

South Australia's draft Biodiversity Bill

*Submission to the Biodiversity Co-ordination
Unit, Department for Environment and Water,
SA*

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About Doctors for the Environment Australia

Doctors for the Environment Australia (DEA) is an independent, non-government organisation of medical doctors in all Australian states and territories.

DEA's work is based on the premise that humans need a future with clean air and water, healthy soils capable of producing nutritious food, a stable climate, and a complex, diverse and interconnected humanity whose needs are met in a sustainable way. We are therefore interested in environmental protection and restoration to promote human health and social stability.

Acknowledgement of Country

Doctors for the Environment Australia's members live and work around Australia. We would like to acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners of these lands, in the spirit of reconciliation.

We recognise that First Nations peoples have cared for Country and lived sustainably for millennia, and that sovereignty of this land was never ceded. We pay our respects to First Nations Elders past and present, and to emerging leaders.

Thank you for the opportunity to contribute to the development of South Australia (SA)'s Biodiversity Bill, including the materials and online process. In general, DEA agrees with most of the proposed measures detailed in the Bill and provides the following additional commentary and recommendations.

We note the excellent photography in the explanatory guide, however, its value would be enhanced as educational and environmentally protective tools if the photos were labelled with descriptions of species and locations of landscapes. Without this information, the photos are decorative rather than informative.

Biodiversity and health

It is important to understand that biodiversity is integral to human health, as outlined in DEA's 2019 Biodiversity Policy and Position Statements.¹

Briefly, natural ecosystems support our health by filtering our air, providing fresh water and food, regulating our climate, directly improving human health and protecting against the spread of disease and pests.

They foster our mental wellbeing, serve as places of recreation and sources of nature-based jobs. Furthermore, with over one third of all medicines known to humans being derived from nature, protected ecosystems are a form of innovative capital for future medical advances.

¹ [Biodiversity Policy and Position Statement - Doctors for the Environment Australia 2019](#)

Spending time in nature supports our physical and psychological health. Its calming effect reduces blood pressure and feelings of anxiety and stress.

A global environment that supports biodiversity is better able to support human health and increases our resilience to climate change.

However, our beautiful unique Australian ecosystems are under threat by climate change, land clearing, habitat loss, pollution, resource extraction and invasive species. Many of our ecosystems are close to collapse and this has major impacts for the health of our communities.

We can indeed work together to protect biodiversity by ending native forest logging, conserving and protecting our natural spaces on land and sea, knowing that in turn our natural environment protects us from harm.

From a human health perspective, biodiversity is strongly linked with food production and nutrition, water, medications (between 30-50% of available medications are sourced from nature), infectious diseases, allergies and climate change.

Habitat modification is the key driver of biodiversity loss in Australia, especially deforestation and land clearing. Other key threats to Australia's biodiversity include global heating, urban development, livestock production and grazing, extractive industries, coastal activities, changed fire regimes and changed hydrology. DEA acknowledges that some of these drivers and threats fall outside the legislative and regulatory powers of the Department of Environment and Water (DEW).

Therefore, one of the key issues in addressing the biodiversity threat both in South Australia and the nation, is that the current system in Australia distributes responsibility across jurisdictions with no one jurisdiction coordinating efforts to protect our environment.

General recommendations to strengthen the impact of the Biodiversity Act

Given the limits of the legislative and regulatory power of DEW, we recommend that the following approaches be implemented to strengthen the impact of the South Australian Biodiversity Act.

- Active and strong DEW advocacy through formal channels for the establishment of a **national Environmental Protection Authority** with sufficient powers to coordinate effective biodiversity protection and enhancement across all Australian jurisdictions.
- Active DEW participation, alongside the Department for Health and Wellbeing and other relevant departments, in a **One Health approach** to enhance human, animal, plant and environmental health.^{2,3,4}

² [One Health | Australian Centre for Disease Control](#)

³ [South Australian Antimicrobial Resistance Action Plan \(SAAMRAP\) Steering Committee | SA Health](#)

⁴ [One Health Master Action Plan for Australia's National Antimicrobial Resistance Strategy – 2020 and beyond - Australian Government](#)

- DEW should support a **Health in All Policies approach**⁵ when considering the main drivers of biodiversity loss: climate change, deforestation, land clearing, urban development, livestock production and grazing, extractive industries, coastal activities, changed fire regimes and changed hydrology.
- In particular, DEW must advocate for **no new or expanded fossil fuel developments in South Australia** as this is essential in addressing climate change – one of the main underlying causes of biodiversity loss – and in protecting biodiversity and human health.

Survey questions

1. Do you support the definition of ‘plant’ to include fungi and algae to allow for their protection under the Act?

Yes, DEA supports the broadest possible definitions of biodiversity to allow for their protection under the Act.

2. Do you support adopting the definition for ‘native plant’ from the National Parks and Wildlife Act 1972, meaning any plant indigenous to Australia can be protected?

Yes, DEA supports SA’s recognition of the importance of adaptation strategies for climate change, including the need to foster appropriate native plants from elsewhere in Australia that may be more suited to the climate in SA, even though not locally indigenous. It is not clear why this is limited to plants and we note that koalas are now common in, but are not indigenous to parts of SA. We agree with the public consultation which believe that koalas should be considered native to SA for the purpose of this act.⁶

3. Do you support the proposed objects of the Biodiversity Act?

DEA recognises the urgency and criticality of biodiversity protection and restoration and would like to see stronger objects for the Bill. In particular, we believe that sharing responsibility equally does not adequately reflect the differential contribution of different groups to biodiversity loss, or their different opportunities for contribution to biodiversity protection. Most corporate entities have much greater power in land use change and biodiversity impacts than individuals do.

We suggest replacement of this sentence:

- *To promote biodiversity conservation and restoration as a responsibility equally shared by all of society across all sectors and supported by individual accountability.*

With this point:

- *To promote biodiversity conservation and restoration as a responsibility of all individuals, organisations, businesses and government, with mutual accountability.*

⁵ [Health In All Policies \(HiAP\) – Preventive Health SA, Government of South Australia](#)

⁶ Hollow et al. 2015. Citizen science for policy development: The case of koala management in South Australia, Environmental Science & Policy, <https://doi.org/10.1016/j.envsci.2014.10.007>

4. Do you support the proposed guiding principles of the Biodiversity Act?

We support the proposed guiding principles, particularly the placement of halting and reversing the loss of biodiversity as the leading principle. We suggest that even more emphasis be given to the importance of protecting existing biodiversity because restoration and replacement of lost biodiversity may be impossible and is much more difficult and costly.

We support the engagement of First Nations people, but suggest that the principle that mentions First Nations engagement specifically notes a responsibility of government to provide financial and logistical support for this engagement, rather than assume First Nations communities have capacity and resources.

5. Do you support what constitutes ‘harm’ and what is considered ‘reasonable measures’ for the purposes of the general biodiversity duty?

We support the definitions and descriptions of harm particularly recognising the importance of ecological communities as inherent in biodiversity.

We believe that deterrence of any activity that may contribute to loss of biodiversity should be a function of the act.

We disagree that a breach of the general duty to protect biodiversity should not in itself constitute an offence under the Biodiversity Act. Much stronger deterrence is needed to halt the ongoing processes that are leading to loss of biodiversity. Strong penalties should be applied for any action that contributes to such loss as this could lead to innovative processes that enable biodiversity to be protected.

6. Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established?

Yes, particularly noting the role and structure of the First Nations Committee.

7. Do you support committees being appointed based on their skills and expertise?

DEA would like to see recognition of the importance of diversity and inclusion when determining who should be on a committee when a decision is made between candidates of comparable skills and expertise. Irrelevant characteristics such as disability, parenthood and its demands and socio-economic status should not be deterrents to membership of biodiversity committees. Even requirements for English and computer literacy may lead to loss of optimal committee membership.

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?

Yes, and DEA would like to see funding available for biodiversity protection be uncapped and assured as an investment in health and wellbeing of South Australians.

9. Do you support the ‘regulated activities’ and ‘unregulated activities’ approach to native plants?

The explanatory report does not adequately described unregulated activities. In general DEA would support government oversight of any activity that has possibility of impacting on biodiversity, as this ensures close

communication and collaboration with developers and community members. Unregulated activities can enable increasing threats. For example, special rights for First Nations communities can be regulated through First Nations leadership to ensure protection of biodiversity and the sustainability of cultural practices.

10. Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy?

Yes DEA recognises the importance and validity of the mitigation hierarchy. However, we argue that the concept of off-setting should not be considered part of biodiversity protection as it can inappropriately lead to comparisons and gaming. Biodiversity loss at one site should not be compensated by not destroying biodiversity at another site, if the second site should be protected regardless of the proposed development it is proposed to off-set. Off-setting remains contentious in the professional and academic analysis of biodiversity protection.⁷

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?

Each plant and ecosystem is different and the arbitrary determination that native plants must be more than 20 years old to ensure protection seems inappropriately rigid. This focus on individual plants at 20 years undermines the importance of ecosystems particularly with annual grasses. With high levels of expertise in the Biodiversity Committee, it may be appropriate to have more sophisticated decision-making as many plants and ecosystems less than 20 years old should be protected, particularly when they are in fragile ecosystems.

12. Do you support the ability for the NPCAC to request further information and allow clearance applications to be resubmitted in favour of a more formal review process?

No, in general, DEA believes that a clearance application that has been rejected by NPCAC because it places biodiversity at unacceptable risk should not be re-considered. The concept of providing more information to allow a positive response suggests that the clearance is both assured for the proponent and poses an acceptable level of risk. Because of the urgency and importance of biodiversity protection, DEA proposes that submissions should be final, and any appeals should be to judicial review with public involvement so the SA community can be involved in any decisions that place SA biodiversity at risk

13. Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife?

As noted under question 9, DEA could not find adequate explanation of regulated and unregulated activities. In general, DEA would support government oversight of any activity that has the possibility of impacting biodiversity, as this ensures close communication and collaboration with developers and the community members. Unregulated activities can be the thin end of a wedge that enables increasing threats. For example, special rights for First Nations communities can be regulated through First Nations leadership to ensure protection of biodiversity and the sustainability of cultural practices.

⁷ Pope et al. 2021. When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets. Environmental Management. <https://doi.org/10.1007/s00267-020-01415-0>

Benefit and morality of people keeping and selling protected animals are contentious issues, and DEA is concerned by the simple statement that new regulations will make it easier for people to keep and sell protected animals. While we support citizen science and community involvement, there are significant risks in members of the public keeping and selling protected animals. These include risks to wild populations, commodification of nature, misidentification and spread of infectious disease across species, among others.

14. Do you support introducing targeted controls for managing impact causing species in favour of an 'unprotected' list of species?

Yes, DEA supports the concept that every species requires protection and there should be no 'unprotected' list, although some species need more investment. With the unpredictability of future climate change, we need to protect as much biodiversity as possible to enable adaptation going forward.

15. Do you support the approach of determining trafficable quantities of species with higher penalties?

Yes, very high penalties are needed as deterrents against commercial trafficking, which can be highly profitable.

16. Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)?

Yes, biodiversity includes both species and communities. DEA would support a public education campaign about this to ensure efforts are made to protect ecosystems, rather than focussing on individual species which can favour iconic species rather than investing in priority areas.

17. Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation?

Yes, DEA supports systems that recognise changing conditions and allow for future recognition of species and ecological communities.

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?

The simplicity of using existing offences rather than creating a new offence for damaging or destroying threatened ecological communities seems appropriate. However, as with other features of the bill, this should be scheduled for review.

19. Do you support the ability to apply a 'provisional listing' of species and ecological communities where appropriate?

Yes, because of the limited knowledge of species and ecological communities and the extent of new and emerging threats, the ability to apply provisional listing enables rapid protection to apply, ensuring protection of biodiversity while further research is conducted. However, in the absence of adequate research to confirm the status of a provisionally listed species or community, the provisional listing should be

maintained until there is confidence that the species or community is not endangered. Because of the inadequacy of resources and the scale of the task in ensuring biodiversity is not endangered, the default should not be for the provisional listing to expire as suggested.

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?

Yes, the concept of critical habitats and assurances that they are protected increases the likelihood that threatened species and ecosystems will not be damaged or destroyed. This is an important aspect of the bill.

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?

Yes, Action Plans are a key strategy to protect biodiversity. However, action plans are worthless if they are not implemented.

The systematic failure of implementation of plans to protect diversity is a failure of Australia's biodiversity protection policy framework. Action plans need leadership, commitment and funding and the Biodiversity Act must assure these, and report publicly on action plans.⁸ Action plans should include strategies to overcome common reasons for their non-implementation, namely vested interests, weak financial support, as well as poorly integrated institutional and regulatory structures.⁹

22. Do you support renaming Heritage Agreements to 'Biodiversity Agreements' to better reflect their role?

Yes, naming should be consistent with contemporary language. We now seek to protect biodiversity for the values of biodiversity rather than heritage values. The term 'Biodiversity Agreements' should be used to reflect their current role.

23. Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements?

Australia's conservation estate is increasingly on private land, and each state has a form of covenant agreements which are legally binding instruments to protect biodiversity on private land.¹⁰ However DEA does not support the proposed introduction of time-limited Conservation Agreements. Biodiversity protection must extend in perpetuity and efforts to restore and protect biodiversity under a time limited agreement could be completely wasted if the agreement ends. In recognition of the increasing importance of private landholders, including First Nations communities, in biodiversity protection, this is an area that needs attention at research, policy, implementation and outcome levels.

⁸ Invasive Species Council 2018. KTPs & TAPs: Australia's failure to abate threats to biodiversity. <https://invasives.org.au/wp-content/uploads/2023/01/ISC-KTPs-and-TAPs-discussion-paper-23-May-2018.pdf>

⁹ Cardona Santos et al 2023. Mainstreaming revisited: Experiences from eight countries on the role of National Biodiversity Strategies in practice. Earth System Governance. <https://doi.org/10.1016/j.esg.2023.100177>.

¹⁰ Archibald et al 2021. Do conservation covenants consider the delivery of ecosystem services? Environmental Science & Policy. <https://doi.org/10.1016/j.envsci.2020.08.016>.

24. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act?

Enforceable undertakings can be one mechanism to manage breaches of the Act and ensure that individuals and corporations make good on damage they have done to biodiversity. However, DEA believes that such undertakings may not be strong enough to act as deterrents to damage and destruction of biodiversity. Enforcement agencies need the option to apply substantial fines and even imprisonment for individuals and corporations who wilfully or negligently contribute to loss of biodiversity in addition to any reparation that can reduce or repair damage.

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?

DEA strongly supports wider standing for people to apply for civil enforcement for breaches of the Act. Members of the public may be the only observers of biodiversity damage, for example when they are bird-watching or camping. Conservation organisations are often frustrated at their lack of standing when their very purpose is to protect biodiversity. We note the explicit mention of vexatious and frivolous complaints and it may be necessary to actively deter these. However, the entire community should have standing to ensure enforcement of the Biodiversity Act, in recognition of our shared responsibility to protect biodiversity, as articulated in the objectives of the Act.

26. Do you support the concept of ‘no development’ orders?

Yes, ‘no development’ orders which restrict development on land that has been unlawfully cleared are a key mechanism to deter unlawful clearing. These orders should be attached to Title documents to ensure their continuity when the property is sold or transferred.

27. Do you support the option of civil penalties for breaches of the Act?

Yes, when combined with criminal penalties as below..

28. Do you support the penalties for criminal offences proposed under the Act?

A range of civil and criminal penalties will provide flexibility to ensure the Biodiversity Act is effective.

Civil penalties can be applied when the evidence for breach of the Act is on the balance of probabilities, rather than beyond reasonable doubt needed for criminal penalties. This may act as a deterrent to breaches and facilitate enforcement of the Act. Criminal penalties and the enduring criminal record that individuals and corporations could sustain if demonstrated at a higher standard of evidence, could complement civil penalties.

Appendix 1 provides a full list of penalties, and many have expiation fees much lower than the penalties that could apply. It is important that this does not lead to such fees being considered the cost of doing business. As far as possible an effective penalty should be imposed, in some cases up to \$1 million for a corporation should apply for breach of the Biodiversity Act. We also note that even a penalty as high as \$1 million will be

inadequate to restrain corporations in some industries, in which case the use of imprisonment as a deterrent may be necessary.

29. Do you support the permit provisions proposed in the Biodiversity Act?

As discussed under regulated activities, more consultation is required to ensure we take the right approach to permits to keep native animals because of the practical and moral issues that arise.

Situations in which the Minister can provide or revoke a permit need complete clarity to ensure public confidence in the process.

30. Do you support the provisions that set the scope of the State Biodiversity Plan?

The plan must be as broad as possible. As discussed in the explanatory paper, the Biodiversity Plan includes restoration, recovery and conservation. This appears to omit the most important element which is to halt processes and activities that contribute to biodiversity loss.

We support the regular production and review and reporting on the plan. However, implementation is critical. The widespread failure of implementation of plans to protect diversity is a failure of Australia's biodiversity protection system. Action plans need leadership, commitment and funding – the Biodiversity Act must assure these and report publicly on action plans.¹¹ Action plans should include strategies to overcome common reasons for their non-implementation, particularly vested interests, weak financial support as well as poorly integrated institutional and regulatory structures.¹²

31. Do you support the recognition of culturally significant biodiversity entities?

Yes, DEA recognises Indigenous ecological knowledge and the need for the policy to support biodiversity that is identified by First Nations communities, in a two-way learning process with non-Indigenous people.

32. Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account?

Yes, the Biodiversity Plan will be ineffective if decision-makers are not bound by its principles, policies and directions. To halt and reverse our declining biodiversity, the Biodiversity Act should take precedence over other Acts, because biodiversity is unique and irreplaceable.

33. Do you support the proposal to establish a Biodiversity Register?

A public portal to facilitate sharing knowledge of biodiversity is important. However, it is important to ensure quality of information and consistency with other biodiversity registers such as Atlas of Living Australia, iNaturalist and bird and frog databases.

¹¹ Invasive Species Council 2018. KTPs & TAPs: Australia's failure to abate threats to biodiversity. <https://invasives.org.au/wp-content/uploads/2023/01/ISC-KTPs-and-TAPs-discussion-paper-23-May-2018.pdf>

¹² Cardona Santos et al 2023. Mainstreaming revisited: Experiences from eight countries on the role of National Biodiversity Strategies in practice. Earth System Governance. <https://doi.org/10.1016/j.esg.2023.100177>.

34. Do you support the framework that the Bill proposes for the regular review of the Act?

Yes, regular review and updating are required, in addition to mechanisms to ensure the Act is not superseded by future governments with other priorities. DEA would like to see biodiversity protections assured in state and national constitutions so they are not vulnerable to other priorities.

35. Do you support moving the clearance exclusions into a schedule to the Act so they are in one place?

Yes, placement of similar sections together facilitates coherence of the Act.

36. Do you agree with the changes to the unregulated activities in Schedule 2?

All unregulated activities must be subject to scrutiny. Regardless of historic activities and practices, any grazing activity that contributes to loss of biodiversity should be regulated. Likewise, allowing clearing near to houses to reduce risk of fire can encourage development of housing in places where they should not be built because of inherent fire risk. Allowing clearing of plants less than 20 years old is inconsistent with the needs of biodiversity protection, particularly considering short-lived grasses and their ecological communities. DEA would like to see gradual reduction of the scope of unregulated activities with the goal of ensuring biodiversity protection principles are employed in all activities.

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?

Yes, the focus on preservation as a positive obligation presents more useful principles than the focus on clearance as a negative focus for the principle. It appears that each of the principles is as strong or stronger than the corresponding principles in the old act, including clause (k) which is referred to a local board likely to have awareness of local biodiversity concerns.

38. Do you support the amendments proposed to the National Parks and Wildlife Act 1972?

Yes, it appears that the Biodiversity Bill has been developed with considerable effort to ensure it interacts appropriately with other legislation.

39. Do you support the amendments proposed to other legislation?

Yes, it appears that the Biodiversity Bill has been developed with considerable effort to ensure it interacts appropriately with other legislation.

Further information

Barraclough KA, Carey M, Winkel KD, Humphries E, Shay BA, Foong YC. Why losing Australia's biodiversity matters for human health: insights from the latest State of the Environment assessment. Medical Journal of Australia. 2023;218(8):336-340. <https://doi.org/10.5694/mja2.51904>

DEA Fact Sheets on Biodiversity

- [Land Clearing Fact Sheet - Doctors for the Environment Australia 2019](#)
- [Forests and Native Vegetation Fact Sheet - Doctors for the Environment Australia 2019](#)
- [Zoonoses Fact Sheet - Doctors for the Environment Australia 2020](#)
- [Native Forest Logging Position Statement - Doctors for the Environment Australia 2023](#)