Biodiversity Coordination Unit
Department for Environment and Water
81-95 Waymouth Street
Adelaide SA 5000
Via email: biodiversityact@sa.gov.au

1 March 2023

Dear Coordination Unit,

RE: Submission on the proposed Biodiversity Act for South Australia

The Conservation Council SA welcomes the opportunity to provide a submission to the Government's discussion paper on a proposed Biodiversity Act for South Australia.

The Conservation Council SA is an independent, non-profit, and strictly non-party political organisation representing approximately 60 of South Australia's environment and conservation organisations and their 90,000 members.

The Conservation Council SA is happy for its submission to be published.

Below is a brief summary of Conservation Council SA views based on the issues highlighted in the discussion paper provided; however, we reserve our right to provide a more comprehensively detailed response once more detail of the reform proposals are provided.

A clear imperative to act with ambition

Alongside the climate crisis, the nature crisis is upon us. As the Commonwealth State of the Environment 2021 puts it bluntly and seriously:

> *Overall, the state and trend of the environment of Australia are poor and deteriorating as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction… Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years.*[1]

A key finding of the most recent (2018) South Australian State of the Environment Report puts it even more succinctly:

> *Our native plants and animals are in serious trouble with many in decline and likely to become extinct.*[2]

[1] https://soe.dcceew.gov.au/overview/key-findings
[2] p6, https://www.epa.sa.gov.au/soe-2018

However, the discussion paper does not outline the clear and aspiring vision for South Australian nature that we need to match this tremendous challenge. Instead, whilst what is proposed seeks to strengthen our legislative framework here and there – and there are indeed ideas to be found that are much-welcomed from within the discussion paper – what is absent is the compelling step-change to secure the survival of our remaining nature for future generations of South Australians to enjoy and cherish, and to support their wellbeing and ongoing prosperity. If we cannot rise to meet the seriousness of this challenge, we will rob our State's unique nature from these future generations of South Australians, and at their great cost.

Whilst political and other constraints against necessary change shall ever continue, we must strive to raise our ambitions to something greater. It is imperative that we deliver the Biodiversity Act that South Australia needs, rather than what is easy and good, but which will not ultimately save our nature from ongoing decline.

Key issues

First Nations engagement

The Conservation Council SA supports the commitment to First Nations engagement regarding South Australia's unique biodiversity proposed in the discussion paper. This commitment needs to be legislated, ensuring that wherever it is feasible and desired by First Nations peoples, that they are decision makers and stewards in helping to reverse the decline of South Australian biodiversity.

An outdated approach: Ecologically Sustainable Development

The Discussion Paper proposes that the Act adopt ecologically sustainable development ('ESD') as its guiding goal, presumably with the intention that they would form part of the Objects of the Act as found in s7(1) of the *Landscape South Australia Act 2019*[3].

However, the ESD approach has been comprehensively overturned in the recent Independent Review of the *Biodiversity Conservation Act 2016* (NSW) as chaired by Australian public policy luminary, former Commonwealth Treasury Secretary Ken Henry AC. As Henry notes in his foreword to that review:

> *…the objects of the Biodiversity Conservation Act 2016 are already obsolete. The crafting of the Act was, understandably, guided by principles of sustainable development. Those principles are no longer fit for purpose.*[4]

Instead of focusing on economic development, the guiding Objects of the Act should focus upon delivering healthy biodiversity and ecosystems for South Australia. Healthy, thriving nature begets healthy, prosperous communities. Any short-term financial gains must be discarded in favour of long-term economic and social prosperity; a true valuing of the opportunity cost of nature to South Australians would reveal this paradigm. Indeed, the World Economic Forum has concluded that more than half of global GDP is moderately or heavily dependent upon nature[5], with an almost identical finding by an Australian report that utilises the same methodology[6].

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[3] https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FLANDSCAPE%20SOUTH%20AUSTRALIA%20ACT%202019

[4] p3-4, https://www.parliament.nsw.gov.au/lc/tabledpapers/Pages/tabled-paperdetails.aspx?pk=186428&houseCode=lc

[5] p8, https://www.weforum.org/publications/nature-risk-rising-why-the-crisis-engulfing-nature-matters-for-business-and-the-economy/

[6] https://www.acf.org.au/the-nature-based-economy-how-australias-prosperity-depends-on-nature

Options for biodiversity offsetting

The Conservation Council SA supports the adoption of a strong mitigation hierarchy for biodiversity, but with the caveat that if the current environmental offsetting regime based on native vegetation and the *Native Vegetation Act 1991* is to be replaced, it must be done with great care and with the unambiguous certainty that there will be an absolute gain for South Australian nature.

As with all environmental offsetting regimes across Australia, the *Native Vegetation Act* delivers an imperfect outcome for nature, facilitating all too much vegetation clearance and with it, the further decline of South Australian fauna. However, it is one of the better environmental offsetting schemes in Australia, and we need to be careful if we are to open the current status quo to the possibility backsliding.

Two good options are therefore possible. Either:

1. South Australia commits fulsomely and comprehensively to biodiversity offsetting as a more direct, better targeted approach for preserving South Australia's native fauna and flora, replacing the current native vegetation approach (which is used as a proxy for all biodiversity);

   or

2. We recognise the risk of backsliding from reopening the offsetting debate, and use the proposed Biodiversity Act to adopt a clear approach to 'unacceptable impacts' – development proposals that will be given a clear, unambiguous 'no' based on where they are proposed to be located – combined with a biodiversity mitigation hierarchy that creates a set of public service decision-making principles that need to be adhered to when Government makes decisions that significantly impact upon nature.

Further, declining environmental baselines cannot be used an excuse for allowing the decline of biodiversity to continue. This means that **any environmental offsetting scheme contemplated for the Biodiversity Act must deliver an absolute net gain for the environment** – not a negative outcome or zero-sum gain for nature, as currently stands. This in turn means that any offsetting formula must include a premium to create certainty that such an absolute net gain has been delivered, but also, separately, incorporates contingencies for risks (of full or partial failures in offset delivery), and also for delays (in implementing the offsets).

Any new environmental offsetting scheme must adhere to strict like-for-like requirements, and post-approval condition setting would not be acceptable.

General duty of care

The Conservation Council SA supports the inclusion of a general duty of care in the proposed Biodiversity Act. However, such a duty will be ineffective unless it allows third party standing, i.e., third parties will be able to make legal claims against persons who are alleged to have breached this legal duty.

Further, the Conservation Council SA advocates for a *specific* duty of care for the environment to be created for the South Australian Government.

An independent statutory conservation trust

The Conservation Council SA supports the proposal put in the submission from the Australian Land Conservation Alliance's submission to the Biodiversity Act[7], which describes the purpose of such a trust as "*to partner with willing landholders to permanently protect, manage and restore biodiversity across South Australia.*"

If such a Trust is to succeed, it will require a strong enough funding base such that it can contemplate in-perpetuity funding arrangements for landholders rather than only limited, termed agreements. Further, such a Trust should remain an organ of Government to allow it to receive more reliable ongoing Government support, albeit at an arms-length in order to be able to operate sufficiently independently in pursuing its long-term agenda for nature, and less subject to the shifting political priorities of shorter-term political cycles. There is no desire for a Trust to be created under the Act but then later orphaned.

A Trust would also go some way to addressing another key absence from the legislative framework, namely, a legislative mechanism that can guarantee an uplift in the funding available to reverse the decline in nature. Whilst doing more to prevent nature loss is critical, managing and reversing the decline in nature that our state has already suffered will require very substantial investment – yet another reason why we need to dramatically increase the cost of environmental offsets and greatly improve the efficacy of our environmental offsetting regime (as discussed earlier).

Biodiversity planning

The Conservation Council SA welcomes the proposal for a biodiversity plan (or strategy) for South Australia in which measurable targets are set and regularly reported upon.

Key threats to biodiversity and threatened species listing

The Conservation Council SA welcomes the proposal to identify key threats to biodiversity and statutory obligations – as well as key, proactive actions – to address these threats.

Further, Conservation Council SA welcomes the intention to reform and improve our threatened species listing process, extinction risk and mitigation measures.

We note that these proposals require additional dedicated funding if they are to be effective, as legislative change may be necessary but certainly not sufficient.

Biodiversity data and information

The South Australian and Commonwealth Governments have both recognised the importance of good environmental data and information if we are to properly account for the value of our biodiversity.

[7] As available here: https://alca.org.au/alca-submission-on-the-developing-a-biodiversity-act-for-south-australia/

Enhanced Protection Conservation Covenants

The Conservation Council SA supports the proposal in the submission from the Australian Land Conservation Alliance for the creation of enhanced protection conservation covenants[8], broadly based on Special Wildlife Reserves as found in Queensland.

Public consultation on exposure draft legislation

The Conservation Council SA strongly encourages the Government to undertake a public consultation on the exposure draft legislation of the *Biodiversity Act* before introducing it to Parliament.

Thank you again for the opportunity to provide a submission to the Government's consultation on its proposed Biodiversity Act for South Australia.

The Conservation Council SA looks forward to seeing the detailed reform proposals on all of issues canvassed in the discussion paper – and beyond – at which point we expect to provide a detailed and comprehensive response to the *Biodiversity Act*. We reiterate our central message of raising the ambition for nature being contemplated by the Government such that it matches the severity and urgency of the nature crisis we all face. Piecemeal reform will not deliver us what we need and will only prove more costly in the long-run to our fauna, flora, and our South Australian communities which cherish and relay upon nature for their ongoing wellbeing and prosperity.

As South Australia's peak body for the environment, we look forward to continuing to consult closely with the Government as the Act progresses.

If you require further information, please contact me at [redacted]

Yours sincerely,



Kirsty Bevan
Chief Executive

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[8] The Australian Land Conservation Alliance has a recent policy note on these covenants, as found at: https://alca.org.au/alca-policy-note-enhanced-protection-conservation-covenants/