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Biodiversity Coordination Unit
Department for Environment and Water
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Dear Biodiversity Coordination Unit

Comments on draft Biodiversity Bill 2025

Thank you for the opportunity to comment on the draft Biodiversity Bill 2025. The following response is based on a complete reading of the Bill, more than 40 years international experience in biodiversity conservation policy, practice and reporting as well as discussions with DEW staff, Tim Jarvis and civil society groups such as ALCA. I also Chaired the South Australian Water Resources Council 1997-2004, and was part of the NRM Council during that period, and so appreciate other legislation and processes that this Bill needs to work with.

Strengths

- The general duty included in Part 2 is useful.
- The mitigation hierarchy is a useful inclusion. It would add more value if its meaning (avoidance > minimisation > rehabilitation/ restoration > offset) was made explicit throughout the Bill, especially for regulation of activities (Part 4, part 5, Schedule 2). The related hierarchy, introduced and complementary but more relevant to private land managers is the "protect-restore-enhance" construct, which is explicit in several places, such as the agreements and plans.
- Provisions for a Biodiversity Plan, the Biodiversity Register, the priority species and habitat lists are useful. The State Biodiversity Data provision is useful, as long as it complements national (e.g. ALA) and international (e.g. iNaturalist) platforms and is publicly available.
- The hooks for credits (4(4)(57) [p46]) and especially the opportunity for credit assignment/transfer (4(4)(58) [p47]) provide a useful foundation for any nature repair market that may evolve.
- Another hook, enabling creation of conservation areas on private land 7(1)(91) [p65], is a positive inclusion but it would be strengthened if it was made clear that such areas would remain private land under a Conservation Agreement.

Part 3 – Administration

- The Bill introduces new administrative arrangements. The Biodiversity Council is assigned functions that make it a powerful institution. This is appropriate but its composition (s15) should be people selected based on skills and experience, not representatives of particular sectors (s15(3)). If the Minister insists on consulting organisations then s15(3) would be strengthened if private land conservation sector was also consulted (e.g. Australian Land Conservation Alliance).
- In several places the Bill suggests the (unelected) Council will make decisions or give approval for the Minister to do so (e.g. s83, s92(5), s94(1)). The Bill would be strengthened if it was clear that the (elected) Minister either makes decisions or is responsible for decisions made.



- Given the proposed governance arrangements, the Bill would be strengthened if it distinguished between strategic advisory functions (Biodiversity Council - e.g. advising minister on conservation, research and data priorities; consideration of market mechanisms; allocation of funds; role of First Nations peoples, State Plan) and more tactical and regulatory functions (committees, including advice on lists, processes, register, grants/programs, permits, licenses).
- The Bill covers all biodiversity in SA (s7) but emphasises plants and native vegetation clearance. For example, the Native Plants Clearance Assessment Committee (NPCAC) has functions that focus on terrestrial habitats and native plants. But it is unclear if a critical habitat (s82) includes marine or riverine/riparian habitat. If so, it may be more appropriate to name the committee the "Native Ecosystem Clearance Assessment Committee" and include assessment of marine ecosystems, animals and native plant species and related communities. I understand that other legislation covers marine habitats and their development, as it is not privately owned; but if the Biodiversity Bill is to cover all state biodiversity, then the institutions it enables need to be aligned with the objects (s7).
- The proposed funds (s36, s38, s39) make sense in the wider context. The Biodiversity Conservation Fund would be strengthened (e.g. s36(3)(c)) if it was explicitly enabled to receive philanthropic investment for purposes that align with the objects of the Bill.

Part 7 – Conserved Areas

- There is a risk that the two forms of agreement (s92, s94) cause confusion. I understand the intention is for a Biodiversity Agreement to be equivalent to a Heritage Agreement but expanded to cover protection, restoration and enhancement of biodiversity; and the Conservation Agreement, which is identical except for a minimum 20 year life, is what would ultimately be security for any trade where it was decided to pay for a "Significant Environmental Benefit" from the Biodiversity Restoration Fund "... to meet the obligations of the Council under a conservation agreement entered into under this section" (7(2)(94)(1) [p66].
- One solution is to use Biodiversity Agreements for the restoration and enhancement stages of conservation; and a Conservation Agreement once biodiversity/SEB outputs are delivered. That would align with good governance practice and enable any market mechanism(s) that may evolve in future.
- As above, any decisions relating to agreements should be either made by the Minister or ultimately be the responsibility of the Minister. It is inappropriate for an unelected body to direct the Minister (e.g. s92(5): "...Minister must not enter into, vary or terminate a biodiversity agreement under this section without first consulting and obtaining the approval of the Council").
- The provision to enable financial assistance to buy land (s101(6)) needs codification to reduce the risk of perverse incentives or perceptions of malpractice.

I would be pleased to discuss these observations and other ideas I have relating to the Biodiversity Bill at your convenience.

Yours sincerely



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