*

- We are strongly supportive of a much more open, transparent and inclusive process for the listing and review of species.
- Consideration could be given to reviewing ecological significant units rather than species as the taxonomy of many species units is far from settled. There have been numerous instances where a species has been recently split into several species, some of which are threatened. If ecological significant units are considered, populations which are isolated from one another would be considered distinct which may result in some being listed as threatened and requiring recovery actions. This would be following the precautionary principle.
- Evaluation of programs aimed at addressing biodiversity decline is important to ensure that investment is delivering the outcomes intended, and significant investment in monitoring is needed. Collation and sharing the results of these evaluations is key to their having impact.

15. *Where a new extinction occurs, the Act could establish a requirement to examine and report on the causes and actions that contributed to it.*

We support this, however it is also important to report on actions being taken to prevent extinction and achieve recovery. This would help highlight resources required and support greater investment in recovery actions. Reporting could also:

- consider the implications of any loss for the food web of that species, and identify any actions required as a result.
- Identify similar species at risk of a similar fate and implement strategies

16. *The Act could establish a framework to document measures to improve the status of biodiversity assessed as threatened.*

We support this. Such a framework would need to align with existing federal provisions for recovery plans, Conservation Action Plans etc. The Act could require management trials to evaluate possible solutions while working on longer term plans.

- Threatened Ecological Communities (TECs) are missing from recovery and there is no discussion on recovery actions. South Australia still doesn't have a process for assessing or listing TECs and this document appears to be silent on this.
- The Act needs to provide clarity on who has obligations to monitor, report on, and/or implement actions for listed species and communities.
- Regional threat listings should be considered in development applications e.g. Greater need to avoid impacts.
- Ideally this information would be kept at a central location (i.e. website) that is easily accessible and updatable.

SUPPORT

Topic 6 – Biodiversity planning and reporting

17. *The Act could mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on.*

The Board supports the development of a state-wide biodiversity strategy and plan with measurable targets and regular reporting. This has been a notable gap, with no plan in place since No Species Loss, and is essential to the success of the new Act.

- For a state-wide biodiversity plan to have positive effect, it needs to be funded appropriately. History shows that long term funding for programs is rare, making it difficult to implement long term programs.
- Given the diversity and extent of threats to biodiversity and number of threatened species in the state, the plan will need to prioritise investment to where it will have greatest benefit. We suggest a prioritisation process similar to NSW's Saving Our Species program to address risks to species that do not have their own recovery plan. i.e. Categorisation of species into 'landscape-managed', 'site-managed', 'iconic', 'data deficient' or 'keep watch', based on their ecology, extent, threats and data available, to guide investment needs.
- Regulation to prevent further loss (Topics 2,10) is important, as is education and support for landholders' voluntary efforts to protect biodiversity values and undertake restoration (Topic 9). However, to reverse biodiversity declines associated with historic habitat clearance, substantial investment is needed. The nature repair market will provide a pathway for landholders to add biodiversity management as a financially viable land use, and the state could be a buyer in this market to ensure the establishment and management of habitat on private land (including formal conservation areas; Topic 8) occurs where it is most needed.
- The Act should make clear who has responsibility for meeting which targets, and what the consequences to identified organisations are if targets are not met.

18. *The Act could require any state-wide plan or strategy to be regularly reviewed and updated.*

We support this, and recommend that an independent review process regularly assesses progress against the Act's principles and objectives in a simple and effective way.

Topic 7 – The benefits of information

SUPPORT

19. *The new Act could provide for a framework to enable the sharing of biodiversity information with the community and across all levels of government to assist in decision-making*

We strongly support this. In addition to the creation of a new biological data repository for the state (which we are aware is underway), data needs to be shared and interpreted in a way that will allow the community to understand trends and also be aware of the deficiencies/ gaps.

We suggest a requirement any new data repository be compatible and integrated with Australian Government systems (e.g. Atlas of Living Australia (ALA), Biodiversity Data Repository, etc.) as this will help ensure that South Australian data is included in federal-level decision making. For example, some funding prioritisation made after the 2019/20 bushfires was made using only ALA records (it did not include records in BDBSA), which in some cases meant that the data was seriously out of date.

20. *The new Act could establish the Department for Environment and Water as the responsible government agency for the management of South Australia's biodiversity information.*

We support this and agree this should be done 'without adding complexity to the existing processes'.

21. *The new Act could establish requirements for the submission of biodiversity data collected in South Australia to a central repository.*

We strongly support this.

- There is a wealth of privately funded and collected data that is often not shared publically which would be of benefit in working to improve biodiversity understanding and future actions. We note this will have implications for proponents in terms of resources and costs to ensure data meets state requirements. It will also need to be resourced to ensure the data is validated and meets the required standards.
- Additional support from DEW (training and data entry) to get data into BDBSA or a central repository would be valuable. For instance, DEW could support Citizen Science projects operating in SA to ensure that data collected is fit for purpose and archived appropriately.
- Finding ways to incorporate other data sets (e.g. iNaturalist) would also be valuable.

22. *The new Act could direct the development of a policy that describes requirements for the collection, collation, interpretation and dissemination of biodiversity information.*

We support this. Such a policy would need to be considerate of existing data set collection methodologies and requirements, including consistency of effort and timing for certain investigations.

Topic 8 – Achieving 30 by 30

SUPPORT

23. *The Act could consider broadening or creating schemes to further support the establishment and management of conservation areas on private and other land.*

We support this. Investment into long term management on private and other land could deliver valuable outcomes, if the requirements are perpetual and land owner support is provided. Ensuring there is long term financial support to heritage agreements and other protected areas is important.

- The Act could also consider generating opportunities to acquire land to increase the National Reserve System.

- Many 'protected areas' are currently not adequately managed, risking further biodiversity declines due to the impacts of pests and weeds.
- In relation to Matter 24 (page 12), it is unclear how the Act will interact (align with) current legislation, such as the formation of Management Agreements under the *LSA Act* or other Australian Government land agreements / legislation such as Bio Carbon.
- Will CAR (comprehensive, adequate, and representative) principles be reflected in the 30/30 plan to ensure areas of high biological diversity and different ecosystem types are protected? There is great potential to increase the SA's conservation estate with protection of land in the semi-arid zone, however, this is not sufficient to protect SA's biological diversity.

24. *The Act could seek to enable additional incentives, including the provision of financial and technical assistance, to landholders who have entered into formal agreements for conservation.*

This is essential. Private landholders need expert ecological advice and support as well as money to implement effective management.

- To date, support for Heritage Agreements has occurred in a random and inconsistent way, meaning that gains are often lost due to lack of follow up support. An ongoing culture of collaboration and ongoing availability of experienced field ecologists would go a long way to achieving more sustainable biodiversity gains across the state.
- Facilitating changes to allow Heritage Agreements on pastoral leases (currently administered under the *Pastoral Land Management and Conservation Act 1989*) would be beneficial. More staff to assist landholders with Heritage Agreements - both on ground and in the office – are needed.

Topic 9 – Biodiversity – a shared responsibility

SUPPORT

25. *The Act could be clear about the respective roles and responsibilities of the community by introducing a 'biodiversity duty of care', which makes the protection of biodiversity a continuous legal and social responsibility.*

Supported.

26. *If the inclusion of a 'biodiversity duty of care' in the Act is supported, it could be tied to relevant administrative powers and to civil penalties.*

We support this, and believe this will be the key to this new Act as it will actually have an instrument in place to enforce duty of care for biodiversity, tied to relevant administrative powers and to civil penalties.

- A new duty of care would need to dovetail with existing compliance requirements under other legislation, or require legislative amendment. There is a level of uncertainty about how this might work in practice.
- Who will be responsible for compliance, enforcing civil penalties?

27. *The Act could include provisions so that guidelines and regulations can be made to ensure South Australians understand and comply with a 'biodiversity duty of care' obligation.*

We agree with the establishment of 'General Duty of Care' obligation.

- Improving understanding of Duty of Care among the general population will be essential. Much of the community focus on large trees, placing lesser values on the supporting ecosystem such as grasses and shrubs. Regional partners including local government have a significant role to play in helping to educate the public about local ecosystem elements and values. Local government and real estate agents could be supporters of the Act, in assisting to increase awareness of the duty of care, with consideration of recourse for LGAs where illegal clearance remains high.

- It is important that the implementation of the duty of care is practical and doesn't result in perverse outcomes, such as people not wanting to own native bush. As people age they are not physically as capable to look after their bush, it is important that new obligations don't discourage retirees or busy people from owning native bush. Voluntary standards and codes of practice (a soft approach) will need to be supported by experts to be effective, but incentive and reward is preferred over punishment.
- The Act needs to consider how a duty of care will be applied to the management of existing / long established threats (for example, feral cats) and how responsibilities will be managed where they interact with other Acts.

Topic 10 – Consequences of doing the wrong thing

SUPPORT

28. *The Act could seek to align sanctions and penalties for similar offences, having consideration where possible of levels imposed through other jurisdictions.*

- We support this and the need for stronger penalties which reflect the actual costs of impact. The value of habitats being lost far exceeds the current penalties. We agree that SA legislation related to biodiversity should be more consistent with other states where it makes sense e.g. similar penalties for offences.
- There is also a need for more investment in auditing and compliance, with more staff on the ground to connect to landowners.

29. *The Act could enable suitable non-government parties to commence proceedings for offences under appropriate circumstances.*

- It is not clear why this provision is required. Is this typically prevented in (other) legislation?

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

- Making good and repairing damage to biodiversity is important, and the costs need to be a realistic reflection of what will be required. Transparency over these costs may provide a disincentive to illegal clearance.
- Inclusion of community service penalties (such as weed control or rehabilitation of land) in addition to monetary penalties could be considered.

Other matters for consideration

- Establishment of a dedicated compliance unit within DEW is recommended, and if compliance roles are to be shared across agencies/ statutory bodies, roles and responsibilities need to be clear.
- What are the consequences for public land managers who are, or are perceived to be, not meeting management obligations or duty of care in respect to the management of threatened species within the land they manage?