

18 February 2025

Biodiversity Coordination Unit
Department for Environment and Water
GPO Box 1047
Adelaide SA 5001

SAPN submission on draft Biodiversity Bill

SA Power Networks (**SAPN**) appreciates the opportunity to make a submission to the SA Biodiversity Coordination Unit in relation to the draft *Biodiversity Bill 2025 (Bill)*.

Introduction

1. SAPN is the primary electricity distributor for South Australia and provides a critical service in the delivery of service infrastructure in our State. It builds, maintains and upgrades the poles, wires and substations that deliver power to around 900,000 homes and businesses across South Australia. SAPN provides this critical electricity distribution role throughout metropolitan Adelaide and towns and cities across the State.
2. The distribution system in South Australia consists of approximately:
 - a. 404 substations;
 - b. 89,000 circuit kilometres of power lines operating at 132 kV, 66kV, 33kV, 19kV - SWER, 11kV, 7.6kV and 400/230 Volts (LV);
 - c. 630,000 poles; and
 - d. 75,000 distribution transformers.
3. SAPN maintains existing assets and constructs new assets on a daily basis. This work ensures a safe and reliable electricity supply to new and existing customers. SAPN undertakes approximately 1,500 new customer connections per annum, involving extensions/upgrades of the electricity distribution network, which includes major customer driven connections (such as new residential developments, small and large scale commercial/manufacturing/primary production connections, major projects of state significance and Distribution Connected Generation). A significant number of our assets are located on land outside of the metropolitan area and often in remote rural locations.
4. SAPN recognises the important aims of the Bill in protecting and restoring biodiversity across the State, and supporting economic opportunities for these objects.
5. In order to effectively and efficiently undertake its functions, SAPN relies on certain legislative exemptions and approval pathways. Notably, this includes specific exemptions under the *Planning, Development and Infrastructure Act 2016* (SA) (**PDI Act**) and associated regulations, and also the *Native Vegetation Act 1991* (SA) (**NV Act**) and associated regulations.
6. The effective operation of these pathways is critical to the ability of SAPN to provide these functions efficiently and effectively.
7. We draw the following specific comments to the attention of the SA Biodiversity Coordination Unit:

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[REDACTED]

[REDACTED]

Clearance exemptions

8. Native vegetation clearance requires a consent of the Council except in prescribed circumstances that are contained in Schedule 1 Part 1 of the NV Regulations (s 27 of the NV Act and regulation 8 of the NV Regulations).
9. Subject to the below, SAPN notes that the prescribed circumstances (clearance 'exemptions') in the Bill substantially reflect the existing provisions in the *Native Vegetation Regulations 2017* (SA) (**NV Regulations**).
10. SAPN supports the broad consistency in implementation of the Bill.
11. SAPN relies on these prescribed circumstances in order to effectively provide its services. In particular, the maintenance of infrastructure (Schedule 1, Part 1, Division 1, clause 2 of the NV Regulations). Given that the definition of 'infrastructure' includes the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of electricity, this prescribed circumstance is of importance to SAPN.
12. Currently, one of the limbs that enlivens the prescribed circumstance is where the clearance is undertaken in accordance with an approved 'standard operating procedure' determined or approved by the Council.
13. SAPN undertakes vegetation clearance pursuant to a *Standard Operating Procedure for Vegetation Clearance*, which was endorsed by the Native Vegetation Council on 27 July 2017 (**SOP**). The SOP outlines the procedures which SAPN has in place, which ensure impacts to native vegetation are minimised as part of SAPN's activities. It sets out the key activities where native vegetation clearance may be required and ensures that SAPN meets its vegetation clearance requirements under the NV Act.
14. This prescribed circumstance is broadly repeated in Schedule 2, Part 2, Division 2, clause 5 of the Bill. However, instead of reference to a standard operating procedure, the clearance must instead be in accordance with 'guidelines' that have been adopted by the Biodiversity Council under section 61 of the Bill. There is no longer a concept of approved standard operating procedures.
15. The process for preparing and adopting guidelines under section 61 of the Bill is more time consuming and onerous than the preparation of a standard operating procedure. Draft guidelines must be the subject of public advertisement, and must also be provided to various entities for comment, most of which are not relevant to the maintenance of infrastructure by SAPN.
16. Unlike standard operating procedures, guidelines are not specific to a single entity. They are public documents of general effect.
17. SAPN suggests that it is inefficient for an entity such as SAPN, which carries out unique functions whilst managing unique demands and challenges, to have to rely on guidelines as contemplated by the Bill.
18. Whilst guidelines may be appropriate for other processes in the Bill, SAPN submits that the 'maintenance of infrastructure' exemption should not rely on the existence of guidelines as created by the Bill.
19. Further, there is no certainty that any guidelines will even be produced, for the benefit of SAPN. If no guidelines are produced, then this limb of the 'maintenance of infrastructure' exemption cannot be relied on by SAPN which would potentially result in substantial inefficiencies for the provision of electricity infrastructure.



Recommendation 1:

SAPN recommends that the concept of standard operating procedure be introduced into the Bill to reflect the same process as currently required under the NV Act, and the use of a guideline not apply to the infrastructure prescribed circumstance. Following the meeting between DEW and SAPN representatives on 17 February 2024, we understand that DEW representatives agree with this recommendation and intend to amend the Bill accordingly.

We note the Bill does introduce a concept of a native plant management plan, which we understand has a different purpose, although we query whether that concept can be varied to incorporate a standard operating procedure.

20. SAPN also relies on the clearance exemption contained within Schedule 1, Part 1, Division 1, clause 1 of the NV Regulations ('Vegetation within 10 metres of existing building'). This 'exemption' is substantially reproduced in Schedule 2, Part 2, Division 2, clause 6 of the Bill. However, instead of applying to vegetation within 10 metres of an existing building, the clause applies to vegetation within 3 metres of an existing building.
21. Whilst SAPN acknowledges the policy rationale for reducing the scope of this prescribed circumstance, it presents an unworkable and unduly restrictive limitation for SAPN's operations. SAPN necessarily conducts unavoidable clearance activities within 10 metres of buildings and structures.

Recommendation 2:

SAPN recommends that this prescribed circumstance should return to the 10 metre definition, or alternatively, a specific allowance for SAPN to conduct clearance activities within 10 metres of existing buildings should be introduced.

22. Clause 2(4) in Schedule 2 to the Bill provides that the Schedule (i.e. the clearance exemptions) will apply to plants growing on land that is subject to a biodiversity agreement or conservation agreement unless a clause specifies that it does not apply to such plants.
23. It is not practicable for the operation and existence of a clearance exemption to be rendered inoperable based on any such clause. This would have the effect of significantly impacting SAPN's operations, in circumstances where the clearance exemptions are relied upon by SAPN on a regular basis.
24. The clearance exemptions relied upon by SAPN should prevail over any such clause.
25. Further, SAPN as an electricity entity has duties under Part 5 of the *Electricity Act 1996* (SA) to clear vegetation from powerlines. Without the benefit of relevant clearance exemptions, SAPN's ability to discharge its duty would be severely compromised.

Recommendation 3:

SAPN recommends that Clause 2(4) in Schedule 2 to the Bill clarify that the clearance exemptions will operate, and can be relied on by SAPN, irrespective of what any specific clause provides.



Nests and wombat burrows

26. SAPN regularly manages, removes and relocates wombat burrows and birds' nests on or near its infrastructure. If not managed in a safe and timely manner, burrows and nests can severely detrimentally impact the reliable operation of SAPN's distribution network.
27. In managing wombat burrows, SAPN relies on the permit exemption in section 68AA of the *Native Parks and Wildlife Act 1972* (SA). That section allows a person to destroy, damage or disturb a wombat burrow without requiring a permit, if the burrow is causing, or is likely to cause, damage to infrastructure.
28. SAPN understands this permit exemption will be largely replicated in Schedule 4 of the Bill. SAPN supports the replication of this provision.
29. However, the permit exemption in Schedule 4 of the Bill cannot be relied on if the wombat burrow (or any other 'protected habitat') is within a 'protected habitat protection zone'.
30. Currently, there is no clarity on whether there is any intention for a protected habitat protection zone to be introduced, or what the spatial extent of such a zone would be.
31. If a protected habitat protection zone is introduced, SAPN would no longer be able to rely on the permit exemption for the area impacted by that zone. Given the state-wide nature of SAPN's operations, this is an unacceptable outcome and would impact SAPN's operations. An inability to rely on a permit exemption would require SAPN to apply for and obtain a permit on each occasion that a burrow needs to be disturbed or removed for the maintenance of what is critical infrastructure.
32. The protections afforded to wombat burrows are proposed to be expanded to any other habitats (including nests) that the Minister chooses to declare in the Gazette. Currently, there is no clarity on whether there is any intention for protected habitats to be declared, and what they may be.
33. If any type of bird nest is declared as a protected habitat, then SAPN will need to rely on the permit exemption when removing or relocating any such bird nest.
34. If birds' nests are declared as protected habitats, and if a protected habitat protection zone is introduced, SAPN as a network service provider should be excluded from the operation of any such protected habitat protection zone.
35. Given the number and regularity of birds' nests and wombat burrows that SAPN is required to manage, it would be inappropriate, inefficient and unacceptably onerous if SAPN was required to obtain a permit on each occasion it needed to manage a nest or burrow.

Recommendation 4:

SAPN recommends that the Bill should expressly exclude network service providers such as SAPN from the operation of a protected habitat protection zone.

PDI Act

36. SAPN relies on essential infrastructure exemptions and pathways in the PDI Act and associated regulations. SAPN notes that the Bill only proposed to vary the PDI Act to the extent of introducing a special legislative scheme.



37. It does not appear that the essential infrastructure exemptions and pathways relied on by SAPN in the PDI Act are sought to be impacted by the introduction of the Bill. SAPN supports this approach.

Appeal rights

38. The NV Act does not currently contain any appeal rights.
39. The Bill proposes to introduce an avenue of appeal to the ERD Court in respect of certain orders including compliance orders.
40. SAPN supports the introduction of appeal rights in respect of orders.
41. However, the Bill contains no appeal rights in respect of clearance consents. An applicant who is refused a clearance consent, or is granted a consent on unfavourable conditions, has no avenue of recourse.

Recommendation 5:

SAPN recommends the Bill introduce a right of merit appeal in relation to the granting and refusal of clearance consents.

Further information

42. We note the introduction of Biodiversity agreements and Conservation agreements with landowners. SAPN seeks confirmation that these instruments will not be used to further restrict the ability of SAPN to provide its critical services. For example, a Biodiversity agreement that seeks to protect native plants on private land should not be used as a mechanism to prevent SAPN undertaking its activities.

Consultation

43. SAPN appreciates the opportunity to provide feedback on the Bill but recommends further consultation. The four week consultation period is very short and is respectfully inadequate for the complex and lengthy nature of the legislation proposed, particularly where the Bill has potential to impact critical service delivery. In addition, much of the operational detail is proposed to be contained in Regulations and other subordinate legislation.
44. Whilst SAPN appreciates the policy intent of strengthening biodiversity protections in the new Bill, for public infrastructure providers such as SAPN, it is imperative that the Bill does not unnecessarily burden critical infrastructure functions. To the extent that the provisions, pathways and exemptions in the existing legislation are operating sufficiently, the Bill should not seek to disturb these existing practices.

Recommendation 6:

SAPN recommends a further community consultation period, and in addition, detail be provided as to the proposed content of Regulations.



We thank you for the opportunity to provide this submission and look forward to liaising further on this important legislation. Should you wish to discuss any of the above or require further information please contact [REDACTED] Environment and Cultural Heritage Manager on Mobile [REDACTED] or [REDACTED]

Yours sincerely

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