

17 February 2025

Biodiversity Coordination Unit
Department for Environment and Water
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Adelaide SA 5001

c/o: biodiversityact@sa.gov.au

Dear Sir/Madam

I am pleased to provide the Premier's Climate Change Council's submission in response to the public consultation on the 'South Australia's Draft Biodiversity Bill' from the Department for Environment and Water.

The Council is established under *South Australia's Climate Change and Greenhouse Emissions Reduction Act 2007*. The Council is the State Government's key advisory body on matters associated with reducing greenhouse gas emissions, mitigating and adapting to climate change.

The Council welcomes the publication of the draft bill and is pleased to have the opportunity to have input to this important reform.

Please contact the Premier's Climate Change Council Executive Officer, Mr [REDACTED] by email: [REDACTED] or phone: +[REDACTED] if you have any queries or wish to discuss this matter further.

Yours sincerely,

[REDACTED]
Chair

Premier's Climate Change Council, South Australia

South Australia's Draft Biodiversity Bill – Submission from the Premier's Climate Change Council

Introduction

The Department for Environment and Water should be congratulated on the preparation of this draft Bill. The Premier's Climate Change Council (PCCC) strongly supports a Biodiversity Act that will conserve, restore and enhance biodiversity in the context of a changing climate.

The PCCC provided feedback on the discussion paper for preparing a Biodiversity Bill (the Bill) and welcomes the opportunity to provide further feedback to the Department for Environment and Water now that the Bill has been drafted.

The PCCC is supportive of formation of a Biodiversity Council as proposed by section 14 of the draft Bill and welcomes the inclusion of the PCCC as a body to be consulted before making an appointment in relation to climate change adaptation.

The PCCC notes and supports the proposal to absorb the *Native Vegetation Act 1991* and wildlife provisions of the *National Parks and Wildlife Act 1972* into the Bill to streamline current legislation to better protect South Australia's biodiversity.

The PCCC notes some very positive new provisions including:

- declaring areas critical habitat
- seeking concurrence of the Minister responsible for the Biodiversity Act where a code amendment overlaps a biodiversity zone or overlay
- the development of a new biodiversity policy in relation to significant environmental benefits, which will provide an opportunity to review how the scheme should operate into the future
- improving protections for planted native plants by introducing new protections after they reach 20 years old, such that they will be subject to the same native plant clearance consent processes and exemptions as existing native plants.

Building on the PCCC's previous input, additional recommendations are provided below that the Council considers would strengthen the capacity of the proposed legislation to support biodiversity and nature positive outcomes in a changing climate.

The PCCC has also responded to the survey questions in Attachment 1.

Opportunities for changes to strengthen biodiversity positive and climate change adaptation outcomes

Biodiversity is fundamental to human well-being and economic prosperity. Given the dire condition of biodiversity in South Australia the Bill must support biodiversity positive outcomes i.e. biodiversity is enhanced, not simply protected, or managed at current levels.

Conserving, restoring and enhancing biodiversity must be a core consideration in a wide range of decision making, including development and major projects, not something that is continually comprised and harmed to achieve other economic and societal goals.

Objects and Principles

It is unclear why the drafting of the objects refers to the enhancement of biodiversity in only one of the objectives (section 7(b)). The PCCC would like to see this concept included consistently across the objects where there is reference to conservation and restoration, as appropriate.

For example, in relation to section 7(a):

- ‘to promote the conservation, restoration and **enhancement** of biodiversity as a responsibility equally shared by all of society across all sectors and supported by individual accountability;

An alternative approach could be to define what is meant by conservation to make it clear that this includes the idea of enhancing not simply managing what is currently there.

The Principles could include reference to having regard to ‘mitigating and adapting’ to the impacts of climate change not just the impacts (see section 8 (d)).

Recommendation: Include the concept of enhancing biodiversity more consistently and explicitly in the objects of the Act and consider inclusion of reference to having regard to ‘mitigating and adapting’ to the impacts of climate change in the Principles.

Interaction with other legislation

Clearing of native vegetation, intensifying land use, population growth and infrastructure development continues to alter and fragment habitat across the state. These changes are exacerbated by climate change and also make it much harder for flora and fauna to adapt to the changing climate. Similarly, the clearance of vegetation can contribute to climate change by removing carbon sinks and releasing carbon into the atmosphere.

Biodiversity cannot be properly conserved, restored or enhanced if activities that impact on biodiversity are made exempt from the biodiversity legislation or lack legislative and decision-making frameworks that allow proper consideration and management or avoidance of material harm to biodiversity.

The PCCC previously commented on the need for biodiversity management requirements to be integrated into other relevant legislation and that the biodiversity legislation should have precedence over other relevant legislation and/or be considered early in planning for land use change and development to avoid the effectiveness of the Act being undermined. For example, proper consideration of biodiversity impacts in legislation relating to major projects, land use and development decisions, infrastructure, mining and hydrogen and renewable energy projects.

The PCCC considers there is still a need to more fully incorporate appropriate consideration of biodiversity impacts in relation to these land use and development decisions.

The PCCC notes that Cabinet used to be involved in determining an application for impact assessed development and that the current Planning, Development and Infrastructure Act 2016 (PDI Act) allows the decision to be made solely by the Minister for Planning. Other ministers including the Minister responsible for the Biodiversity Act may not be formally advised of or have an opportunity to influence the development application before a final decision is made. The

Planning System Implementation Review recommended that the Impact Assessed pathway should require an application to go through a Cabinet process.¹

Existing legislation also contains exemptions which prevents effective implementation. For example, exemptions under the Native Vegetation Act can result in many incremental changes that in total reduce the effect of that Act on protecting native vegetation and biodiversity. The capacity for exemptions should be minimised if the new Biodiversity Act is to be successful.

Recommendation: The PCCC recommends changes to the PDI Act to give appropriate consideration of biodiversity and a greater role for the Minister responsible for the Biodiversity Act (responsible Minister) in decision making on land use, development, mining and infrastructure decisions that could result in serious harm to biodiversity. The PCCC also recommends a review and revision of exemptions to native vegetation clearance rules and decision making by the proposed Native Plants Clearance Assessment Committee.

- a) Where a proposed development is classified as impact assessed development include the Minister responsible for the Biodiversity Act as a relevant authority for decision making under the PDI Act.
- b) Give the responsible Minister a consultation role under the PDI Act in determining whether a major project or development should be declared as impact assessed development where the project could cause serious or irreversible impact on biodiversity; and include a role for the Department for Environment and Water in advising on the Assessment Requirements.
- c) Enable the Department responsible for administering the Biodiversity Act to be a referral agency for Crown Development and Essential Infrastructure Development under both the PDI Act and State Development Coordination and Facilitation Bill 2025.
- d) Include a requirement for consideration of biodiversity impacts and/or the State Biodiversity Plan as well as consultation with the Minister responsible for the Biodiversity Act before making a recommendation that a specified area of land be established as a State Development Area and in preparing a State Development Area Plan (as proposed under the State Development Coordination and Facilitation Bill 2025).
- e) Consider inclusion of call-in powers for the responsible Minister in relation to decisions to approve development under the State Development Coordination and Facilitation Bill 2025 if they pose a risk of serious or irreversible impact on biodiversity.
- f) Remove the exclusions from native vegetation clearance rules that currently apply to impact assessed development, where there is a risk of serious or irreversible impact on biodiversity (refer to Part 2, division 3, section 9 of the Bill).
- g) Similarly review and revise the exemption provisions under schedule 2 so that clearance of native plants incidental to mining and petroleum activities that has a risk of serious or irreversible impact on biodiversity is not exempt and approval can be considered by the Native Plants Clearance Assessment Committee.
- h) Do not include exemptions from native vegetation rules or requirements to consider biodiversity in relation to hydrogen and renewable energy developments.

¹ https://plan.sa.gov.au/planning_review/about_the_review/final-report-and-government-response

- i) Require decisions under the *Hydrogen and Renewable Energy Act 2023* to have regard for the objects of the Biodiversity Act and the State Biodiversity Plan.

Recommendation: The PCCC also recommends that the government commits to commence a more fulsome review of interactions between the Biodiversity Act and other legislation in relation to decisions on land use change and major developments and projects within 18 months of the Act coming into effect. The review should include independent legal and planning expertise.

Biodiversity duty for public authorities

The Biodiversity Bill includes a new general duty requiring anyone undertaking an activity to take reasonable and practicable measures to avoid non-trivial harm to biodiversity. This is strongly supported by the PCCC.

However, the PCCC notes that the general duty does not apply where an activity has been authorised under the Biodiversity Act or through a decision made under another other Act. In addition, regard to the biodiversity principles and State Biodiversity Plan applies primarily to persons engaged in administration of the Biodiversity Act and decisions made under the Act. It does not apply more broadly to decisions made under other legislation or government policy.

The Biodiversity Bill requires a mechanism to mainstream consideration of biodiversity and nature positive decisions in government decision making.

Requiring biodiversity conservation to be a core consideration of government across different sectors/domains was identified as best practice in a recent analysis of best practice biodiversity legislation² across the world.

The PCCC previously recommended inclusion of provisions that require biodiversity outcomes to be considered and improved in all state-funded infrastructure, transport, health, and education projects consistent with a biodiversity positive design approach. This included a framework to establish measurable outcomes for all projects and reporting requirements. The PCCC considered that this would stimulate innovation as well as lead to better environmental and social outcomes.

For example, the United Kingdom's *Environment Act 2021* includes a specific biodiversity duty at section 102 that requires relevant public authorities to consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective in that Act. This provision requires active consideration of action to conserve and enhance biodiversity along with a requirement to report on an authority's considerations.

Recommendation: The PCCC recommends inclusion of a mechanism to mainstream consideration of biodiversity conservation across government decision making, such as a general duty to conserve and enhance biodiversity for public authorities based on the provisions in the United Kingdom's *Environment Act 2021*. This mechanism could specify the need to have regard to the principles of the Bill as well as the State Biodiversity Plan.

² [Best practice mechanisms for biodiversity conservation law and policy | Cambridge Prisms: Extinction | Cambridge Core](#)

Offsets as a last resort only

The PCCC welcomes the provision that requires a proponent to have regard to, and give effect to, the mitigation hierarchy which includes offsets as a last resort.

The cost of offsetting should be increased so that offsetting is never cheaper than preservation. Consideration should be given to ‘advance offsetting’ where the offset is in place before the vegetation or biodiversity is impacted.

In reality, offsets are extremely unlikely to achieve no net loss or gain. Even good offsets only provide a partial benefit compared with the native vegetation and habitat lost due to time lags, challenges in re-creating nature and declining baselines resulting in inability for flora and fauna to re-populate a site. In addition, it can be a huge challenge to measure baselines and outcomes and to actually establish whether an offset policy is meeting its objectives. Effective offset policy is complex and requires significant resources to make it work effectively.

Recommendation: The PCCC recommends that offsets require a net gain for biodiversity by setting credit obligations for all development and clearing assessed through any biodiversity offset scheme at more than 100% of calculated biodiversity loss.³ If an offset policy is included then its implementation must be adequately resourced including to secure the necessary underpinning data needed.

Commitment to resources for implementation

The PCCC emphasises the need to provide adequate resourcing for implementation including for education and awareness, impact assessment, enforcement and compliance, and monitoring, reporting and evaluation. This should be new funding not just reorganising existing resources within the Department for Environment and Water.

Recommendation: The government commits to new funding to implement the Biodiversity Act.

Independent Review

The PCCC welcomes the independent review of the Act proposed under section 167 and recommends including a provision for the report to advise on legislative and operational changes needed to improve the operation and effectiveness of the Act. This section should also be strengthened to prevent a review from reducing the level of biodiversity protection under the Act.

Recommendation: Include a provision for the independent review of the Act to include advice on legislative and operational changes needed to improve the operation and effectiveness of the Act on biodiversity protection.

³ The NSW “[Independent Review of the Biodiversity Conservation Act 2016 – Final Report](#)” suggests a 120% credit obligation.

Attachment 1: Response to Survey Questions

1. Do you support the definition of 'plant' to include fungi and algae to allow for their protection under the Act?
 - a. Yes, while not scientifically accurate, including fungi and algae in the definition of "plant" is a simple and effective way to ensure that these organisms are protected.
2. Do you support adopting the definition of 'native plant' from the National Parks and Wildlife Act 1972, meaning any plant indigenous to Australia can be protected?
 - a. Yes, noting the protections also proposed in the draft Bill to allow for the management of problematic native plants, the PCCC supports this proposal.
3. Do you support the proposed objects of the Biodiversity Act?
 - a. Yes, noting the suggestion that the objects of the Bill be amended to strengthen references to the enhancement of biodiversity
4. Do you support the proposed guiding principles of the Biodiversity Act?
 - a. Yes, the guiding principles are supported subject to the feedback in this submission.
5. Do you support what constitutes 'harm' and what is considered 'reasonable measures' for the purposes of the general biodiversity duty?
 - a. In general, the PCCC supports the definition of "harm" and "reasonable measures" under the general duty of care however the PCCC also considers that the Bill requires more pro-active mechanisms to mainstream consideration of biodiversity and more nature positive decisions, including a biodiversity duty for public authorities.
6. Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established?
 - a. Yes, the PCCC supports the governance framework for the Act but notes that adequate additional resources, including funding, will be required to support these proposals.
7. Do you support committees being appointed based on their skills and expertise?
 - a. Yes, committee members should be appointed based on relevant skills and expertise. The PCCC welcomes the proposed opportunity to input on the appointment of members to the Biodiversity Council.
8. Do you support the establishment of a Biodiversity Administration Fund as a means of providing transparency on which funds can be used for the administration of the Act?
 - a. Yes, however the PCCC also emphasises that additional funding beyond the Administration Fund is also required to support the administration of the Act.
9. Do you support the 'regulated activities' and 'unregulated activities' approach to native plants?
 - a. The PCCC supports this approach but notes that the merging of the *Native Vegetation Act 1991* (NV Act) with the Biodiversity Act provides the opportunity to review and address some of the exclusions that currently exist in the NV Act, as outlined in the submission.
10. Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy?
 - a. Yes, the PCCC supports the inclusion of guidelines on how the mitigation hierarchy should be applied.

11. Do you support the new measure aimed at protecting planted native plants more than 20 years old, excluding those in people's gardens or commercial forests?
 - a. Yes, the PCCC supports this measure as a method to ensure that regenerated native vegetation is protected.
12. Do you support the ability for the NPCA to request further information and allow clearance applications to be resubmitted in favour of a more formal review process?
 - a. The PCCC supports this proposal in principle, noting that appropriate resourcing of the NPCA must be maintained to ensure that applications are appropriately reviewed.
13. Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife?
 - a. Yes, the PCCC supports the streamlined approach proposed by the Bill and the inclusion of all native species in the definition of protected animal.
14. Do you support introducing targeted controls for managing impact causing species in favour of an 'unprotected' list of species?
 - a. Yes, the PCCC supports the removal of the "unprotected" list of species in favour of targeted controls for managing impact causing species.
15. Do you support the approach of determining trafficable quantities of species with higher penalties?
 - a. Yes, the PCCC supports measures to tackle serious organised crime through the introduction of "trafficable quantities" and higher penalties.
16. Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)?
 - a. Yes, the PCCC supports this holistic approach to conservation in alignment with other Australian states and territories.
17. Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation?
 - a. Yes, the PCCC supports this forward looking proposal to extend protection to other ecological entities.
18. Do you support relying on the existing offences for plants and animals, instead of creating a new offence for threatened ecological communities or other listed ecological entities?
 - a. The PCCC supports the simplicity of this approach but would suggest that the proposed "higher penalty" should be carefully defined to ensure that it is applied when appropriate.
19. Do you support the ability to apply a 'provisional listing' of species and ecological communities where appropriate?
 - a. Yes, the PCCC supports this proposal to quickly implement protection in response to emerging threats.
20. Do you support the ability to declare critical habitat to provide increased protections for threatened species, threatened ecological communities, and other listed ecological entities?
 - a. Yes, the PCCC supports this initiative and recognises the importance of protecting critical habitats to protect threatened species.
21. Do you support the ability to develop action plans for the protection and recovery of a threatened species, threatened ecological community, or listed ecological entity?
 - a. Yes, the PCCC supports this proposal and is pleased to note the proactive nature of the proposal to implement plans to abate threatening processes.

22. Do you support renaming Heritage Agreements to ‘Biodiversity Agreements’ to better reflect their role?
- a. Yes, the PCCC feels that this proposal makes sense in the context of the proposed Biodiversity Act.
23. Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements?
- a. Yes, the PCCC supports the introduction of new types of protected areas for private land.
24. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act?
- a. The PCCC supports the principle of an enforceable undertaking as a method to manage breaches of the Act.
25. Do you support the proposal to introduce wider standing for people to make an application to the court for civil enforcement of a breach of the Act?
- a. Yes.
26. Do you support the concept of ‘no development’ orders?
- a. Yes, the PCCC supports the concept of “no development” orders to disincentivise unauthorised clearance or other bypassing of the law.
27. Do you support the option of civil penalties for breaches of the Act?
- a. The PCCC supports this option and the widening of standing for people to make an application to the court for civil enforcement. However, the PCCC suggests that a person should not be able to choose a civil penalty as a way to avoid criminal prosecution unless the civil penalty results in more than 100% restoration of the damage caused by their action.
28. Do you support the penalties for criminal offences proposed under the Act?
- a. Yes, the PCCC supports the proposed penalties and the alignment with other jurisdictions and equivalent South Australian legislation.
29. Do you support the permit provisions proposed in the Biodiversity Act?
- a. Yes, the PCCC supports the proposed provisions.
30. Do you support the provisions that set the scope of the State Biodiversity Plan?
- a. Yes, the PCCC supports the proposed scope of the State Biodiversity Plan subject to the feedback in this submission.
31. Do you support the recognition of culturally significant biodiversity entities?
- a. Yes, the PCCC supports this proposal but suggests that it may not go far enough to protect ecological communities that have cultural value to some or all First Nations peoples.
32. Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account?
- a. Yes, for the Act to be properly implemented it will be essential for decision makers to take the Plan into account when making decisions. However this does not go far enough and decisions under other Acts should also take the State Biodiversity Plan into account.
33. Do you support the proposal to establish a Biodiversity Register?
- a. Yes, in the response to the consultation on the discussion paper the PCCC noted the gaps that currently exist in available data on biodiversity in South Australia. The proposed biodiversity register will go some way to address these gaps.
34. Do you support the framework that the Bill proposes for the regular review of the Act?

- a. Yes, the PCCC supports this proposal but suggests that this section should be strengthened to prevent a review from reducing the level of biodiversity protection under the Act.
35. Do you support moving the clearance exclusions into a schedule to the Act so they are in one place?
- a. Yes, this proposal is sensible and adds clarity to the draft Bill. However further work is required to review and reduce these exclusions as outlined in the PCCC submission.
36. Do you agree with the changes to the unregulated activities in Schedule 2?
- a. Yes, the proposed changes with a focus on outcomes are sensible. The PCCC supports the clarification that planted native vegetation more than 20 years old is protected.
37. Do you support updating the existing 'principles of native vegetation clearance' to 'principles of preservation of native plants' to align with provisions in the Biodiversity Act related to threatened species, threatened ecological communities and listed ecological entities?
- a. Yes, the PCCC supports this amended language to change the focus to preservation away from clearance. Some changes to the principles have been requested in the PCCC submission.
38. Do you support the amendments proposed to the National Parks and Wildlife Act 1972?
- a. Yes, the PCCC supports the proposed amendments to the *National Parks and Wildlife Act 1972*.
39. Do you support the amendments proposed to other legislation?
- a. Yes but they do not go far enough and further amendments have been proposed in the PCCC submission.