Primary Producers SA Inc.
Ground Floor, 62 The Parade
NORWOOD SA 5067

PO Box 259
KENT TOWN DC SA 5071

T: 08 8297 0899

ABN 75 266 051 838

www.ppsa.org.au

Mr Brett Simes
Biodiversity Coordination Unit
Department for Environment and Water
GPO Box 1047
ADELAIDE SA 5001

Via email biodiversityact@sa.gov.au

1 March 2024

Dear Mr Simes

Thank you for the opportunity to provide comment to the *Discussion Paper: Developing a Biodiversity Act for South Australia* (the '**Discussion Paper**') released for public consultation on 7 December 2023. We welcome the opportunity to enhance the proposed legislative framework through ongoing consultation with the Department of Environment and Water ('**DEW**') at this stage of drafting.

Primary Producers SA (**'PPSA'**) is the peak industry body representing the interests of South Australian primary producers and is the South Australian member of the National Farmers Federation. Our members are the peak commodity organisations of South Australia. Current members include Grain Producers SA, Livestock SA, SA Dairyfarmers' Association, SA Forest Products Association, Horticulture Coalition of SA, and the Wine Grape Council of SA.

According to the most recent PIRSA Scorecard, South Australia's primary production sector has grown to $18.5 billion dollars in agribusiness revenue, accounting for more than half of SA's overseas merchandise exports and remaining the state's single largest export sector in 2022-23. There are more than 15,300 primary production businesses, supporting over 78,000 FTEs jobs in the food and agribusiness value chain.

PPSA is also the South Australian member of the National Farmers Federation ('**NFF**'), and we support the implementation of the NFF Roadmap to exceed $100 billion in farm gate value by 2030. PPSA stands with the NFF, supporting their ongoing advocacy for mechanisms which recognise and support the stewardship work of Australian farmers in managing a significant portion of the country's natural capital.

Natural capital is the world's stock of natural resources including geology, soils, water, air and all living organisms that provides free goods and services to society through ecosystem services. Ecosystem services provided by primary production to natural capital assets include the regulation of disease, floods and droughts, provision of food sources, and cultural services.

In line with the 2023 State Economic Statement to transition to a 'green economy', we believe that government policy such as the proposed Biodiversity Act, should recognise the role farming plays in the active stewardship of much of the South Australian landscape. Put simply, agriculture is where industry strengths and natural resources combine to frame the state's role in the global economy.

We note the Discussion Paper sets out a rational for a new approach to biodiversity given the state's record of species loss, the spectre of pressures from climate change and the risk to our 'clean and green' reputation in the international marketplace.

PPSA recognises the importance of the environment for Australian agriculture, as well as the broader public, for the intrinsic soil, water, and living organism services it provides. In recent decades primary producers have achieved a great deal to advance biodiversity through revegetation projects, Landcare programs, Heritage Agreements, wildlife management and pest and weed control programs. Such initiatives are testament to the alignment of interests in managing productive agricultural land and delivering ecosystem services.

Ongoing access to prime agricultural land underpins productivity of the primary industry sector. PPSA notes that rural zoning accounts for more than 54% of our state's total land mass of the state, which is held or managed by primary producers, with significant holdings of biodiversity assets curated for a range of personal, financial, societal, and environmental outcomes.

PPSA acknowledges the raft of existing South Australian legislation which has implications for conservation and management of biodiversity; including but not limited to the Landscape SA Act, the Environment Protection Act, the proposed Biosecurity Act, the Native Vegetation Act, the Pastoral Land Management and Conservation Act, the Planning Development and Infrastructure Act, and the Mining Act. These statues directly impact primary production and natural resource management practices.

While PPSA generally supports the intent of the initiative as set out in the Discussion Paper, we caution the Department in drafting overly complex or prescriptive legislation that may create new risk or cost burden to the business of primary production. It is important to also avoid unintended consequences which may arise through poorly designed legislation and supporting regulatory instruments.

PPSA has reviewed the Discussion Paper and further considered matters canvassed during our briefing held with you on Tuesday, 20 February 2024. Please note the submission lists a range of outstanding matters that PPSA members seek further consultation prior to finalization of the Bill's drafting.

If you, or the department have any queries regarding this submission, please feel free to contact me via email admin@ppsa.org.au

Thank you for your careful consideration of these matters.

Yours sincerely

Caroline Rhodes
Chief Executive Officer

PRIMARY PRODUCERS SA

Submission in response to the Discussion Paper:

Developing a Biodiversity Act for South Australia

CONTEXT

In this submission we make several general observations and make recommendations for consideration around the 'Topics' set out in the Discussion Paper.

PPSA at a glance

Primary Producers SA (PPSA) is the peak industry body representing the interests of South Australian primary producers.

PPSA also serves as the South Australian member of the National Farmers Federation (NFF). This ensures PPSA is directly engaged in all NFF activities including implementation of the Roadmap for Australian Agriculture to exceed $100 billion in farm gate value by 2030.

PPSA has the capacity to provide strong representation and advocacy on behalf of the South Australian primary production sector through our membership base.

Our members are the peak commodity organisations of South Australia. Current members include Grain Producers SA, Livestock SA, SA Dairyfarmers' Association, SA Forest Products Association, Horticulture Coalition of SA, and the Wine Grape Council of SA. Each organisation is represented by a councillor on the PPSA Policy Council, to provide direction and oversee the operations of PPSA.

Our purpose

As the united voice of South Australia's primary production sector, our purpose is:

- To **advocate the interests and concerns of Primary Producers** to both State and Federal governments and community using evidence-based reasoning.
- To **present one voice** to government, both State and Federal, and the wider community on Cross-Commodity issues affecting Primary Producers in South Australia.
- To **promote Primary Production in South Australia** and ensure that the contributions and achievements of South Australian Primary Producers are recognised; and
- To **assist stakeholders and suppliers to Primary Production** where such assistance will benefit Primary Producers.

What we do

PPSA develops the South Australian primary production sector through:

1. **Engagement**. PPSA partners with government and industry to develop policies and programs that promote the social, economic, and environmental sustainability of South Australian primary production.
2. **Leadership**. PPSA acts as the conduit to the South Australian primary production sector and presents a united voice on behalf of its membership in advocacy and representative activities.
3. **Communication**. PPSA influences policy makers by promoting the contribution we make to the South Australian economy and engaging positively with government and the broader community.

GENERAL OBSERVATIONS

Introduction

Primary Producers SA (PPSA) has reviewed the Discussion Paper for the *Developing a Biodiversity Act for South Australia*. The following submission includes observations on each of the Topics of the Discussion Paper and includes 20 recommendations as identified in bold text.

As outlined, PPSA has identified a range of matters that will require further consultation with the primary production sector. While PPSA broadly supports the intent of the proposed legislative reform, we caution against creating complexity and cost impositions on primary producers arising from additional regulatory burden.

The Discussion Paper

PPSA supports the circulation of a Discussion Paper to stimulate community and stakeholder engagement in formulation of the proposed Biodiversity Act.

Acknowledging the Minister's commitment to the proposed Act, PPSA suggests that if legislation is to proceed, it should be explicitly explained in terms of the management and conservation of threatened species and ecological communities, as opposed to blanket biodiversity.

PPSA respectfully submits the Discussion Paper would also have benefited from being presented as a narrative of the why, what, and how it would achieve objectives and who would oversee implementation in lieu of the 'Topics' as presented.

The Consultation Process

On 19 June 2023 PPSA participated in the stakeholder workshop from which principles to guide any new legislation were developed.

These principles on face value encompassed the issues raised for a proposed Act, however while it evident that while these principles in a general sense are embedded in the Discussion Paper, it makes no specific reference to how the feedback from stakeholders has been incorporated. This is a considerable gap in the consultative approach taken by DEW.

Recommendation:

1. ***PPSA recommends there is a need for further discussion to articulate how the 2023 workshop-developed principles have been incorporated into framing a draft Bill.***

A Model for Legislative Reform

PPSA acknowledges a need for improved outcomes for conservation and management of biodiversity in South Australia through clearer legislative intent.

We note there is a raft of existing South Australian legislation which has implications for conservation.

and management of biodiversity; including but not limited to the Landscape SA Act, the Environment Protection Act, the proposed Biosecurity Act, the Native Vegetation Act, the Pastoral Land Management and Conservation Act, the Planning Development and Infrastructure Act, and the Mining Act.

Also acknowledged are the key problems with existing legislation set out in the FAQ's on *YourSay*, that:

- biodiversity is considered under multiple pieces of legislation which causes complexities due to lack of cohesion, consistency and narrow scope.
- penalties are disproportionate and inconsistent.
- the enforcement approach needs modernisation to ensure additional tools and compliance action options are available.
- there are inadequate provisions relating to identifying and protecting species at risk of extinction.
- there is misalignment with national legislation and/or international obligations and approaches.

While the Discussion Paper covers some of these problems and states, "*…current laws do not reflect the modern and significant challenges of biodiversity loss*" an analysis of the provisions for biodiversity under existing legislation, of how new legislation would interact with that existing legislation or how it would interact with that raft of existing legislation should be explored through consultation.

For example, PPSA observes for example that under the Landscape SA Act there are many existing programs that have a heavy bias toward species and ecological community conservation, and this could be further leveraged.

PPSA suggests there is merit in considering how improved biodiversity objectives could be achieved through amendments to those existing laws to more clearly stipulate positive benefits for biodiversity.

While in the *YourSay* FAQs it states that "*…it is likely a new Biodiversity Act will need to provide guidance and influence over other legislation and may require consequential amendments to be made*" this is pre-emptive of a model for the Act. While consequential amendments to existing legislation by a new single focus Act is one regulatory approach, an analysis of the merits of an 'omnibus' Act that brings together key pieces of legislation is another not presented as an option.

Recommendation:

2. ***PPSA recommends there is a need for further discussion on the operating model of the proposed Biodiversity Act, given the existing number of related Acts and regulatory instruments governing conservation and management of biodiversity in South Australia.***

The Scope of Biodiversity

Given almost everything we do has an impact (positive and negative) upon biodiversity, a clear discussion on the scope of the legislation is critical. It is not until 'Topic 5' of the Discussion Paper, 'Assessing Risk of Extinction', that it becomes apparent the intention of the legislation is to focus on threatened species and ecological communities.

The majority of the Discussion Paper refers only to biodiversity in the general sense. A clearer articulation that the focus of the proposed legislation is concerned with 'listed' species and ecological communities as identified by a rigorous scientific and community-based assessment process is needed.

The FAQs on YourSay states commonly "*…conserving biodiversity relates to saving endangered species, but it is also important to protect whole ecosystems."* Also, that biodiversity is defined "*…in its broadest sense encompasses the variety of life forms on Earth, from the tiniest microorganisms to the largest plants and animals, including humans*".

If indeed *"A new Biodiversity Act is the state's key piece of environmental legislation with strong influence over actions taken that are likely to have impact on matters involving biodiversity",* then PPSA has concerns over the boundaries envisaged for the legislation. It is unclear if the intention is to follow the Commonwealths EPBC Act's focus on specific threatened and vulnerable species and ecological communities.

Recommendation:

3. ***PPSA recommends that prior to further development of the proposed Act there be a clearer definition of its scope, a transparent analysis of the deficiencies of current legislation and articulation of how the new legislation would relate to those existing state laws and Commonwealth's EPBC Act and the Nature Repair Act.***

Competition for land and water resources from both mining and extraction interests, as well as the expansion of the urban footprint, and increasingly large-scale renewable energy projects and future transmission lines, present a significant challenge to the preservation of biodiversity in South Australia, and by extension, the operation of the proposed Biodiversity Act.

Ongoing access to prime agricultural land underpins productivity of the primary industry sector. PPSA notes that rural zoning accounts for more than 54% of our state's total land mass of the state, which is held or managed by primary producers, with significant holdings of biodiversity assets curated for a range of personal, financial, societal, and environmental outcomes.

The scope of the proposed Biodiversity Act should clearly define the role in related legislative instruments and regulatory approvals required in South Australia governing change of land use, including for mining, energy and urban development purposes.

Recommendation:

4. ***PPSA seeks clarity on the scope of the proposed Biodiversity Act, in respect to change in approved land use and/or designated zoning classification, which may result in a loss of biodiversity or natural capital on existing agricultural land.***

Governance and Decision Making

It is proposed that the Department of Environment and Water (DEW) having carriage of the legislation and a committee to make scientific determinations to oversee the legislation. While that is appropriate, PPSA is wary of powers solely entrusted to public servants and appointed scientists and urges consideration of a mechanism for community oversight of decision making. That could either be a new body or, depending upon the model of the legislation, utilise expertise of existing bodies, such as Landscapes Boards.

Recommendation:

5. ***PPSA recommends that consideration be given to a mechanism for community/landholder input to decision making.***

Avoiding duplication

Across the agricultural sector, a variety of commodity-specific sustainability frameworks, certifications, and other schemes exist to substantiate sustainability efforts and progress. These all have been developed to meet the increasingly complex sustainability imperatives coming from corporate, consumer, and government entities, which have a broader human centric focus.

The Australian Agriculture Sustainability Framework (AASF)[1] has been driven by the increasing appetite of international capital markets on articulating inherent risks to their investments, through emerging Environmental Social and Governance (ESG) reporting frameworks.

The AASF is a principles-based uniting concept that amplifies the efficacy of existing domestic and international industry-specific sustainability frameworks by articulating 17 agreed universal principles and offering a cohesive structure to sectoral efforts.

It is structured around three pillars which align with ESG. Under each pillar there are Categories, Principles and Criteria which describe the intent, and which are informed by and align with international frameworks, initiatives, and schemes.

Investment in Australian agriculture to achieve integrated goals of productivity, sustainability, and environmental outcomes such as natural capital, carbon and biodiversity is accelerating.

PPSA has been carefully monitoring the development of the AASF, as a key market access tool designed to communicate the sustainability status and goals of Australian agriculture at large to markets and communities, while avoiding unnecessary cost on individual landholders.

Recommendation:

6. ***PPSA recommends that consideration be given to the role of the Biodiversity Act in supporting sector-wide sustainability reporting frameworks to avoid duplication in reporting and compliance requirements imposed on individual landholders.***

[1] The framework can be accessed via the link: http://www.farminstitute.org.au/aasf

Avoiding unintended consequences

PPSA has reviewed the Discussion Paper and further considered matters canvassed during our briefing held with you on Tuesday, 20 February 2024. Please note the submission lists a range of outstanding matters that PPSA members seek further consultation prior to finalization of the Bill's drafting.

In particular, PPSA seeks further consultation on the following matters:

- the proposed model for the Act,
- the definition of the scope of biodiversity,
- analysis of the deficiencies of current legislation in achieving the policy objectives concerning biodiversity,
- the relationship to existing state laws and Commonwealth's (EPBC) Act and Nature Repair Act,
- mechanisms for community/landholder input to decision making,
- maintenance of existing arrangements and relationships with First Nations people,
- considerations for regulation and compliance relating to cultural values,
- scope of the targeted impacts on biodiversity to be covered,
- consultation with industry around the decisions and actions on the public register,
- consideration of 'ESG' principles to guide decision making in lieu of 'ESD',
- clarification of the focus on vulnerable species and extinction,
- biodiversity planning, reporting, and reviewing adding to an already crowded area,
- improvements to data and information arrangements,
- consolidation of incentive arrangements for private conservation areas and a mechanism to record and acknowledge privately owned 'protected areas',
- mechanisms to enable producers to capture biodiversity assets in accessing markets,
- how, when establishing protected areas, climate change impacts are considered,
- avoiding vexatious misuse in a legal context of a statutory Duty of Care, and
- the intention to introduce stronger penalties and more options for enforcement.

Summary

While PPSA generally supports the intent of the initiative as set out in the Discussion Paper, we caution the Department in drafting overly complex or prescriptive legislation that may create new risks and cost burdens to the business of primary production. It is important to also avoid unintended consequences which may arise through poorly designed legislation and supporting regulatory instruments.

RESPONSES TO DISCUSSION PAPER COMMENTS

1. Biodiversity and South Australia's First Nations People

PPSA supports the intent to engage with First Nations people in the proposed Biodiversity Act, noting that Landscape Boards have existing strong relationships with people in their regions, where much of the 'on country' focus relates directly to management of biodiversity, with the added cultural perspectives in landscape management.

Recommendation:

6. ***PPSA recommends that development of legislation acknowledges existing arrangements and relationships with First Nations people under a raft of exiting legislation.***

PPSA notes the inference in the Discussion Paper to enshrine decision-making powers of First Nations interest groups in respect to the proposed Biodiversity Act. We note separate and targeted engagement with First Nations peoples has been undertaken by DEW to inform its approach to drafting new biodiversity laws, while also proposing to align with other Australian jurisdictions and/or international conventions.

In contemplating any such proposal in draft legislation, PPSA will have regard to the practical lessons of the repealed Aboriginal cultural heritage law reforms in Western Australia, "…that went too far, were too complicated and placed unnecessary burdens on property owners"[2].

Should a similar approach be implemented in South Australia for protection of (cultural) biodiversity, the likelihood of community opposition should be carefully considered by government to ensure a balanced approach in achieving greater First Nations engagement in biodiversity matters[3].

Recommendation:

7. ***PPSA recommends that DEW has regard to the recent experience in Western Australia concerning Aboriginal cultural heritage laws, in drafting a Biodiversity Act to increase involvement of Aboriginal First Nations In South Australia in biodiversity matters.***

2. Avoiding Impacts: *Promoting avoidance and minimisation of impacts to biodiversity*.

That the proposal is to prioritise avoidance and minimise impacts to biodiversity and follow a mitigation hierarchy to make it clear that any action must leave biodiversity in a measurably better state is supported.

However, the broad focus on biodiversity per se rather than on specific species and ecological communities which are 'listed' on a register, needs to be explicitly made. Almost everything primary

[2] https://www.abc.net.au/news/2023-08-08/roger-cook-repeals-aboriginal-cultural-heritage-laws/102699678
[3] https://www.wa.gov.au/government/media-statements/Cook-Labor-Government/Laws-overturned:-Aboriginal-cultural-heritage-legislation-replaced--20230808

producers do has impacts on biodiversity and the limited scope of legislation would need to be specific in that regard. DEW must have regard to the practical implementation of this concept and likely impact arising from additional regulatory complexity.

PPSA is concerned that the proposed Act could render communities, industry, and individual primary producers moribund without clear definition of what biodiversity it is seeking to manage and conserve. Related to that, the proposal that 'any action' that has an impact on biodiversity would be in scope. Would that include farming practices and bushfire hazard reductions for example? Those concerns are major issue for primary producers where 'actions' that have impacts on biodiversity are ill defined.

Ongoing access to prime agricultural land underpins productivity of the primary industry sector, to produce South Australia's food, fibre and wine, which generates $18.5 billion agribusiness revenue.

Remaining prime agricultural land should not be left to merely 'offset' the negative environmental impact from surrounding developments, such as high-density housing or mining operations that permanently impact biodiversity within a region. In that context, PPSA welcomes the mitigation hierarchy as an approach to decision-making concerning change of land use across government.

Recommendation:

8. ***PPSA recommends that further definition of the scope of the targeted impacts on biodiversity to be covered by the proposed legislation is required.***

3. Transparent decision-making: *Ensuring awareness of outcomes.*

While the policy intent to ensure transparency of the legislative framework is reasonable, the proposal for the government to maintain a public register of decisions and mandatory reporting as a minimum requirement of the proposed raises concern about the additional regulatory burden this may create for landholders, including primary producers. This could be a costly and complex process if poorly designed, particularly in relation to commissioning third party advice or land surveys.

A question for primary producers, is what biodiversity assets would be recorded in the register. How far into the decision making of landholders would this Act intrude? And would decisions with positive impact on biodiversity be registered? Who would pay for such information gathering or assessment?

Recommendation:

9. ***PPSA recommends consultation is required around the sort of decisions and actions that impact biodiversity would be in the public register.***

The proposal for incorporation of Ecologically Sustainable Development (ESD) principles in the Act is supported, but the effectiveness of its incorporation into multiple laws relating to planning and environment is questionable. We note the Discussion Paper canvasses the *"…proper application of the principles of ESD relating to biodiversity conservation in decision-making processes"*.

PPSA notes that rural zoning accounts for more than 54% of our state's total land mass of the state,

which is held or managed by primary producers, with significant holdings of biodiversity assets curated for a range of personal, financial, societal, and environmental outcomes.

Agricultural land is often the easiest to source and cheapest to develop, but this comes at an enormous cost to the primary production sector, Australia's capacity to produce food, and in the context of the Discussion Paper, the natural capital value or biodiversity loss. For example, a significant proportion of the Greater Adelaide planning zone area encompasses important rural production areas which are inherently fertile and close to markets and services, while holding considerable value in natural capital.

PPSA notes South Australia's scarce arable landscapes are frequently referred to as 'greenfield sites' in housing development applications and government policy governing change of land use. Previous urban growth management strategies have had a significant focus on urban land supply, but not enough attention has been paid to how this affects the region's rural landscapes and permanent loss of biodiversity.

Recommendation:

10. ***PPSA recommends provisions for 'ESD" in existing legislation be systematically reviewed.***

4. Threats to biodiversity: *Recognising threats to biodiversity and improving management.*

The proposal that the Act could provide for a framework for the identification of threats to biodiversity and include statutory obligations for actions to address threats to biodiversity is well intentioned but requires further definition to be readily understood in practice.

As previously canvassed, such a framework is fundamental to what is proposed. Identification of the specific threats to be addressed and the consequent obligations (powers and regulations), is required to be transparent and not be overly burdensome. Acknowledging the details of all the threats and actions is beyond a Discussion Paper, establishment of principles for identifying the threats and actions that could be in scope is necessary to understand the envisaged level of intrusion into the decisions and actions of landholders, particularly of primary producers.

While not to dismiss the need for a 'duty of care' discussed at Topic 9, the potential for heavy burdens on economic activities (esp. primary production), could be counterproductive without proper consultation and recognition of positive efforts.

Recommendation:

11. ***PPSA recommends the actions that have an "impact on biodiversity" to be included and the consequent statutory obligations need thorough consultation with industry.***

5. Assessing the risk of extinction: *Understanding of extinction risk and implementing mitigation.*

It is here in the Discussion Paper where PPSA understands more of the envisaged the focus of the

legislation. The focus on the types of native species that can be considered as threatened, the creation of a formal listing that is enabled to be amended is understood to be at the heart of the proposed legislation.

This Topic 5 addresses the key issue and points to an unstated intention that the Act focus on management and conservation of threatened species (and ecological communities), not just on broadly defined 'biodiversity'.

Recommendation:

12. ***PPSA recommends that if the focus of the proposed legislation is around vulnerable species and their potential for extinction, then development of legislation should explicitly state that.***

6. Biodiversity planning and reporting *Supporting state planning for biodiversity priorities.*

The proposal for a state-wide biodiversity plan that is regularly reviewed and updated, is conditionally supported, where it may address the concerns around the scope and priorities outlined in this submission. Such a plan and its associated planning process with stakeholders would give greater meaning and sense of certainty around what a statutory obligation to biodiversity involves, and the associated government funding that will be required to support the legislative outcomes, will be a matter of ongoing public interest.

PPSA acknowledges the Minister's commitment to new legislation and observes that if it takes an Act of Parliament to give effect to a policy document like "No Species Loss" then, with stakeholder backing for such a plan, that is to be supported in principle.

Notwithstanding that, PPSA has concerns that existing laws (Landscapes/EPA/Native Vegetation), already require extensive planning and reporting, so we submit any new processes be examined closely so there to be minimal repetition and accounting burdens. There must be clear linkage and harmonisation to other sector-wide plans that support state level planning for biodiversity priorities, such as the Landscapes Strategy.

Recommendation:

13. ***PPSA recommends that biodiversity planning, reporting, and reviewing are a priority but given the existing extensive planning and reporting that occurs under existing arrangements, the legislation could streamline rather than 're-invent'.***

7. The benefits of information *data collection, collation, interpretation, and dissemination*

If the proposed Act is required to enable the sharing of biodiversity information, establishes a central repository of data and direct dissemination of that data by DEW then that would be of benefit to achieving the outcomes sought.

PPSA supports this need for data collection and information sharing, particularly where there is not common understanding of what biodiversity is and how it materially impacts society and industry.

Primary producers are significant custodians of biodiversity and as such need to understand and be recognised for their positive and negative impacts.

PPSA understands that the Environmental Protection Agency (EPA) already has the mechanics for data collection and information sharing for the State of the Environment Report so, consistent with previous comments, PPSA requests DEW consider the focus of this initiative should be on improving existing arrangements.

As a principle, PPSA submits that where the benefits of information accrue to the public good, the additional costs of data collection and on-ground survey work should be funded through DEW, and not be borne by the individual landholder.

Recommendation:

14. ***PPSA recommends that given biodiversity data and information arrangements already exist, new legislation should consider amendments to improve those managed by the EPA.***

8. Achieving 30 by 30: *Exploring new and different ways to protect nature.*

The focus here on the extent of 'protected areas' and the proposal for the Act to broaden/create schemes to provide further support for private conservation areas and enable additional (financial/technical) incentives to landholders has full support.

PPSA is a strong supporter of current arrangements providing incentives for nature conservation on private land (Heritage Agreements, National, State and Regional Grants) and while there could always be more funding made available to landholders, it is not clear what new legislation would achieve beyond that which exists now.

PPSA notes that there are significant areas of ecological significance held privately that aren't recorded as protected (for biodiversity) to meet the 30% target, the legislation should provide a mechanism where such assets are not just recorded but acknowledged for their contribution.

Consideration of capturing 'scrub blocks' on farms not under Heritage Agreements or other statutory arrangements could not only contribute to achieving targets but also acknowledge and reward the contribution of the primary industry sector to biodiversity. In addition, this aspect of the proposed Act should capture the significant areas within the forestry estate (Native Forest Reserves), as describe in the YourSay FAQs, which have important biodiversity values.

The role of the Farming for the Future initiative, the general focus on valuing the 'natural capital' on farms and how the Commonwealth Nature Repair Act that could provide market-based incentives to biodiversity conservation should clearly be given consideration in framing this Act.

Recommendations:

15. ***PPSA recommends the Act could consolidate existing incentive arrangements for private conservation areas to the benefit of landholders and primary producers.***

16. ***PPSA recommends the Act could provide a mechanism to record and acknowledge privately owned 'protected areas'.***

17. ***PPSA recommends that the Act must establish mechanisms to enable producers to capture biodiversity assets in accessing markets agricultural commodities.***

When considering the need for 'protected areas', the potential for the ecology of a particular area could change and locking it up could have detrimental impacts on the intended biodiversity values, so is the prevailing approach of building a fence the answer?

Recommendation:

18. ***PPSA recommends that where the Act considers establishing protected areas, climate change impacts are considered.***

9. Biodiversity a shared responsibility: *Ensuring we all pay attention and care for nature.*

Promoting a shared responsibility for biodiversity through a defined 'duty of care' would assist the community and in this case, primary producers understand the contribution they can make.

In principle, PPSA supports a concept of a 'Duty of Care' to provide guidance to the community on what is best practice, but without defined boundaries of the scope for biodiversity, has reservations abouts its application as a vehicle to set civil penalties etc. This could potentially be quite draconian and lead to vexatious litigation which would require very tight and confined definitions.

Recommendation:

19. ***PPSA recommends that there be a statutory Duty of Care but with specific intent(s) and scope to avoid vexatious misuse in a legal context.***

10. Consequences of doing the wrong thing *Stronger penalties and more enforcement options.*

While the Act could seek to align sanctions and penalties and apply a contemporary risk-based approach to the types of enforcement actions would streamline and modernize regulatory processes, PPSA is concerned about the spectre of new powers and penalties being imposed.

Acknowledging that legislation attempts to follow emerging community norms and has a role in supporting those expectations, the wide definition of biodiversity and the proposal for non-government parties to commence proceedings for offenses requires much more discussion with the community and industry.

Recommendation:

20. ***PPSA cautions intentions to introduce stronger penalties and more options for enforcement of yet to be defined boundaries of what constitutes biodiversity and the actions that have impact.***