‘Developing a Biodiversity Act for South Australia’

Discussion Paper comments by Caroline Paterson, February 14, 2024

Thank you for the opportunity to comment at the commencement of drafting this critical piece of Legislation for South Australia. I make these comments as a South Australian resident, born on Ngarrindjeri Country into an agricultural family, and having lived and worked on Ngarrindjeri, Ramindjeri, Narunnga and Kaurna country in this state. I pay my respects to Elders past and present to First Nations people across Australia.

I hold a Bachelor degree in Conservation and Park Management UNISA and after a multi-sector work history across Australia completed almost 20 years as a National Parks and Wildlife SA Park Ranger and Warden, in three regional areas of South Australia. I am now employment in the not-for-profit Environment sector and own a property on Kangaroo Island, which is managed for biodiversity conservation.

Topic 1 – Biodiversity and SA’s First Nations people

- Supported in theory, however we need to recognize regional complexities and perceptions, for example the Kangaroo Island Region. As with all of Australia we have multiple First Nations people with historic and ongoing connection to the island, yet a large number of non-Aboriginal people refusing to accept it. This can cause difficulty in engagement and consultation with First Nations leaders, and is usually not factored into project or activities that may be significant to First Nations people.
- The Biodiversity Act would be a great piece of legislation to have as the first item on the agenda for working with the elected representatives for our new Voice to Parliament.

Topic 2 – Avoiding impacts

- The importance of avoiding impacts to functioning ecosystems, habitat structure and species composition needs to be included, in addition to individual species.
- The impact of cumulative threats needs to be identified as a high priority threat.
- The Act could include an inverted pyramid titled ‘Biodiversity Value’ or similar alongside the ‘Mitigation Hierarchy’ pyramid. The hierarchy of ‘Biodiversity Value’ would have ‘low biodiversity value’ at the top (next to the ‘offset’ mitigation method, then medium, high, and very high (next to the ‘avoid’ mitigation method. This would assist in decision making and help better protect functioning ecosystems on public and private lands.
- In my experience, our important protected area networks do not a get the level of protection required under current State Legislation including the National Parks and Wildlife Act (1972) and Wilderness Protection Act (1990), and their associated Regulations.
- The SA Government is in the process of changing Development Plans across the State. These plans will form the direction for land use, infrastructure and development in SA until 2050. Biodiversity conservation and environmental best practice and adherence to this Act must be included in the new plans before they are adopted.
- There is a need to avoid impacts in areas that are recovering from severe weather events (such as wildfire, floods or drought) needs to be identified, and provided increased protection to allow regeneration of habitat and recovery of populations and ecosystems.

Topic 3 – Transparent decision making

- We need the Biodiversity Act SA and associated Regulations to be adhered to at the commencement of all planning across State and Local Government, on Public and Private Lands. The provision of early advice and intervention will help proposed developments and land use changes align with the Act before they start. Currently many large projects are granted 'Major Project Status' which pushes them through. In the case of council by-laws, changes are slipped through without public consultation.
- I reiterate that State Government is in the process of changing Development Plans across the State. These plans will form the direction for land use, infrastructure and development in SA until 2050. Biodiversity conservation and environmental best practice and adherence to the Biodiversity Act must be reflected in Regional plans before they are adopted for our regions.
- The ESD definition must be clear to ensure that it includes location, the most ecologically sustainable designs are not appropriate if situated on vegetated dunes, coastal headlands or threatened species breeding refuge (refer to Flinders Chase Private Development and Southern Ocean Lodge redevelopment, Cliffs Golf Course).

Topic 4 – Threats to Biodiversity

- The National Parks and Wildlife Act SA (1972) is outdated and overdue for revision.
  - No species have been uplisted in SA since Black Summer, despite Federal Threatened Species list amendments.
  - Fungi, Terrestrial/Marine/Freshwater invertebrates, Freshwater/Marine fishes have no protection under current SA Legislation, (despite some having IUCN Red List threatened species status)!
- The Biodiversity Act needs to provide protection measures across biodiversity and ecosystems, including the acknowledgment of the intrinsic value and status of all taxa and functioning ecosystems.
- Key Threatening Processes need to be included in the Act with mitigation methods led by State and Local Government and enabling strategies identified for landholders and communities. See EPBC Act http://www.environment.gov.au/cgi-bin/sprat/public/publicgetkeythreats.pl but of significance due to lack of commitment to mitigation and Regulations are;
  - Dieback caused by the root-rot water mould (*Phytophthora cinnamomi*)
  - Fire regimes that cause declines in biodiversity
- There are a number of threats that are missing from the discussion paper
  - Disease and biosecurity
  - Changing land use for housing and development
  - The constant push to increase visitor numbers and open up access to wild places to support 'nature based' tourism and economic growth
  - Increased use of private helicopters, planes and drones over species breeding refuges (Fly Neighborly Agreements require updating)
  - Inappropriate fire management regimes
- The use of 'Bushfire' is not supported in the document as many fires start on agricultural land and burn in to bush. 'Wildfire' is a better term that includes both grass and forest fuel types across the landscape.

- The use of the term 'Natural Disasters' is not supported as many wildfires and severe weather events are now being driven by human induced changes to our climate. This term only serves to support climate change sceptics
- Cumulative threats need to be identified as a higher level of threat
- The Australian Government and all states and territories in Australia have agreed to establish a 'common assessment method for the assessment and listing of threatened species'. Adoption of this will bring South Australia into alignment with the rest of Australia for consistency and efficiency https://www.dcceew.gov.au/environment/biodiversity/threatened/cam#what-is-the-common-assessment-method

Topic 5 – Assessing the risk of extinction

- The Act needs to provide protection measures across biodiversity and ecosystems. This would include acknowledgment of the value and status of all taxa.
- Fungi, Terrestrial/Marine/Freshwater invertebrates, Freshwater/Marine fishes have extraordinarily little protection under current SA Legislation
  (despite some having IUCN Red List threatened species status).
- The assessment of threat status for species needs to be based on the IUCN Red-listing criteria as they are rigorous and globally accepted
- The Australian Government and all states and territories in Australia have agreed to establish a 'common assessment method for the assessment and listing of threatened species'. Adoption of this will bring South Australia into alignment with the rest of Australia for consistency and efficiency https://www.dcceew.gov.au/environment/biodiversity/threatened/cam#what-is-the-common-assessment-method
- Assessments must include analysis of all reputable Australian data sets, in addition to BDBSA
- A scientific committee that is not exclusive to DEW staff needs to be set up to ensure that assessments and decisions are based on scientific evidence and transparent to the community
- In the absence of long-term data or knowledge of impacts, the precautionary principal must apply
- Following assessments, long-term, standardized monitoring programs for species, assemblages and habitat quality is required as a funded commitment to identify trajectories.

Topic 6 - Biodiversity planning and reporting

- Regional plans that sit under but align with the Act would help to ensure that local threats, landscapes, and biodiversity values are effectively maintained and protected based on regional nuances.
- Long-term, standardized monitoring programs for species, assemblages and habitat quality is required as a funded commitment to identify trajectories and evaluate success.

Topic 7 – The benefits of information

- Investment in coordination and communications across Australia would ensure efficient use of resources and sharing of lessons learned to maximise impact of actions

- Timely data sharing with other organizations including NGO's is critically important, with Australia wide data bases containing large volumes of biodiversity data. Interpretation of data should be done carefully in collaboration with species experts.
- Long-term, standardized monitoring programs for both species and their habitats is required to detect changes over time
- Consulting and investing in existing long-term monitoring programs, including those delivered by specialist Non-Government Organisations would support continuity and consistency of long-term databases.
- New policy development that advises on methodologies and interpretation must not jeopardise established and long-term programs that are effectively monitoring and evaluating biodiversity measures to inform adaptive management actions

Topic 8 – Achieving 30 by 30

- There is a lack of trust in State and Federal Government, with many significant private conservation properties not under SA Native Vegetation Heritage Agreements
- Consideration of incentives for properties that meet conservation management requirements should be supported, such as those being developed by the Australian Land Conservation Alliance 'Protecting and stewarding for nature 2030 Strategy' https://alca.org.au/about/
- Identify species breeding refuges and take steps to ensure that it and other suitable habitat is protected for that purpose, in alignment for other existing recovery plans or Conservation Advice for example there are currently large areas of coastline comprising significant intact habitats and suitable breeding refuges on the open market;
    - The SA Recovery Plan for Eastern Osprey and White-bellied Sea Eagle includes Recovery Actions to reduce disturbance to breeding territories. 1. Reduce disturbance to breeding territories; 1.1 Adopt and implement the breeding refuge buffer zone disturbance mitigation concept as a primary habitat management model in South Australia; 1.1.4 Identify and implement legislative and or policy or other formal mechanisms (eg formal protection) to afford greater protection to currently occupied sites and extend protection to formally occupied sites and potential habitat
    - The EPBC Act Threatened Species Conservation advice for the Kangaroo Island Southern Emu-wren and Kangaroo Island Western Whipbird (DCCEEW 2021)states that 'Habitat critical to survival should not be cleared and the net amount of habitat should be maintained and/or increased and 'Any know or likely habitat should be considered as habitat critical to the survival of the subspecies. Areas not currently occupied by the subspecies (because they have been burnt), but should become suitable again in the future should also be considered habitat critical to survival'
- The Act must consider more than just the protection status of areas, but allow for investment in the resources, capacity and coordination required to manage, monitor and evaluate sites to ensure they are meeting their biodiversity targets.
- Reviewing the effectiveness of current tenure and management regulations will enable the department to identify minimum requirements for protecting biodiversity.

Topic 9 – Biodiversity – A shared responsibility

- I look forward to seeing the Nature Law reforms rolled out in both Federal and State Government, which will also direct action by Local Government and the broader community
- I would like to see consideration of a Biodiversity Levy, directed at those who profit most from biodiversity such as the tourism, agriculture and development sectors. The return of a percentage of profits could be used to support the delivery of the Act. This is not an offset – sadly the SA Native Vegetation Act, allows the removal of functioning ecosystems with an offset of 'revegetation or remediation projects' elsewhere in the region. In-tact and functioning ecosystems are unable to be restored through human intervention.
- The Act must be written in clear and unambiguous language so that a duty of care is well defined and understood by all, and there is accountability, compliance and links to consequences
- There is an opportunity to improve awareness of threats and create best practice advice for key agencies and organisations whose impact can be high on biodiversity, for example, tourism and accommodation operators.

Topic 10 – Consequences of doing the wrong thing

- The Act must remove the loopholes and option for self-referral, as is current in the EPBC Act. Biodiversity conservation needs to be enshrined by law, not optional, if this Act is to be a success.
- Enforcement of the Act and Regulations is essential. This relies on a commitment for recruitment, training and development for Wardens to work on behalf of this and other nature-based legislation. Education and interpretation are important tools, but need to be supported by appropriate penalties.
- We require an Act with strong, effective compliance and penalties around serious wildlife crimes and native vegetation offences. The Act is an opportunity for consistency in penalties for wildlife offences that may occur on public land managed by different authorities (e.g. local and state government)

There is still a lot of work to do, but thank you for committing to a Biodiversity Act for South Australia. I look forward to seeing this important part of Australia's commitment to Nature Law Reform progress to a draft document in the near future.

Kind Regards,

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