

Consultation Report

Response to feedback from the *Native Vegetation*

Amendments 2024



Introduction

The *Native Vegetation Act 1991* (the Act) was established to provide incentives and assistance to landowners in relation to the preservation and enhancement of native vegetation; to control the clearance of native vegetation; and for other purposes. Given the age of the legislation and the history of amendments, parts of the Act are outdated, confusing and at times, administratively burdensome to implement.

Proposed amendments to the Act aim to improve and refine the current operation of the Act. They respond to issues encountered by the Native Vegetation Council (Council) and the Department for Environment and Water (DEW) in the administration of the functions under the Act and issues raised by stakeholders. Amendments will enable the Council and DEW to continue to implement the Act effectively and efficiently.

There is no intention to reduce or weaken any protections for native vegetation. It is not proposed that the amendments will impose any new or increased barriers to obtaining clearance approval.

Background

The Act and *Native Vegetation Regulations 2017* are the legislative basis for the management of native vegetation on private and public land in South Australia.

The Act includes provisions which:

- establish the Native Vegetation Council and the Native Vegetation Fund,
- control clearance of native vegetation,
- provide incentives and assistance to landowners,
- enable the protection of native vegetation through landowners who enter into heritage agreements,
- provide enforcement avenues for unauthorised clearance of native vegetation.

While the Act is specifically aimed at protecting native vegetation, it also considers the habitat that it provides for native fauna and therefore effectively acts for the broader protection of nature and biodiversity.

The Act remains relevant and important for the protection of the State's native vegetation. Its introduction has been effective in largely halting any further substantial decline in the extent of vegetation in South Australia.

Previous legislative amendments have been successful in addressing a range of matters such as limiting the extent of clearance approved under the Act through the introduction of intact stratum provisions, consolidation of fire prevention and control regulations and associated delegations; and establishing additional options for achieving significant environmental benefit (SEB) offsets.

Consultation approach

To understand any potential unintended consequences of proposed amendments to the Act, DEW engaged with a number of key stakeholders (appendix 1) between August and September 2023 as part of pre-public consultation discussions. The feedback received indicated broad support from stakeholders for amendments to be pursued and suggestions for incorporation into the preparation of the draft *Native Vegetation (Miscellaneous) Amendment Bill 2024* (Bill).

The draft Bill was published on the YourSAy website from 17 April 2024 to 29 May 2024 for consultation. A discussion paper, frequently asked questions (FAQS), and the Bill, were available on the website for review. The website included links to the *Native Vegetation Act 1991*, the *Native Vegetation Regulations 2017*, the *Planning, Development and Infrastructure Act 2016* (PDI Act), and the DEW website.

Participants were able to comment and provide submissions in the following ways:

- Complete the online survey (questions attached as appendix 2), or
- Provide a written submission via either email (DEW.NVActAmendments@sa.gov.au) or post:
Native Vegetation Branch
Department for Environment and Water
GPO Box 1047 Adelaide SA 5001

A dedicated email inbox was established (DEW.NVActAmendments@sa.gov.au) whereby questions could be sent relating to the draft Bill, or how to make submissions.

Eleven information and consultation sessions were delivered to both government and external stakeholders throughout April and May 2024.

Two internal information and consultation sessions were also delivered to DEW staff throughout April and May 2024.

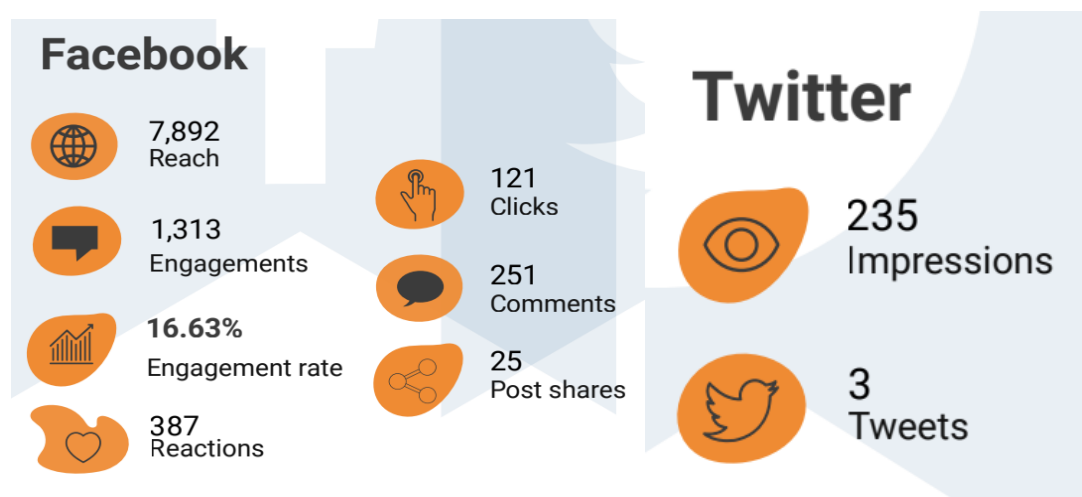
Engagement approach

Social media

Social media was used as an engagement tool to expand the reach to stakeholders in relation to the Act amendments. YourSAy South Australia posted on Facebook on 9 May to remind stakeholders of the proposed changes to the Act. The post received 372 reactions, 217 comments and was shared 25 times.

Additionally, YourSAy provided DEW with an online promotion report for the period 17 April and 29 May 2024. A paid Facebook ad campaign was delivered during this consultation period with 94 views of the landing page and 7,592 people viewing the ad:

YourSAy also promoted the proposed amendments to the Act organically on social media via both Facebook and Twitter with the below outcomes.



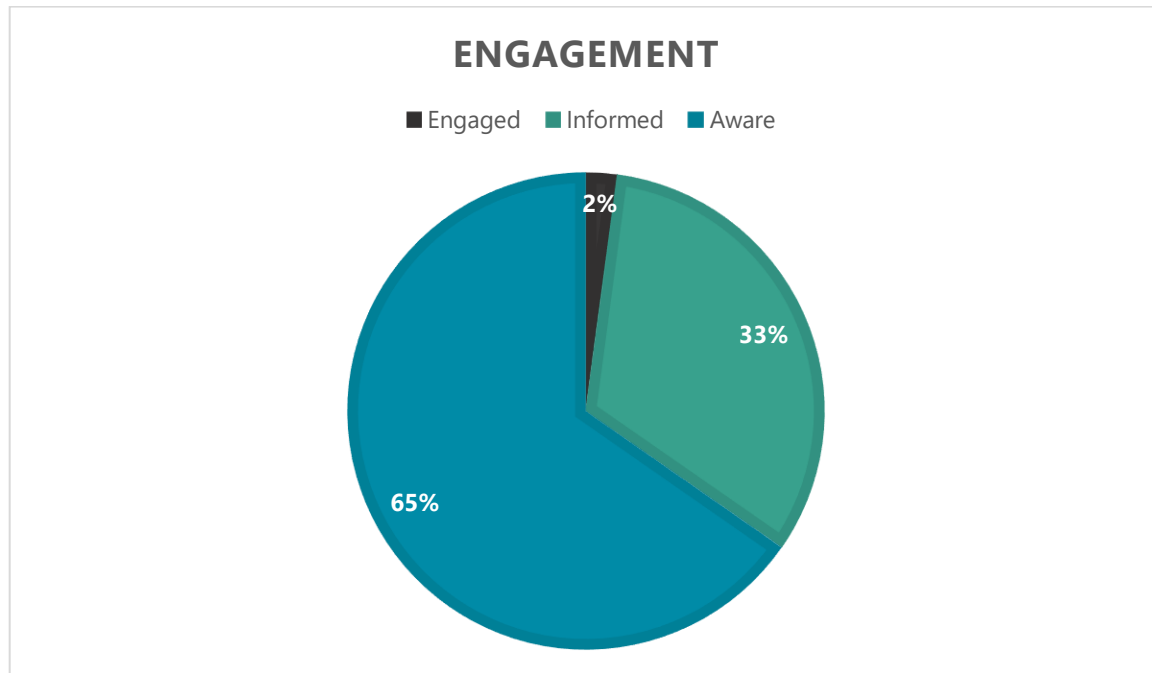
The proposed amendments were also delivered via a newsletter email to 70,297 registered email addresses. The email was opened 26,478 times.

YourSAy webpage

The dedicated YourSAy webpage for the draft Act Amendments received a total of 1,856 visits. The maximum visitors on any given day was 105.

Of the visitors to the page;

- 35 were engaged participants (i.e., completed the survey)
- 541 were informed participants (i.e., download a document, visited the FAQ page)
- 1,085 were aware participants (i.e., visited at least one page).



There were several engagement tools available on the YourSAy site. The below table denotes the number of visits and downloads/views for each engagement tool or document.

Engagement Tool Name	Visitors	Downloads/Views
NV Act Amendments - Final - Discussion Paper	336	518
Native Vegetation (Miscellaneous) Amendment Bill 2024	216	367
Native Vegetation Act Amendments - FAQs	59	77
FAQ	178	226
Key Dates	5	5

Demographics of respondents

There were 35 participants who responded to the survey. Key demographics of the 35 survey participants are outlined below.

Gender

Female	13
Male	18
Prefer not to say	2
Blank	2
Total	35

Age

Born between 1932 and 1965	15
Born between 1966 and 1999	9
Born from 2000 and later	1
Blank	10
Total	35

Aboriginal or Torres Strait Islander

Aboriginal or Torres Strait Islander	1
Non-Aboriginal or Torres Strait Islander	9
Blank	25
Total	35

Location

Regional	11
Outer metropolitan	11
Metropolitan	10
Interstate	1
Blank	2
Total	35

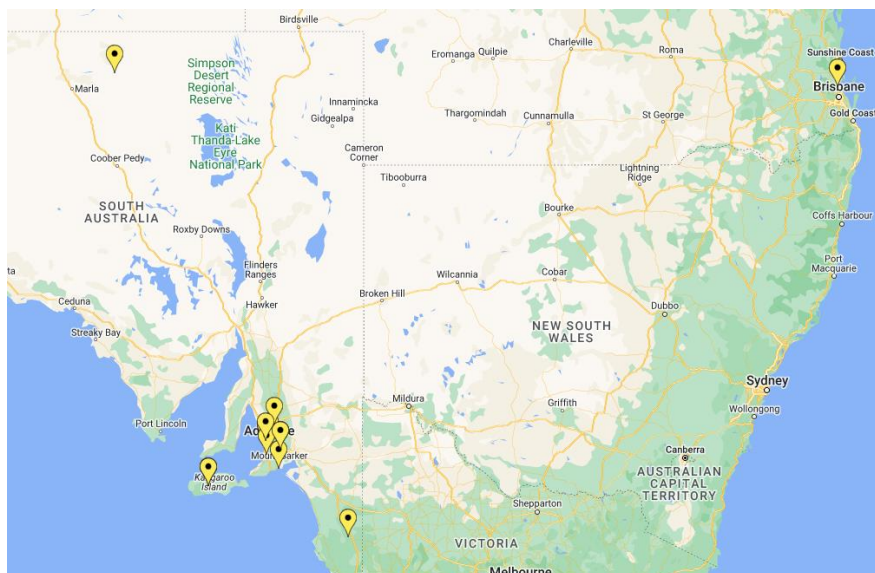


Figure 1 Map of respondent locations

Written submissions

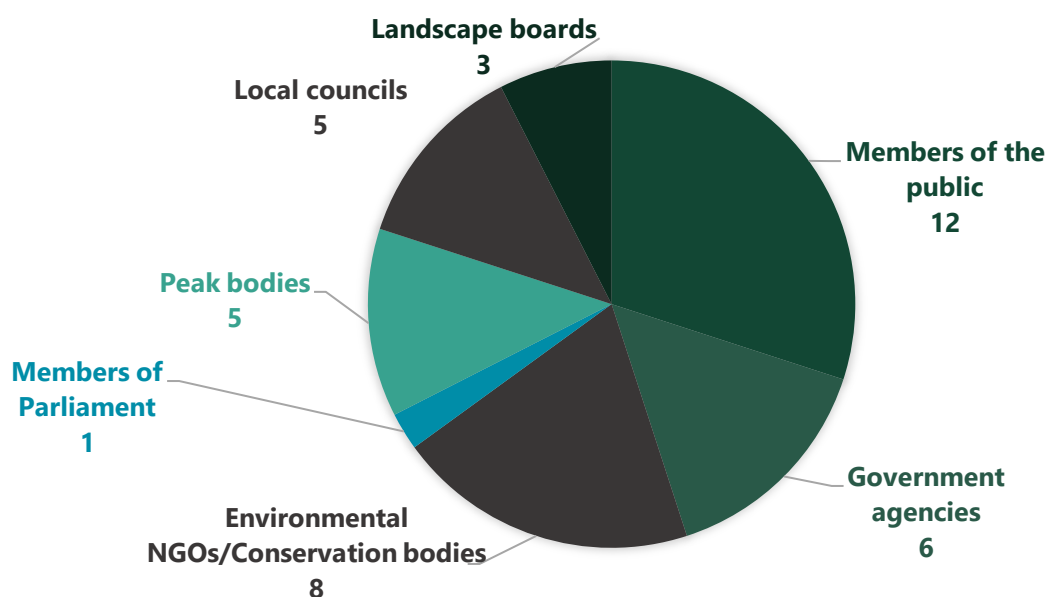
There were 40 written submissions received. The submissions were received from a wide range of stakeholders including government departments, members of the public, environmental consultants, researchers and Universities, landscape boards, conservation bodies and environmental NGOs.

The written submissions have been categorised into the following stakeholder groups:

- Local councils
- Landscape boards
- Environmental NGOs/Conservation bodies
- Members of the public
- Government agencies
- Peak bodies
- Members of Parliament

The below graph identifies the submissions received from each stakeholder group. It should be noted that one Landscape board submission was provided on behalf of multiple regional boards but has been captured as single submission.

WRITTEN SUBMISSIONS



What we heard

The effectiveness of the engagement and reach throughout the period prior to formal consultation and throughout can be seen through the number of written number of submissions received. DEW received 40 written submissions from a broad range of stakeholder groups (see appendix 3). This is in addition to the 35 survey responses.

The feedback was generally supportive of a majority of the proposed amendments, with stakeholders' main interests being around improved compliance and enforcement measures, including the mitigation hierarchy into the Act and including the definition of significant environmental benefit into the Act.

Some stakeholders identified that further detail would be required before they felt comfortable supporting an expanded use of the Native Vegetation Fund, and many respondents wanted to ensure that the Act aligned with other legislation and worked in a contemporary and complimentary way. Respondents were interested in the Act becoming less complicated, with the ability to be easily interpreted and applied.

The following priority themes were raised from the submissions and will be instrumental in continuing to refine and amend the draft Bill.

Amendments to definition for substantially intact native vegetation

There were mixed views on the need to amend the definition of substantially intact native vegetation. Some were supportive of a change as a clearer definition would be beneficial and less complicated. Others saw the introduction of the term 'contiguous' as creating more ambiguity and thought this may cause a greater risk of more clearance.

Mitigation hierarchy

There was strong support across all stakeholders for the mitigation hierarchy to be included in the Act. Some were concerned that the mitigation hierarchy would highlight to large developers and business that they could pay for an offset if they could prove that they could not avoid, minimise or restore. Strengthening the wording for avoidance to be the clear goal was suggested to mitigate this risk.

There was some feedback received that raised concerns relating to how the Act could impede housing development opportunities, with cost impositions being felt by developers.

Significant Environmental Benefit

There was strong support across all stakeholders for moving the definition of significant environmental benefit (SEB) from the Regulations into the Act. From the feedback, it was noted that some stakeholders were interested in seeking further clarification for how SEBs would work practically within specified guidelines.

Expert based Native Vegetation Council

The proposed amendment to change the appointment process of the Council would allow for the consideration of any individuals, irrespective of their association with a nominated body (Conservation Council of South Australia, Primary Producers SA Incorporated and the Local Government Association of South Australia) to be appointed as a Council member. Appointed Council members would have needed legislatively prescribed knowledge, skills and experience. Nominated bodies would then be provided the opportunity to give feedback on all proposed Council members prior to the Minister appointing.

A large portion of stakeholders did not agree with the proposal to amend the membership of the Native Vegetation Council to be expert based. There were concerns that the proposed change would result in the underrepresentation of and sector representatives thereby leading to increased political appointments.

Some offered alternative advice that the Minister could appoint qualified members in situations where the peak bodies could not nominate a potential candidate. Many stakeholders had an interest in ensuring a First Nations representative was part of the Council.

Expanded use of the Native Vegetation Fund

There were generally no major concerns regarding expanding the options for use of offset funds to achieve conservation and preservation of native vegetation outcomes. Examples of additional options for use of the offset funds included contributions to the purchase of land and reverse auctions.

Most respondents were supportive of broadening the use for other conservation or ecological purposes, especially if the use of the funds was able to be clearly reported or provided under a clear set of guidelines. The main objection to this amendment was using the fund for administrative costs.

It was suggested that the government undertakes and publishes a comprehensive evaluation of the Fund to identify whether the offsetting principles for SEBs are being met, and whether the costs paid by proponents are appropriately set to deliver SEBs. The Council has a 'Policy for achieving a Significant Environmental Benefit' that contains monitoring and review provisions regarding the impact and appropriateness of SEB policy settings.

Conservation agreements

Most stakeholders confirmed their support of the proposed conservation agreements and noted the alternative arrangements from a Heritage Agreement would allow more flexibility. The inclusion of a minimum time period for conservation agreements was identified as important by some stakeholders.

Financial assistance

There was almost unanimous support for expanding the purposes for which landowners can apply for financial or other assistance.

Expiation fees and penalties

There were mixed views in relation to expiation fees and penalties although many stakeholders noted that the expiation fees have not been updated since 2014 and should therefore be considerably higher. Some also noted that there should be a provision for indexation of penalties and fees. Alignment with expiation fees and penalties with other jurisdictions was also proposed. Ensuring the expiation fees and penalties were high enough to deter and prohibit illegal clearance was identified as an important factor when setting the value.

Minor clearance

Most stakeholders were supportive of the introduction of provisions to allow minor clearance of intact stratum in limited circumstances. Importantly, some stakeholders saw the provision for minor clearance as problematic, as it could create a loophole for all clearance matters. To mitigate this, it was suggested that 'minor clearance' is clearly defined in Section 3 of the Act or is captured in the Regulations.

Consistent application process for clearance and standardised SEB process

Any type of improvement to the Act that focussed on streamlining and reducing complexity and reducing administrative burden was largely supported throughout the submissions received. While the establishment of a single, standard consistent application process was greatly supported, some submissions indicated that they would not support the change if it meant a greater impost was imposed onto landholders i.e., the cost of the application process is not increased.

In terms of SEB processes, there was broad support for this to be standardised, with clear expectations and obligations identified. Feedback suggested that this amendment would be strongly supported especially if it meant that offsets are only considered once reasonable steps had been taken firstly to avoid and minimise impacts, in the first instance.

Planning, Development and Infrastructure Act

Stakeholders were interested in this amendment being able to align the definition of the building code in the Native Vegetation Act with the PDI Act, as well as ensuring clarification of requirements for PDI Act referrals.

Compliance and enforcement

There was overwhelming support from respondents to improve compliance and enforcement options. The addition of a mid-range penalty for compliance was also favoured.

Other feedback received

Consultation feedback included the suggestion to consider adding the equivalent of 'no development orders' modelled on section 30 of the *Heritage Places Act 1993*.

In addition, several minor administrative amendments were identified as a result of further internal review of the draft Bill. These include moving regulations relating to provision of false information in applications and the serving of notices into the Act.

Other feedback was received that does not relate directly to the themes identified above. Feedback included that stakeholders felt the amendments could go further to protect native vegetation, and that the Act should endeavour where possible to align with Commonwealth legislation (i.e., *Nature Repair Act 2023*).

Stakeholders noted that further enhancements possibly missed in the Act amendments could be made via the proposed Biodiversity Act. There was a recommendation that active engagement occurs between those drafting the proposed Biodiversity Act and the Native Vegetation amendments to ensure development of complementary legislation that supports SA's economic development whilst conserving and maintaining SA's biodiversity.

There was an interest in ensuring better definition between ecological management and clearance, especially regarding cultural practices. An opportunity was identified to better define and separate out 'ecological management' and 'clearance' and providing separate definitions for each term and placing each in separate sections under the Act and associated Regulations.

Conclusion

Overall, feedback received identified the need for DEW to focus on making the Act less complicated, with clearer processes and consistency across decision making functions. Equally, feedback identified that stakeholders are interested in the Act remaining as a preservation and enhancement mechanism for native vegetation, while ensuring native vegetation clearance, when necessary, is undertaken in a considered and responsible way.

The next stage will see changes made to the draft Bill, with the plan to introduce to Parliament by the second half of 2024.

Contact

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Appendix 1

Stakeholders

Australian Land Conservation Alliance	Nature Conservation Society of South Australia
Conservation Council	Nature Foundation
Country Fire Service	Plan SA
Department for Energy and Mining	Primary Industries and Resources SA
Department for Infrastructure and Transport	Primary Producers SA
Department for Trade and Investment	Trees for Life
Livestock SA	SA Water
Local Government Association of South Australia	South Australian Landscape Boards
Native Vegetation Council	South Australian Chamber of Mines and Energy
The Nature Conservancy Australia	Urban Development Institute Australia (SA)





Appendix 2

Questions in discussion paper

Question 1: Do you support the amended definition of substantially intact native vegetation?
Question 2: Do you support the inclusion of the mitigation hierarchy in the Act?
Question 3: Do you support moving the definition of significant environmental benefit from the Regulations to the Act?
Question 4: Do you support the membership of the Council being changed to be expert based?
Question 5: Do you support the expanded use of the money from the Fund?
Question 6: Do you support the introduction of conservation agreements?
Question 7: Do you support the expanded purposes for which landowners can apply for financial or other assistance?
Question 8: Do you support the increase in expiation fees and penalty provisions?
Question 9: Do you support the introduction of provisions to allow minor clearance of intact stratum in limited circumstances?
Question 10: Do you support the relocation of circumstances from Regulations to the Act to provide for a clearer and consistent application process?
Question 11: Do you support consolidating the circumstances when the Council is able to consent to clearance which is seriously at variance with the principles of clearance?
Question 12: Do you support the proposed standardised SEB process in terms of the expectations and obligations?
Question 13: Do you support long-term protections and management of SEB areas through entering into a conservation or heritage agreement?
Question 14: Do you support the clarification of requirements for PDI Act referrals?
Question 15: Do you support the amendments to improve compliance and enforcement options?

Appendix 3

Stakeholders - Written submissions

Adam Schultz	Kangaroo Island Council
Andrew Black	Kangaroo Island Landscape Board
Association of Mining and Exploration Companies	Landscape Boards of SA
Australian Land Conservation Alliance	Livestock SA
Biodiversity Council	Local Government Association SA
City of Mitcham	Michelle Haby
Conservation Council of SA	Murraylands and Riverland Landscape Board
Department for Energy and Mining	National Parks and Protected Area Program
Department for Infrastructure and Transport	Native Vegetation Council
District Council of Streaky Bay	Nature Conservation Society of SA
Dr S Petit	Nature Foundation
Environmental Defenders Office	Nick McBride
Gay (Gabriel) Crowley	Office for the Valuer-General
Grain Producers SA	Peter Favis
Green Adelaide	Primary Producers
Joan Gibbs	SA Nature Alliance
Joanna Wells	The Nature Conservancy
John O'Donnell	Tom Morrison
Kallan and Kathy Dennis	University of Adelaide
Kangaroo Island Bushfire Management Committee	Vaughan Levitzke