SAVE OUR WILDLIFE FOUNDATION INC.

Submission to the

Government of South Australia

in response to

Public Consultation on Developing a Biodiversity Act for South Australia

February 2024

Submission in response to Public Consultation on Developing a Biodiversity Act for South Australia

Save Our Wildlife Foundation Incorporated (SOWFI) welcomes the opportunity to provide this submission as part of public consultation on the development of a new Biodiversity Act for South Australia.

If there are any questions or you would like further information, please contact Sophie Porter, Chairperson, SOWFI Board via email: [redacted]

Who we are

SOWFI was established in South Australia in 2018 by a group of wildlife rescuers and carers looking for an organisation that provided science-led, best practice training, an objective and active management structure, and both professional and personal support to members in pursuit of the rescue, rehabilitation and protection of South Australia's native wildlife.

Since its establishment, SOWFI has grown to an organisation of more than 100 volunteers across the Adelaide and Mount Lofty areas with networks across all regional areas. As a 100% volunteer run organisation, our volunteers perform a wide range of roles to support the rescue, rehabilitation, advocacy and conservation of native wildlife and its habitats.

In 2022/23, SOWFI's 24/7 Wildlife Rescue and Advice Hotline received over 5,500 calls from members of the public. We conducted 14 group training sessions, and rescued and rehabilitated over 825 native creatures, including several species recognised as rare or in decline. SOWFI also contributed to the restoration of native habitats by leading several tree plantings, with SOWFI's volunteers planting over 500 native trees last year.

We collaborate with experts across the sector to ensure that the advice and care we provide is not only evidence-based best practice but gives native wildlife the best opportunity to thrive in South Australia.

SOWFI is passionate about protecting and caring for South Australia's native wildlife.

Overview

SOWFI recognises and supports the need for establishment of a new Biodiversity Act in South Australia. The new Act should have the objective of safeguarding the state's biodiversity, ensuring its long-term future.

Currently, with the lack of protections, there has been a reduction in biodiversity ever since European settlement. The lack of coordinated long term planning and consideration of environmental impacts has seen significant land clearing and fragmentation of native flora resulting in several extinctions and the continuing decline in many wildlife species.

On the ground, wildlife rescue and rehabilitation organisations such as SOWFI have seen the prevalence of disease in our native wildlife, for example stress induced exudative dermatitis in brushtail possums who have been pushed into smaller and smaller living spaces. Koalas are often found in locations where there are little to no eucalypts and are impacted by dogs as they cross yards to gain access to food trees. Ringtail possums are also being impacted by fragmentation and loss of understory plants which increases risk of predation, reduction of nesting locations and increases heat stress incidents.

However, we know that the impacts on biodiversity can be reversed. For example, several benefits of increased biodiversity resulting in increased wildlife numbers can be seen in locations such as the Laratinga Wetlands in Mount Barker.

We are pleased to provide the following topic-specific feedback in response to the discussion paper.

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

SOWFI strongly **supports** increasing involvement of First Nations South Australians in biodiversity matters. We understand the deep connection that First Nations people have with Country, a connection that has endured for more than 65,000 years.

As part of this connection, we praise the care and management that First Nations peoples provide to the land and acknowledge there may be opportunity to respectfully learn from these practices in supporting the future of South Australia's biodiversity.

As part of this learning, the Act should consider best practice biodiversity initiatives already in place such as ranger programs and initiatives managed by Traditional Owners. The Act should create a framework to support application and delivery of these learnings without creating additional barriers.

Topic 2 – Avoiding impacts

SOWFI strongly **supports** that society's actions should avoid negative impacts on biodiversity as much as possible.

We acknowledge the use of the *mitigation hierarchy* as a tool to frame this principle and that it is currently in use by the Department of Environment and Water (DEW) in some of its decision making. While SOWFI supports the need to promote avoidance and minimisation of impacts to biodiversity, it is recommended a review of available evidence into whether use of the *mitigation hierarchy* has delivered desired results for DEW, including the protection and preservation of the environment.

Matters for consideration

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.*

SOWFI **supports** the Act prioritising avoidance and minimisation of impacts to biodiversity. However, while the Act must make clear that any negative impacts to biodiversity are a last resort, it must also couple this with the requirement any negative impacts are adequately offset. Any offsetting policies must be regularly reviewed and backed by the most current best practice evidence available, with the option to offset off-limits in areas of high conservation value. Any offset scheme must adopt a clear and objective environmental standard to *improve* biodiversity outcome with like-for-like offsetting requirements to be tightened, with limited use of indirect offsets allowed.

To underpin offsetting, the Act should include a set of scientifically-robust principles to govern the operation of offsetting.

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

SOWFI **supports-in-principle** the Act requiring evidence providing justification on how avoidance and minimisation have first been addressed, noting that further analysis should be conducted to determine the efficacy of the mitigation hierarchy's use.

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

SOWFI **supports-in-principle** the Act requiring that any action having impacts to biodiversity must leave biodiversity in a measurably better state than it was before.

However, SOWFI is concerned that *measurably better* could be open to ambiguity and abuse. To address this, the Act could require that the only acceptable measurements of biodiversity are those which have been approved by the proposed scientific committee. Prior to any impactful action being taken, measurements must be taken which establish a clear and unambiguous baseline.

The Act should also require parties responsible for taking impactful actions to clearly provide an acceptable timeline as to when biodiversity will be considered *measurably better* with further measurements taken at that point in time.

Topic 3 – Transparent decision-making

SOWFI strongly supports the new Act to enable transparency in decision making. Transparent decision-making is a hallmark of good government. Not only does it support building trust and confidence in the public system, it supports holding decision-makers to account, and allows the community to understand not only how and why decisions are made but also reflect on how they impact the environment around them.

Matters for consideration

5. *The Act could require government maintain a public register to ensure decisions made that impact biodiversity are disclosed.*
6. *The Act could require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed.*

SOWFI **supports** the requirement that the government maintain a public register to ensure decisions made that impact biodiversity are disclosed. This public register must be regularly updated and accessible to the community.

It has been SOWFI's experience there are at times a lack of transparency on decisions that impact on the state's biodiversity, including decisions made around the removal of significant trees and how impacts of fauna have been considered. The new Act should require decisions to consider the biodiversity impacts in full, including impacts on fauna. Where impacts are expected, the Act should require an appropriate qualified and independent expert to input into the decision and risk management. For example, this may include the presence of a native wildlife carer at the removal of any tree where marsupials have been previously sighted.

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.*

SOWFI **supports** the Act incorporating a clear definition of Ecologically Sustainable Development (ESD), supported by a process so that ESD principles are required in the context of decision-making about biodiversity.

SOWFI understands the need to balance several elements when defining ESD and strongly urges robust consultation on its definition during the legislative drafting process.

Topic 4 – Threats to biodiversity

As a leading native wildlife rescue and rehabilitation organisation, SOWFI is well aware of the threats to South Australia's biodiversity. With the continuing urbanisation across Adelaide and other urban centres, SOWFI has seen an increase in calls seeking the rescue or provision of advice on native wildlife in distress.

While there is a need to address Australia's current housing crisis, this must be done responsibly and in consideration of the impacts on biodiversity. For example, the expansion of infrastructure such as roads and new housing developments do not adequately account for the impacts on the natural movement of wildlife across the environment. These impacts have seen a spike in native wildlife being killed or injured on roadways, by dog and cat attacks, and through electrocution.

The new Act should require more research and innovation to reduce threats of urbanisation such as through use of natural corridors, wildlife bridges and underground powerlines. Impacts of dogs and cats suggest the Dog and Cat Management Act should also be reviewed in the context of the threats they post to biodiversity.

Of course, urbanisation is not the only threat do biodiversity. Climate-fuelled disasters, such as bushfires also pose a significant threat.

These threats last well beyond the fire event itself. For example, the impacts of the 2019/20 bushfires on biodiversity are still being felt. The fire not only burnt huge areas of the national park, but the resulting blue gum plantations have now dropped seed requiring volunteer efforts to pull growing blue gums out of native conservation areas.

In addition, while SOWFI understands the need to prioritise resources in response to an emergency, the new Act should require adequate resourcing to protect high biodiversity areas even if they do not contain human infrastructure.

Matters for consideration

8. *The Act could provide for a framework for the identification of threats to biodiversity.*
9. *The Act could include statutory obligations for actions to address threats to biodiversity.*

SOWFI **supports** the Act providing a framework for the identification of threats to biodiversity, and the inclusion of statutory obligations for actions to address identified threats. This framework must also take into consideration cumulative impacts on biodiversity overtime.

SOWFI suggests utilising the proposed Scientific Committee or its equivalent, to identify threats to biodiversity, similar to the process in New South Wales and identification of *key threatening processes*.

Once the Scientific Committee identifies a threat to biodiversity, the Department for Environment and Water, with input from the Scientific Committee and other key stakeholders, must develop a threat abatement plan. The Act should require such plans to be reviewed for effectiveness and relevance at regular intervals and require to be supported through adequate government funding.

Topic 5 – Assessing the risk of extinction

As part of a need to protect biodiversity, it is vital that government and the community understand species which are at greatest risk of extinction. Armed with this knowledge (and supported by frequent and accurate reporting), government and organisations can take the appropriate conservation actions to mitigate future losses.

Matters for consideration

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

SOWFI **supports** the establishment of a Scientific Committee to guide listing, assessment and review extinction risk of diversity. The Act should require that the Committee be adequately resourced and funded to enable it to complete its work.

While it is recognised appointment to the committee is likely to be a ministerial appointment, to ensure integrity and effectiveness of the proposed Scientific Committee, the Act should provide robust requirements for its membership. These requirements should ensure membership includes adequate expertise on and knowledge about contemporary biodiversity issues and actions to both protect and restore it.

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

SOWFI **supports** the Act providing clarity on the types of native species that can be considered threatened, the creation of a formal listing, assessment and review process, and the adoption of a streamlined process for list amendments to ensure currency.

However, to do this, the Act must require regular surveys and surveillance of biodiversity. For example, the last full biodiversity survey in the Mount Lofty Ranges was conducted in 2000-01. Without more contemporary data, impacts on biodiversity cannot be adequately monitored leading to missed opportunities. For example, in Western Australia, ringtail

possums were identified as being endangered too late, and have required significant investment to save the remnants of the population.

SOWFI recommends the Act should also include scope for provisional listing to provide an important safeguard for species that need to be listed on an emergency basis. Provisional listing could be used following a major event that has significantly impacted on the conservation status of a species, such as a bushfire event.

14. The Act could ensure that programs implemented to address biodiversity decline are evaluated.

SOWFI **supports** that the Act require evaluation of programs implemented to address biodiversity decline. To support this evaluation, the Act must ensure that appropriate data and information is collected and available for analysis (see topics 6 and 7 of this consultation).

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

SOWFI **supports** the Act requiring examination and reporting on causes and actions that contributed to a new extinction, where it occurs. The Act should also require this examination to consider the Act itself, and whether further amendments are required to strengthen the state's response to protecting South Australian biodiversity from future extinction events.

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

SOWFI **supports** the establishment of a framework to document measures to improve the status of biodiversity assessed as threatened. The Act should also require regular public reporting of this information.

Topic 6 – Biodiversity planning and reporting

There is a growing need for state level planning to establish and work towards South Australian biodiversity priorities.

Matters for consideration

17. The Act could mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on.
18. The Act could require any state-wide plan or strategy to be regularly reviewed and updated.

SOWFI **supports** the Act mandating a state-wide biodiversity plan where measurable targets are set and regularly reported on. The Act should also require the plan to be regularly reviewed and updated to ensure currency.

It is recognised that the state's 2018 State of the Environment Report recommended the development of a biodiversity action plan, and that the government of the day's response was that the Department was undertaking analytical work to identify and define priority actions. Unfortunately, five years on from the release of this report, the state still lacks such a plan.

The plan should detail a coordinated cross-government, cross-sectoral and cross-community response, that brings together the latest evidence-based approaches to conserve and improve South Australia's biodiversity.

Topic 7 – The benefits of information

SOWFI agrees that a robust information base is essential to underpin the effectiveness of a new Act. Quality information will support best-practice decision, identifying what initiatives work and those which are less effective, as well as help identify risks to biodiversity to support early risk mitigation strategies.

Matters for consideration

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.*
20. *The new Act could establish the Department of Environment and Water as the responsible government agency for the management of South Australia's biodiversity information.*
21. *The new Act could establish requirements for the submission of biodiversity data collected in South Australia to a central repository.*
22. *The new Act could direct the development of a policy that describes requirements for the collection, collation, interpretation and dissemination of biodiversity information.*

SOWFI **supports** the Act requiring development of a framework to enable the sharing of biodiversity information, with the Department of Environment and Water as the agency responsible for management of this information.

Organisations such as SOWFI collect and store a wide range of valuable information, including the number and types of native wildlife that are be rescued and their locations. A new framework could support a system whereby this information is collated into a central repository for analysis and to support decision making. It is important, however, that any framework does not place an administrative burden on organisations, especially volunteer organisations where resources are already limited.

Topic 8 – Achieving 30 by 30

SOWFI supports Australia's commitment to the global '30 by 30' target. While the global '30 by 30' target is a first step providing for a quantifiable target for governments, SOWFI supports ongoing ambition to further increase the size of protected areas over decades to come.

Matters for consideration

23. *The Act could consider broadening or creating schemes to further support the establishment and management of conservation areas on private and other land.*
24. *The Act could see to enable additional incentives, including the provision of financial and technical assistance, to landholders who have entered into formal agreements for conservation.*

SOWFI **supports** the Act creating schemes to further support the establishment and management of conservation areas on private and other land, in addition to enabling additional incentives to landholders who have entered into formal agreements for conservation. As caring for the environment requires a collaborative effort across all parts of the community, the provision of technical assistance to landholders is vital to ensure biodiversity efforts are maximised.

As part of broadening or creating schemes to support establishment of conservation areas on private land, SOWFI strongly supports changes to regulations that restrict the release of

some native rehabilitated fauna, including macropods and wombats. SOWFI is concerned about the lack of protection following release for these animals, especially in the context of the considerable volunteer resources required to rehabilitate these animals.

There is opportunity for the government to work collaboratively with private landholders to offer safe havens for released wildlife. Doing so would promote South Australia's biodiversity, strengthen the relationship with wildlife rescue groups and provide an opportunity for rehabilitated native wildlife to thrive in their natural environment.

Topic 9 – Biodiversity – a shared responsibility

SOWFI strongly holds that that the entire community is responsible for protecting the biodiversity of communities in which we live.

Matters for consideration

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 continuous legal and social responsibility.

SOWFI **supports** the Act being clear about the respective roles and responsibilities of the community by introducing a 'biodiversity duty of care'. This has been supported by several reports that of the Australian Centre for Environmental Law which found that a statutory duty of care on landholders enables considerable benefits to protecting the environment.

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.
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.

SOWFI **supports** the Act tying the *biodiversity duty of care* to relevant administrative powers and civil penalties. However, SOWFI recognises the need to continue to educate the community and promote the benefits of biodiversity across the state. The Act should require the development of an educational strategy to support South Australian's understanding of their duty of care obligation.

Where this duty of care is not met, the government must have the appropriate powers to demand corrective action or undertake processes for penalties to be issued.

Topic 10 – Consequences of doing the wrong thing

While SOWFI recognises the value in working with and educating the community on the benefits of supporting and protecting biodiversity, we recognise the need for consequences to deter those from doing the wrong thing.

Matters for consideration

28. The Act could seek to align sanctions and penalties for similar offences, having consideration where possible of levels imposed through other jurisdictions.
29. The Act could enable suitable non-government parties to commence proceedings for offences under appropriate circumstances.
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.

SOWFI **supports** the Act aligning sanctions and penalties for similar offences to those, where possible, which are imposed through other jurisdictions. However, it is recommended that, if taking this approach, consideration is given to ensure that the level of penalty imposed both meets the community's expectation and acts as sufficient deterrent / punishment for those responsible for the offence.

SOWFI also **supports** the application of a contemporary risk-based approach to dealing with enforcement actions, on the condition that less severe enforcement actions lead to biodiversity restoration while deterring future offences without delay.

Conclusion

South Australia has a key opportunity to make up for lost-time and devise an Act that goes further than other jurisdictions – a robust, modern and model piece of legislation that raises the national bar to be the strongest biodiversity legislation in Australia.