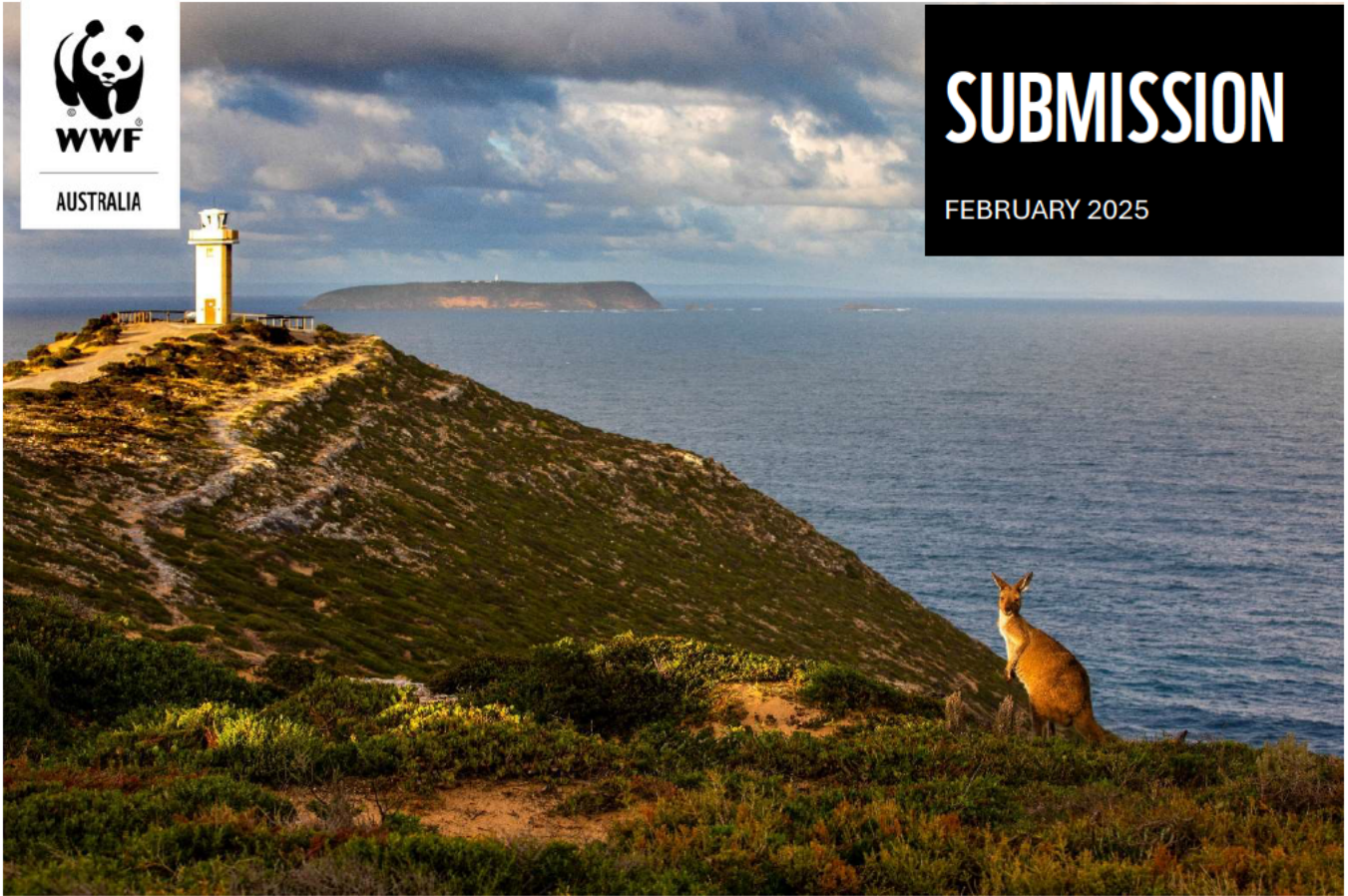




AUSTRALIA

SUBMISSION

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WWF-AUSTRALIA SUBMISSION TO DRAFT BIODIVERSITY ACT (SOUTH AUSTRALIA)

World Wide Fund for Nature-Australia (WWF-Australia) is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature. WWF-Australia has approximately two million financial and non-financial supporters.

WWF-Australia welcomes the opportunity to provide a brief submission on the exposure draft of South Australia's *Biodiversity Act* ('the Act').

We welcome the South Australian Government's commitment to developing the *Biodiversity Act*. The steadily deteriorating state of nature across Australia is at crisis point and requires all governments, state and federal to strengthen environmental laws as a key part of the solution.

Positive reforms

Some of the proposed reforms WWF-Australia supports include:

- The introduction of a general duty to protect biodiversity;
- The recognition of the role of First Nations peoples and traditional knowledge;
- The potential to declare critical habitat as a mechanism to prevent unacceptable impacts;
- Prioritizing the avoidance and minimization of biodiversity impacts rather than offsets;
- The ability to use the Biodiversity Fund for land purchase;
- The proposed improvements to threatened species listings, action plans and related processes;
- The purpose and content of the proposed State Biodiversity Plan, including the requirement for the Minister to prepare and publish the Plan, and review and report on it every 5 years.

Key issues and suggestions for improvement

1. Proposed objects of the Act.

WWF recommends inclusion of an additional, stronger objective – something like “stop biodiversity decline” or “stop extinctions”. This would then be more consistent with the Global Biodiversity Framework (GBF), and Australia’s Strategy for Nature 2024-2030 that was endorsed by all Australian environment ministers and is Australia’s action plan for delivering on its GBF commitments. Such an object could be included in an amended object 2, so as to read: “2. To stop extinctions and protect, restore and enhance biodiversity such that there is an improvement in the state of biodiversity at all scales and to build the resilience of biodiversity, including resilience to the impacts of climate change.”

2. Principles.

The principles are generally sound but there is a need for the precautionary principle to be added.

The precautionary principle is typically written as:

“Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and*
- *an assessment of the risk-weighted consequences of various options”.*

There are abbreviated versions available as well. WWF recommends the precautionary principle be included in the Act.

3. Mitigation hierarchy and native vegetation offsets.

The Act proposes a continuation of the current no net loss policy when considering significant environmental benefit. To date, there is a lot of evidence that demonstrates ‘no net loss’ has been leading to overall decline in biodiversity outcomes¹. Simply relying on no net loss is no longer a suitable objective for the mitigation hierarchy and for offsets. This is because we are in an extinction crisis affecting Australia and the world^{2 3}.

The Nature Positive Goal, developed in response to this global crisis, is defined as: Halt and Reverse Nature Loss by 2030 against a 2020 baseline, and achieve full recovery by 2050⁴. The Global Biodiversity Framework (GBF) adopted by 196 countries in 2022 including Australia gives effect to the Nature Positive goal and has 23 global targets for action to 2030⁵.

The South Australian Minister for the Environment joined other Environment Ministers across Australia in working together to achieve a Nature Positive Australia aligned with the ambition in the GBF. This resulted in the release of Australia’s Strategy for Nature 2024-2030, endorsed by Environment Ministers and containing ambitious targets from the GBF of particular relevance to Australia (e.g. zero new extinctions)^{6 7 8}.

Nature Positive requires us to move beyond just minimising negative impacts and start tackling the repair and recovery of nature. Enabling sustained, coordinated public and private investment is the key to achieving Nature Positive, however it has nonetheless raised the bar for environmental protection as well. Together with the fact that current approaches have failed to slow the rate of decline, this means we all need to do more to protect and restore nature in our daily business, in addition to sharing responsibility for addressing historical impacts. The test – for every decision – needs to be whether there is absolutely more nature as a result of a decision than there was before. This applies to all of us – governments, business and individuals. For the mitigation hierarchy this requires net gain to be the objective, not no net loss.

¹ Maron et al. (2023). Nature positive’ must incorporate, not undermine, the mitigation hierarchy. *Nature Ecology and Evolution*, 8(1).

² IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany. 1148 pages. <https://doi.org/10.5281/zenodo.3831673>

³ Australian State of the Environment Report 2021. <https://soe.dccew.gov.au/>

⁴ Nature Positive Initiative <https://www.naturepositive.org/app/uploads/2024/02/The-Definition-of-Nature-Positive.pdf>

⁵ CBD (2022) COP15: Final text of Kunming-Montreal Global Biodiversity Framework, CBD/COP/DEC/15/4. Decision 15/4: <https://www.cbd.int/decisions/cop?m=cop-15>

⁶ Environment Ministers meeting 9 June 2023 Agreed Communiqué <https://www.dccew.gov.au/sites/default/files/documents/emm-communique-09-june-2023.pdf>

⁷ Environment Ministers meeting 10 November 2023 Agreed Communiqué <https://www.dccew.gov.au/sites/default/files/documents/emm-communique-10-nov-2023.pdf>

⁸ Environment Ministers meeting 24 June 2024 Agreed Communiqué <https://www.dccew.gov.au/sites/default/files/documents/emm-communique-21-june-2024.pdf>

In terms of the amount of gain (beyond no net loss), this needs to be set in a way that is not too onerous but clearly provides a net increase in biodiversity. WWF recommends setting this at least 20% beyond no net loss for the time being (noting the UK has set this at 10%).

What is just as critical here is that the objective needs to be absolute, and in this case demonstrate *absolute* net gain. This means improvements need to be real: they need to be measured from a fixed baseline state rather than assuming that because biodiversity is in decline, a bit less decline over a period of time is sufficient – it's possibly an improvement from what might have happened but it's not equivalent to the loss (see for example [Thomas et al 2024](#)).

WWF recommends that a policy of absolute net gain is adopted for the mitigation hierarchy and environmental offsets and that this is embedded in the Act. We further recommend that the power to determine the Significant Environment Benefit policy and offset formula be given to the Biodiversity Council and not the Minister. The current policy of no net loss actually means net loss in practice and is therefore inconsistent with the objects of the Act and undermines the global and national goal of Nature Positive. The NSW Government is working through similar nature positive reforms and Victoria is also considering adoption of the net gain approach for offsets⁹ ¹⁰.

WWF also recommends the following points are adopted when determining the Significant Environment Benefit policy and offset arrangements:

- Irreplaceable biodiversity cannot be offset and must be avoided.
- Offsets must be secured, and gains start to be realised before impacts commence.
- Offsets must be high integrity, like for like and deliver an absolute increase in the biodiversity impacted (quality/quantity, species population, etc.).
- Cumulative impacts need to be assessed and inform requirements.
- Cash payments in lieu of offset (i.e. payment into the Biodiversity Restoration Fund) should not be used (given most such schemes in Australia have failed badly) but there may be potential to use a credit-based scheme where there is an existing "gain" in place to purchase (Point 2).

4. The relationship of this legislation to other acts

The draft Act appears to have reduced legislative primacy and it is critical this be corrected so the Act can have the broad effect that's intended and that is necessary to meet its objectives. The need for legislative primacy was a key point made in the Henry review of NSW biodiversity legislation¹¹. WWF recommends therefore that section 6(5) is deleted so that the Government of the day does not have the power to effectively "switch off" most of the Act when it wants, and similarly section 4(1) which would severely curtail the effect of the Act.

⁹ State of NSW (2024). [NSW Plan for Nature. NSW Government response to the reviews of the BC Act and native vegetation provisions of the LLS Act July 2024.](#)

¹⁰ The State of Victoria, Department of Energy, Environment and Climate Action August 2024. [Discussion paper – a better approach to managing the biodiversity impact of renewable energy Nov 2024](#)

¹¹ Dept of Planning and environment NSW (2023). [Independent Review of the Biodiversity Conservation Act 2016.](#)

5. The importance of conservation covenants

The Act should enable enhanced conservation covenants to be legislated given the effectiveness of these mechanisms in certain circumstances¹².

6. Threatened species listings and critical habitat

The determination of critical habitat and threatened species listings could be improved and be more transparent.

WWF recommends that the Act make the independent Scientific Committee responsible for threatened species listings and decisions, rather than making it a political decision of the Minister. We also recommend that the public be able to nominate key threatening processes.

WWF also recommends that when deciding whether to declare critical habitat (section 82(2)) the Minister *must decide* whether or not to declare, rather than must consider whether or not to declare, critical habitat.

7. The State Biodiversity Plan

While we support the proposed State Biodiversity Plan, WWF recommends that consultation on the development of the Biodiversity Plan, and its implementation and five-yearly review, is as broad as possible. Broad consultation and genuine engagement is an excellent way to bring more of society into the positive solutions for the future repair of South Australia's natural environment. It also makes the longer-term implementation of the Plan more likely to succeed.

Thank you again for the opportunity to contribute to this important reform process.

For further information:

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¹² ALCA (2023). Policy Note on Enhanced Protection Conservation Covenants https://alca.org.au/wp-content/uploads/2023/12/ALCA-Policy-Note-Enhanced-protection-conservation-covenants_November-2023-2.pdf