



**Aboriginal
Legal
Rights
Movement**

Submission: Aboriginal Legal Rights Movement

To: Biodiversity Coordination Unit
Department for Environment and Water South Australia
biodiversityact@sa.gov.au

Re: Draft Biodiversity Bill 2025

Date: 6 March 2025

Acknowledgement of Country

Aboriginal Legal Rights Movement (ALRM) acknowledges the Kaurna people as the custodians of the greater Adelaide region, from which this submission is being forwarded.

ALRM recognises that the cultural and heritage beliefs are still as important to the living Kaurna people today and pays tribute to elders and leaders past, present and emerging.

We pay our respects to the cultural authority of Aboriginal people from other lands & waters of South Australia and Australia.

About the Aboriginal Legal Rights Movement

Aboriginal Legal Rights Movement is an independent Aboriginal community controlled organisation governed by our all Aboriginal Board. ALRM is also a law practice for the purposes of the *Legal Practitioners Act* of South Australia and this submission is very much informed by the work of our various law practices and programs.

Introduction to this submission

The South Australian Department for Environment and Water has engaged extensively with First Nations peoples and organisations prior to the release of the Draft Biodiversity Bill 2025 and further since its release on Your Say. ALRM was pleased to participate in the Draft Biodiversity Bill First Nations Workshop on 25 February 2025 and now presents this submission.

We have drafted our submission in a table format in which we set out both the draft provision of the Bill we refer to and our submission regarding the provision, we trust this will assist. We write from the perspective of the impact of the Bill on Aboriginal people and thank you for considering our submission.

Section of the Draft Biodiversity Bill	ALRM Comment
Section 3 – Definition: Culturally Significant Biodiversity Entity means a native species or ecological community to which some or all First Nations persons attribute cultural value and which is critical to their relationship with, and adaptation to, Country that is— (a) identified by the relevant First Nations persons as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy referred to in section 161(4)(b); and (b) recognised by the Minister as a Culturally Significant Biodiversity Entity in accordance with the biodiversity policy referred to in section 161(4)(b);	We hear the concerns that the Minister is the one empowered to either validate or not validate a First Nations identified Culturally Significant Biodiversity Entity. We consider too much scope is left to the regulations here and it would be very unfortunate if a Minister went against First Nations advice on this issue. We consider it would be worth adding an additional clause to say something to the effect that the Minister will respect and follow advice from the First Nations EBDC.
Section 4—Interaction with other Acts (1) Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act. (2) In the event of an inconsistency between this Act and the Fire and Emergency Services Act 2005, the Fire and Emergency Services Act 2005 will prevail to the extent of the inconsistency.	Native Title Rights: We understand that the intention is that the Biodiversity Act will not impact Native Title Rights. We strongly submit that if this indeed is the intention, it be set out clearly here in section 4. ALRM has had experience of other legislation overriding Native Title rights by implication, although that wasn't the intention in its initial drafting. We consider that the only way to make clear the intention and avoid any doubt is to insert a provision that clearly states that: (a) in the event of an inconsistency between this Act and the <i>Native Title Act 1993 (Cth)</i>, the <i>Native Title Act</i> will prevail to the extent of the inconsistency; and (b) in the event of an inconsistency between the operation of this Act and an acknowledged native title right or interest, the latter will prevail. We strongly seek such a provision be included.
Section 7 – Objects The objects of the Act are - s7(d) to recognise and respect that First Nations persons are the enduring	ALRM recognises that this object is positive.

custodians of the lands and waters of the State and have a fundamental role in, and knowledge of, caring for Country, including in relation to conserving and restoring biodiversity; and	As suggested by others in the First Nations Engagement, could this perhaps be placed earlier in the list of objects? We recognise the first object of the Act is likely to be as set out in s7(a) but perhaps s7(d) could be moved up to (b).
Section of the Draft Biodiversity Bill	ALRM Comment
Section 8 – Principles A person or body engaged in the administration of this Act must seek to give effect to the following principles: (c) that First Nations people, as traditional owners with a strong connection to Country, will be engaged in a way that is respectful and mindful of cultural sensitivities and the historical and persisting impacts of colonisation; (d) that decisions should be based on the best available evidence, including scientific evidence, First Nations' knowledge and local knowledge, and be made having regard to the potential long-term, medium-term and short-term impacts of climate change.	ALRM recognises positive principles set out in this section but puts forward an alteration to section 8(c) so it reads as follows: That First Nations people <u>are treated with respect</u> as traditional owners with a strong connection to Country. Engagement will be respectful and mindful of cultural sensitivities and the historical and persisting impacts of colonisation <u>which has brought devastating consequences for First Nations peoples and Country.</u> Like section 7 above, we suggest Principle (c) of section 8 regarding First Nations people could quite easily become principle (a) which will underline the respect. In relation to (d), we suggest this also be ordered differently, so that it places First Nations knowledge then scientific evidence.
Section 10—First Nations' knowledge A person or body engaged in the administration of this Act must, as far as is practicable, seek, consider and apply First Nations' knowledge (where it is available and endorsed by the knowledge holders), in the following: (a) the identification and management of Culturally Significant Biodiversity Entities; (b) preparing and reviewing the State Biodiversity Plan; (c) preparing and implementing plans and responses to the listing of threatened species, threatened ecological communities and ecological entities, and the declaration of critical habitat, in accordance with Part 6; (d) preparing guidelines or biodiversity policies under this Act;	We suggest it would be better if this reads: A person or body <u>must make all reasonable efforts</u> to seek First Nations knowledge and where it is available and endorsed by the knowledge holder, consider and apply it, at all times respecting the sensitivity of the sharing of cultural knowledge, in the following:

(e) in the case of the Scientific Committee—carrying out an extinction inquiry under section 80.	
Section of the Draft Biodiversity Bill	ALRM Comment
Division 2 – Statutory Bodies	ALRM are pleased to see and endorse an all First Nations committee for the First Nations Expert Biodiversity Committee and at least one First Nations member on all other committees.
Section 77—Action plans (1) The Minister may prepare and publish on the Biodiversity Register an action plan in respect of a threatened species, threatened ecological community, listed ecological entity or critical habitat. (2) In preparing an action plan, the Minister must— (a) take into account any advice provided by the Scientific Committee; and (b) undertake such consultation on the proposed plan as the Minister considers appropriate; and (c) have regard to any submissions received during the consultation period. (3) If an action plan relates to a native species or ecological community that is a Culturally Significant Biodiversity Entity, the Minister must undertake such engagement with First Nations persons and groups as the Minister considers appropriate, having regard to any relevant policy or document published under this Act.	ALRM notes that in section 77, the Minister must take into account any advice provided by the Scientific Committee (s7(2(a)) but only need 'undertake such engagement with First Nations persons and groups as the Minister feels appropriate' in relation to a Culturally Significant Biodiversity Entity. (s7(3)) We submit that given the process required to have an entity recognised as a Culturally Significant Biodiversity Entity, it would be more respectful to say words to the effect that: 'the Minister must undertake engagement with First Nations persons and groups that recognise the species or ecological community as culturally significant and with the FNEBC.'
Section 114—Application to ERD Court for enforcement (1) The following persons may apply to the ERD Court for an order to remedy or restrain a breach of this Act: (a) the Minister; (b) in the case of unlawful clearance of native plants—NPCAC; (c) a person who owns or who has any other legal or equitable interest in land that has been, or will be, affected by the breach; (d) in the case of a contravention of a biodiversity agreement or a conservation agreement—a party to the agreement; (e) in the case of an offence involving a Culturally Significant Biodiversity Entity—any affected First Nations person;	We appreciate the inclusion of clauses in section 114(2)-(13) to ensure that First Nations people impacted have standing to apply to the ERD Court. We can see that thought has been put into the drafting of this section, including in relation to who can be heard in proceedings, ensuring impacts on First Nations people are considered in damages and in the issue of limiting costs. ALRM appreciates that. One thing we note is that in s114(1) (c), (d) and (e) the words 'breach', 'contravention' and 'offence' are used respectively. It would be worth reconsidering if for s114(1)(e) it is too onerous to list 'offence' and should instead be 'breach'.

(f) with permission of the Court—a First Nations person who has a cultural or spiritual connection to the land that has been, or will be, affected by the breach; (g) other than in respect of an application to restrain or remedy a breach of the general duty in section 11—any other person with the permission of the Court.	It could otherwise be 'breach, contravention or offence'. This would then capture the necessary breach.
Section of the Draft Biodiversity Bill	ALRM Comment
Section 128 – Sentencing	ALRM appreciates the inclusion here of considering the impact on First Nations Peoples in considering any sentence.
S153 – s154 re Hunting 153—Offence to hunt Subject to this Act, a person must not hunt, or have possession of any firearm or device for the purpose of hunting unless authorised to do so by permit granted by the Minister under Part 9. Maximum penalty: \$20 000. Expiation fee: \$1 000. 154—Hunting by First Nations persons (1) This section does not apply to the taking of— (a) an animal of a prescribed species; or (b) an animal by a prescribed means or in prescribed circumstances. (2) Nothing in section 153 prevents a First Nations person from hunting for the purposes of satisfying their non-commercial personal, domestic or communal needs through use of the hunted animal as food or for a cultural or spiritual activity. Note— In hunting in accordance with this section, a First Nations person is subject to laws of general application.	We understand that the intention is that First Nations peoples are not required to obtain a hunting permit. It would be useful if this was made clear in s153 and 154.
Section 161—Biodiversity policies (1) The Minister may make biodiversity policies for the purposes of this Act. (2) The Minister may only make a biodiversity policy if satisfied that the provisions of the policy are consistent with the objects and principles of this Act. (3) Without limiting the matters that may be set out in a biodiversity policy, a biodiversity policy may— (a) set out matters to be taken into account in determining matters under this Act,	We note that the Minister must make biodiversity policy in relation to a number of issues set out in s161(4). We note that s161(7) says that when making policy in relation to s161(4)(a) and (b) the Minister 'must seek advice on the policy from the FNEBC and comply with any requirements prescribed by the regulations.' We note that there isn't the same requirement to seek advice from First Nations peoples in relation to s161(4)(f) cultural burning by First

including in relation to measures that may be reasonable measures for the general duty, or what constitutes harm to biodiversity; or (b) set out requirements, standards, goals or guidelines.

(4) Without limiting the generality of subsection (1), the Minister must make a biodiversity policy relating to each of the following: (a) the consideration and application of First Nations' knowledge; (b) the identification, recognition and management of Culturally Significant Biodiversity Entities; (c) the significant environmental benefit scheme (the SEB policy); (d) calculating civil penalties; (e) the approach to be taken to compliance and enforcement; (f) cultural burning of native plants undertaken by First Nations. (5) Without limiting the content of the SEB policy, the SEB scheme set out in that policy must provide that a significant environmental benefit may be achieved by— (a) measures undertaken, or to be undertaken, by the person; or (b) application of the value of an environmental benefit credited to the person under section 57 or assigned to the person under section 58; or 25 (c) measures undertaken by an accredited third party provider, on behalf of the person, in accordance with section 59. (6) A biodiversity policy may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the policy as in force from time to time or as in force at a specified time. (7) Before making a biodiversity policy referred to in subsection (4)(a) or (b), the Minister must seek advice on the policy from the FNEBC and comply with any requirements prescribed by the regulations. (8) The process for making a biodiversity policy is as follows: (a) the Minister must prepare a proposed biodiversity policy; (b) the Minister must undertake consultation on the proposed biodiversity policy with the public and any prescribed entities for a period of at least 30 days; (c) the Minister must have regard to any submissions received during the consultation period; (d) if, following consultation, the Minister considers that

Nations peoples. We consider a subsection similar to s161(7) should be included for consulting with First Nations peoples in relation to cultural burning.

We also suggest that when consulting in accordance with s161(8), it should specify that the Minister be required to consult each of the statutory bodies set out in Division 2.

Finally, we are concerned that s161(8)(b) sets out a minimum of 30 days for consultation on draft policy. Realistically, this is a short time for consulting, especially if the draft policy is put out over Christmas time or at a time where people are on cultural duties or on annual leave. We would suggest at least 6 weeks for any consultation.

the biodiversity policy (whether as proposed or incorporating changes arising from consultation) should be made, the Minister must adopt the biodiversity policy by publishing it on the Biodiversity Register.	
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We thank you for the opportunity to provide this submission to you and the extension of time given to those participating in the First Nations workshop to do so.

We are most happy to assist in any way we can and may be contacted at

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We thank you for considering our submission on the Biodiversity Bill 2025 and recognise and thank you for your efforts in implementing our feedback provided to date.

Signed:

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