



The Ecological Society of Australia Ltd (ESA, www.ecolsoc.org.au) is the peak group of ecologists in Australia, with over 1500 members from all states and territories. Our members work in universities and other research institutions, government departments, NGOs, private industry, Indigenous organisations, and consultancies. We are a non-partisan not-for-profit organisation formed in 1959.

Submission to biodiversityact@sa.gov.au

RE: South Australia's Draft Biodiversity Bill

18th February 2025

The Ecological Society of Australia (ESA) welcomes the opportunity to provide this submission to the Biodiversity Coordination Unit, South Australia Department for Environment and Water regarding the draft Biodiversity Bill.

The ESA is a not-for-profit organisation representing over 1,500 ecologists across Australia. Our members play a vital role in conducting ecological research, providing expert advice, and informing policy. We are committed to working constructively with the government to develop effective laws that will protect Australia's unique biodiversity.

Introduction

ESA wishes to acknowledge the substantial work of the Department thus far in developing useful consultation materials and for enabling an accessible and transparent community consultation process. The strong level of engagement and high number of received submissions signals the critical importance of South Australia's precious biodiversity to local communities, organisations, industry and Australian society more broadly.

There is clearly strong support for legislative reform and a collective call for ambitious, transformative change. This means moving beyond just strengthening protections for existing biodiversity towards broadscale restoration and securing net positive outcomes for the state's biodiversity. There is strong consensus that this cannot be achieved without meaningful engagement with Aboriginal and Torres Strait Islander peoples and centring Indigenous knowledge, lore and connection to country. The Biodiversity Act should manifest SA's strong ambition for nature by removing ambiguous terms in the legislation and setting a clear net positive framework, improve governance, and ensure vital resourcing for the full implementation, operationalisation and enforcement of the Act.

Opportunities to enhance outcomes for SA's biodiversity

While the draft Bill is a meaningful step forward towards protecting and enhancing South Australia's irreplaceable nature, there are several important areas where the Bill could be strengthened to better achieve its biodiversity protection and restoration goals. The proposed Biodiversity Act is an exceptional opportunity for South Australia to demonstrate national leadership. With some further refinement to strengthen a few key areas, South Australia can set the best-practice standard for other states and Territories to follow.

Strengthening protections

Identifying, protecting and effectively managing critical habitats needs to be the highest priority to prevent further species declines and ongoing loss of biodiversity (Ward et al., 2019). The draft Bill states that "the Minister may prepare and publish on the Biodiversity Register an action plan in respect of a threatened

species, threatened ecological community, listed ecological entity or critical habitat". This provision should be strengthened for the most at-risk species and ecological communities. The preparation and implementation of these action plans should be mandatory under the Act, with the Department properly resourced to achieve this. Similarly, the Bill allows for the declaration of critical habitat areas. ESA recommends that if *any* habitat satisfies the current definition (Division 5, Section 82, paragraph 3), then declaration of that habitat as 'critical habitat' should be mandatory under the Act. Any discretion about making a critical habitat declaration must be removed. If any habitat satisfies the definition in the Act, then declaration of that habitat should be legally enforced, mapped and included as a declared critical habitat area within the state biodiversity plan and incorporated into the State Planning Policy as a "no development zone" under the Planning, Development and Infrastructure Act 2016. To this end, the Act must also explicitly incorporate processes for assessing and mitigating cumulative impacts (e.g. Kuempel et al., 2025; Mokany et al., 2019; Tulloch et al., 2019).

Restoration targets

South Australia's proposed Biodiversity Act reforms rightly recognise that the new Bill cannot only strengthen protections for what biodiversity remains – the reforms must include ambitious landscape scale restoration goals. South Australia has experienced very high levels of historical native vegetation clearance – extensive areas of habitat have been removed for agriculture and urbanisation, resulting in fragmented landscapes with diminished flora and fauna. Nationally, South Australia is a climate leader – committing to emissions reduction targets to achieve net zero by 2050. The same needs to be done for securing net positive biodiversity outcomes.

While the Draft Bill facilitates some positive steps towards nature restoration (necessitating a state biodiversity plan, supporting private land conservation, monitoring the condition and trend of biodiversity values); ESA calls on the Department to go much further. The draft Bill would be greatly strengthened by including requirements for specific restoration targets (e.g. Thorpe & Stanley, 2011; Elliott et al, 2022; Wang et al., 2021), timelines for achieving targets and integrating climate adaptation planning into restoration frameworks. It should be noted that restoration targets focused solely on habitat area restored are likely to lead to perverse outcomes, e.g. massive tree plantations displaced native forest but failed to help promote biodiversity (Hua et al., 2018). Therefore, restoration efforts should focus on enhancing habitat availability for species persistence.

As stated in the National standards for the practice of ecological restoration in Australia, biodiversity restoration must be underpinned by robust statutory obligations for achieving net positive biodiversity outcomes, with clear targets that can be measured, monitored and reported against (McDonald et al., 2016). Explicit targets and timelines for the restoration of SA's biodiversity can be aligned with national 30X30 goals within the broader Kunming-Montreal Global Biodiversity Framework.

Recommendations

The Bill has addressed some of the recommendations raised in earlier submissions, particularly around enforcement, compliance, and governance structures. However, ESA raises several key issues that remain partially or inadequately addressed. Concerningly, the Bill often uses softer language ("have regard to") rather than seeking mandatory obligations or to explicitly consider impacts via a transparent decision-making framework. There can be no doubt this ambiguity waters down the intended protections. Several independent reviews of biodiversity conservation law in Australia have shown that legislation fails to protect species and ecosystems against 'death by a thousand cuts' – cumulative impacts (Tulloch et al., 2016; Simmonds et al., 2020; Ward et al., 2020). It is this failure to address cumulative impacts adequately that has locked our biodiversity into a state of ongoing decline. Unfortunately, the draft Bill incorporates only limited mechanisms for addressing cumulative impacts and this must be strengthened as a matter of urgency. Another matter of utmost importance is to explicitly integrate consideration of climate change impacts into decision making, based on the best available science and with decision-making underpinned by the precautionary principle. ESA is also concerned that no specific restoration targets or timelines have been

included – this may be addressed in the state biodiversity plan but such targets should be statutory. Further specific recommendations are listed below.

ESA recommendations:

- 1. Move beyond ‘protect, restore and enhance’ biodiversity to include a net positive framework in the objects and principles of the Act, with legislated targets to secure net positive biodiversity outcomes.**
- 2. Throughout the Act there are often no clear obligations for decision-makers beyond ‘having regard to’ – this ambiguity effectively waters down the protections in the Act. Transparent decision-making frameworks should be enforced with a set of reasons for decisions made publicly available.**
- 3. In Part 2, Section 8 strengthen Principle (d) from ‘having regard to’ the impacts of climate change to an explicit statutory requirement to fully integrate climate change impacts into decision making via a science-informed and transparent process.**
- 4. Principles of the Act should be expanded to include the precautionary principle, principle of ecological integrity, principle of restoration and enhancement and the principle of Traditional Ecological Knowledge and principle of intergenerational equity (Australian Panel of Experts on Environmental Law, 2017).**
- 5. The Act should include measures to protect the Indigenous Estate include Indigenous Protected Areas under its biodiversity and conservation management.**
- 6. Ensure proper resourcing so that deep engagement and ongoing consultation with Indigenous knowledge holders can be fully operationalised across all areas identified in Part 2 Section 10.**
- 7. In Part 2 Section 11 an explicit framework for assessing cumulative impacts must be referred to in the Act to address the common problem of ‘death by a thousand cuts’. Detailed strategic assessment of cumulative impacts must be included as a statutory requirement, rather than simply ‘have regard to’ cumulative impacts.**
- 8. Part 2 Section 9 – Ensure that implementation of the state biodiversity plan is a statutory requirement. The state biodiversity plan should provide a clear and legally enforceable restoration framework with targets for a net positive biodiversity outcome.**
- 9. Part 6 Division 4 – Declaration of action plans should be mandatory for most at risk species and ecological communities; and the Department appropriately resourced to do this.**
- 10. Part 6 Division 5 – Critical habitat protections are currently weak and should be statutory under the Act. The current terminology, that the Minister ‘may declare critical habitat areas’ affords a high degree of discretion. ESA asserts that if any species’ habitat satisfies the current definition in the legislation, then a critical habitat area declaration should be mandatory under the Act.**
- 11. Critical habitat should also explicitly include climate refugia protection (both current and predicted climate refugia due to species’ area of occurrence shifting from climate impacts)**
- 12. Critical habitat declarations should be explicitly listed and enforced as "no-go zones" for development and incorporated into the State Planning Policy under the Planning, Development and Infrastructure Act 2016.**

Conclusion

South Australia boasts an incredible natural environment; stunning coastlines with pristine beaches to arid ranges, stony deserts, expansive ephemeral wetlands and the beloved Murray River. These natural environments alongside urban greenspaces and agricultural landscapes still do support beautiful native plants and wildlife that are cherished and loved not just by South Australians, but people across the globe. However, SA’s precious remaining biodiversity is declining with more species at risk of being lost forever (State of the Environment, 2023). Despite this ongoing decline recent independent expert review found that South Australia had no explicit goals and targets for biodiversity. This new Bill presents an important opportunity to rectify this. ESA congratulates the Department on this significant step forward in developing the state’s first specific biodiversity conservation law. Ultimate success however will depend on translating ambition into strong, enforceable legislation for biodiversity conservation and restoration. This must include

strong upfront protections for remaining habitat and legislated overall ‘net positive’ targets for biodiversity. We urge the Department to grasp this opportunity to strengthen the draft Biodiversity Bill and deliver a legacy of restored landscapes and flourishing biodiversity for South Australia.

The ESA welcomes the opportunity to provide further information to this Consultation or to discuss our submission in more detail. We can be contacted at:

[REDACTED]

This submission was prepared on behalf of the ESA by Policy Working Group members and approved by the President, 18th February 2025.

References:

- Australian Panel of Experts of Environmental Law (2017). The Foundations of Environmental Law: Goals, Objects, Principles and Norms (Technical Paper 1, April 2017).
- Department of Climate Change, Energy, the Environment and Water. (2023). *State of the environment 2023: Biodiversity*. Australian Government. <https://soe.epa.sa.gov.au/environmental-themes/land/state-of-our-land/biodiversity>
- Elliott, C. P., Commander, L. E., Merino-Martín, L., Golos, P. J., Stevens, J., & Miller, B. P. (2022). An approach to defining and achieving restoration targets for a threatened plant community. *Ecological Applications*, 32(6), e2613.
- Hua, F., Wang, L., Fisher, B., Zheng, X., Wang, X., Douglas, W. Y., ... & Wilcove, D. S. (2018). Tree plantations displacing native forests: The nature and drivers of apparent forest recovery on former croplands in Southwestern China from 2000 to 2015. *Biological Conservation*, 222, 113-124.
- Kuempel, C. D., Stockbridge, J., O'Neill, T., Griffiths, L. L., Frid, C. L., & Brown, C. J. (2025). Frameworks and best practices for cumulative impact accounting in offshore energy development. *Marine Policy*, 173, 106571.
- Mokany, K., Harwood, T. D., & Ferrier, S. (2019). Improving links between environmental accounting and scenario-based cumulative impact assessment for better-informed biodiversity decisions. *Journal of Applied Ecology*, 56(12), 2732-2741.
- McDonald, T., Jonson, J., & Dixon, K. (2016). National standards for the practice of ecological restoration in Australia. *Restoration Ecology*, 24(5), 705-705.
- Simmonds, J. S., Reside, A. E., Stone, Z., Walsh, J. C., Ward, M. S., & Maron, M. (2020). Vulnerable species and ecosystems are falling through the cracks of environmental impact assessments. *Conservation Letters*, 13(3), e12694.
- Tulloch, A. I., Barnes, M. D., Ringma, J., Fuller, R. A., & Watson, J. E. (2016). Understanding the importance of small patches of habitat for conservation. *Journal of Applied Ecology*, 53(2), 418-429.
- Tulloch, A. I., Gordon, A., Runge, C. A., & Rhodes, J. R. (2019). Integrating spatially realistic infrastructure impacts into conservation planning to inform strategic environmental assessment. *Conservation Letters*, 12(4), e12648.
- Thorpe, A. S., & Stanley, A. G. (2011). Determining appropriate goals for restoration of imperilled communities and species. *Journal of Applied Ecology*, 48(2), 275-279.
- Wang, L., Ren, G., Hua, F., Young, S. S., Wang, W., Yang, C., & Zhu, J. (2021). Integrating habitat availability into restoration efforts for biodiversity conservation: Evaluating effectiveness and setting priorities. *Biological Conservation*, 257, 109127.
- Ward, M. S., Simmonds, J. S., Reside, A. E., Watson, J. E., Rhodes, J. R., Possingham, H. P., ... & Taylor, M. (2019). Lots of loss with little scrutiny: The attrition of habitat critical for threatened species in Australia. *Conservation Science and Practice*, 1(11), e117.