

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

RE: Submission on Developing a Biodiversity Act for South Australia

Thank you for presenting an agenda paper recently to the Parks and Wilderness Council (PWC) regarding the development of a Biodiversity Act for South Australia. The PWC welcomes the opportunity to provide a submission covering several important issues that we want you to take into consideration during the development of this important Act.

Be Bold and Ambitious

- The development of this Act is a good opportunity to develop contemporary, world class legislation that can enable real, practical and substantive changes resulting in better protection for, and enhancement of, South Australia's biodiversity.
- The PWC urges the Minister to prioritise and strengthen the narrative and outreach around the development of this Act as a unique opportunity to engage broad interests in the protection of biodiversity for the future of the State's environmental, social and economic health for all. Deepening this understanding is also critical to the Act achieving primacy, and thus being effective in halting the biodiversity crisis.
- The new Act should apply across all land tenures and specifically allow for the enhanced protection of biodiversity on private land as well as public land.
- Developing a new Biodiversity Act should enhance the performance of current environmental protection Acts, not detract from them (for example the *National Parks & Wilderness Act 1972*, *Native Vegetation Act 1991*, *Landscape Act 2019* etc).
- Better protection measures alone will not halt the decline of South Australia's natural capital; we urge the Minister to explore opportunities to secure additional resources to support the Act's implementation, especially for species and ecosystems at risk.

Primacy, Penalties and Mitigation

- The Biodiversity Act should be developed to sit above and inform all other relevant legislation in South Australia. Biodiversity is an all-encompassing concept, and the new Biodiversity Act should hold primacy when interacting with other relevant state legislation to facilitate nature positive outcomes.
- The new Act must have a meaningful mitigation hierarchy. Taking an offset approach is not optimal for biodiversity outcomes. The new Biodiversity Act should favour avoidance (for example through re-designing or re-locating a project) to secure the State's overall environmental and economic health long-term. We'd also suggest the Act recognise, define and apply the concept of unacceptable impacts.
- Offsets should be a last resort and the inclusive costs of biodiversity loss should be passed on to the project proponent in full. Absorbing, costs, fees and penalties should act as a disincentive or motivator to apply the mitigation hierarchy not be seen as just the 'cost of doing business.'



- Penalties for transgression of the Act and for harming biodiversity should be constructed in such a way that they are a true deterrent, involving financial, make good and criminal consequences as appropriate.
- Civil penalties as used in the Environment Protection Act 1993 (including protection orders, clean up orders and stop work powers) could be considered.

Future Proofing

- It is crucial the Act be developed in a way that provides an open framework (as opposed to a set of detailed offences) to allow for future changes in biodiversity threats and opportunities.
- The Act should contain a mechanism for monitoring and revision to enable it to remain up to date and effective.
- The provision of a mechanism to nominate key species and important ecosystems (including regular updates) for special consideration and a scientific review committee would be valuable.
- The Council supports the investigation into how the NP&W Act could be modernised and adapted to function in line with the new Biodiversity Act. However, any resultant changes from this investigation should not lessen the strength and adequacy of either the NP&W Act or the new Biodiversity Act.

Ethical Transparency

- The Council urge the structure of the Act to provide for strengthened transparency around the true impacts of development on Biodiversity and the public scrutiny of the details of developments and related decisions.
- The PWC would like to see a 3rd party right to appeal development decisions enabled by the Biodiversity Act.
- The PWC recommends the new Biodiversity Act clearly outlines of the public's right to consultation on significant biodiversity impacts.

Engagement & Messaging

- The Council urges policy staff to consult and engage with non-conservation groups to educate the broader society, industry and community groups of the importance of healthy biodiversity on business and our social fabric.

In closing, the Council recommends that the public messaging around the development of this Biodiversity Act highlight that South Australia's capital future is reliant on the health of its biodiversity and through supporting a strong Act and greater investment we are securing our State's future. The ultimate KPI for this Act is a slowing or reversal of some of the entrenched SA SOE trends which demonstrate the extent of the crisis we face.

The Council thanks DEW staff for the opportunity to contribute and comment and look forward to ongoing communication as this important new Biodiversity Act is developed especially in regard to its interface with the *National Parks & Wilderness Act 1972*.

Kind Regards,

Vicki-Jo Russell

Presiding Member
Parks & Wilderness Council