Australian Land Conservation Alliance

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Biodiversity Coordination Unit
Department for Environment and Water
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20 February 2024

Dear Biodiversity Coordination Unit,

RE: Submission on Developing a Biodiversity Act for South Australia

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Department of Environment and Water (DEW) on the development of a South Australian Biodiversity Act.

ALCA is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Please note that ALCA is happy for this submission to be published in full.

The Topics listed in square brackets against each group of recommendations references the topics as listed in the Discussion Paper[1].

Recommendations

The South Australian Government should:

1. **Be more ambitious**. Whilst canvassing several important issues, the Discussion Paper[2] does not outline an aspiring plan or big idea that will create the much-needed step-change in how we protect, manage, and restore South Australia's declining biodiversity. We desperately need a Biodiversity Act that delivers on an ambition matching the great urgency, importance, scale, and depth of the crisis facing South Australian nature.

2. Ensure that the Biodiversity Act does not weaken or otherwise undermine the strength of existing South Australian environmental legislation unless it would demonstrably lead to stronger and expanded protections, management, and restoration of nature (i.e. stringently apply, in effect, a 'better off overall test').

An independent statutory conservation trust – a big idea whose time has come for South Australia

3. Legislate the creation of an independent a statutory entity **whose purpose would be to partner with willing landholders to permanently protect, manage and restore biodiversity across South Australia**. This could be undertaken via a

[1] https://yoursay.sa.gov.au/89139/widgets/417965/documents/271589
[2] Ibid.

range of mechanisms, but predominantly through conservation covenants and could be expected to include incentive payments for landholders to target the conservation of high-value and threatened biodiversity.

An independent statutory conservation trust is the most significant policy opportunity for nature available to the Biodiversity Act which does not currently exist in the South Australian legislative and institutional landscape.

Such a trust would need to be provided with sufficient capital endowment to ensure it can sustain a substantive capacity to deliver conservation (i.e. protection, management, and restoration) of South Australian nature. This endowment could be provided as a once-off or built over time (such as over the Budget forward estimates).

Exemplar models in other states include the Biodiversity Conservation Trust NSW[3] and Trust For Nature (Victoria)[4], both of which are State Government not-for-profit statutory entities. Through its consultations on the *Environment Protection and Biodiversity Conservation Act 1999*, the Federal Government has indicated it also plans to introduce an Independent Conservation Trust, although it is not yet clear what its full range of functions would be.

Where appropriate, a South Australian independent statutory conservation trust could partner with existing Department resources (such as the Native Vegetation Fund), and external partners such as the Federal Government, private sector, environmental not-for-profits and land conservancies, domestic donors and international philanthropic trusts to further magnify its impact.

ALCA would be pleased to discuss further details on how such a trust could be constructed, including facilitating discussions with the Biodiversity Conservation Trust NSW and Trust For Nature (Victoria).

Private land conservation [various topics and Topic 8]

4. Investigate and where possible legislate for the relevant recommendations from ALCA's recent report: *The private land conservation opportunity to deliver for 30 by 30*[5]. This report provides 23 recommendations, many of which are directly aimed at State government implementation, including the South Australian government.

5. In particular, legislate the creation of **Enhanced Protection Conservation Covenants**. Enhanced protection conservation covenants exclude extractive activities like mining from land otherwise dedicated to conservation. They are especially valuable when substantial investments are required to establish, manage, and rehabilitate environmentally and culturally significant land, providing a level of protection required for many external parties to invest in conservation, especially major international philanthropic foundations, and offering opportunities to dramatically leverage government funding for nature.

[3] https://www.bct.nsw.gov.au/
[4] https://trustfornature.org.au/
[5] https://alca.org.au/the-private-land-conservation-opportunity-to-deliver-for-30-by-30/

Queensland is currently the only Australian jurisdiction to offer enhanced protection conservation covenants, where they are known as Special Wildlife Reserves.

Further detail on the benefits and opportunities provided by enhanced protection conservation covenants can be found in ALCA's Policy Note on our website[6].

6. As a consequential amendment to the *Native Vegetation Act 1991*, legislate to expand the definition of Heritage Agreements to allow for more flexible, 'mosaic covenant' style arrangements, namely, the power for the Minister to enter into conservation covenants (i.e. Heritage Agreements) that combine predominantly high integrity protection of biodiversity with high integrity enhancement or restoration of biodiversity in the remaining balance of land under the covenant. Biodiversity connectivity projects would be one example where this expanded definition would be particularly useful.

7. Related to Recommendation 6 above, investigate the potential of a consequential amendment to the *Native Vegetation Act 1991* that would further expand Heritage Agreements (i.e. conservation covenants) to allow for only, or predominantly, high-integrity restoration, as explored in the recent academic publication, *Conservation covenants for ecosystem restoration: adapting an old instrument to a new global conservation challenge?* [7]

30 by 30 [Topic 8]

8. Investigate and where possible legislate for the relevant recommendations from: *Protecting Australia's Nature: Pathways to protecting 30 per cent of Australia's lands by 2030*[8], a report recently co-authored by Pew Charitable Trusts, The Nature Conservancy, WWF-Australia, and ALCA.

Also note Recommendation 11 below is relevant to Topic 8 from the Discussion Paper.

Objects [Topic 3]

9. Discard the proposed framing of the Act against principles of ecologically sustainable development (ESD) in favour of an Object that focuses on sustaining healthy biodiversity and ecosystems.

   ESD is an outdated approach that ill-advisedly elevates ongoing economic activity and development as the predominant focus and ambition for the legislation, rather than focusing squarely on sustaining biodiversity and healthy ecosystems as one should expect from a Biodiversity Act that is the contemporary to an accelerating nature crisis of South Australian, Australian, and global proportions. The extent of the crisis is noted in the Department's own materials, within the *Biodiversity Act discussion paper: Frequently asked questions*.

   It should be noted that this 'biodiversity-first' approach still allows non-destructive economic activity to occur.

[6] https://alca.org.au/alca-policy-note-enhanced-protection-conservation-covenants/
[7] https://www.frontiersin.org/articles/10.3389/fcosc.2024.1335988/full
[8] https://alca.org.au/wp-content/uploads/2023/11/Report3030_FINAL_web.pdf

The Independent Review of New South Wales *Biodiversity Conservation Act 2016* – an Act which adopted the ESD approach – makes this point so clearly that it is worth reproducing if here at length:

> **"*The Act's failure to achieve its principal purpose and objectives has serious implications***
>
> *The failure of the Act to achieve its principal purpose is contributing to the continuing deterioration of the environment. This impacts the wellbeing of all citizens of NSW, particularly Aboriginal people and communities, for whom the loss of biodiversity presents as a loss of cultural integrity.*
>
> *As in other parts of the industrialised world, the supplies of several ecosystem services critical to production, including fresh water, arable soils and waste absorption, are rapidly declining (IPBES 2019, Dasgupta 2021). Further environmental damage puts at risk prospects for continued growth in the significant portion of the economy that is dependent on healthy ecosystems.*
>
> *The Review Panel notes that since the Act was legislated, global ambition has moved beyond biodiversity conservation to a 'nature positive' framing that emphasises the need to repair past damage and to take urgent action to halt and reverse biodiversity loss, putting nature on a path to recovery, so that thriving ecosystems can support future generations.*
>
> *The Second Reading Speech that accompanied the Act's presentation to the Parliament outlined the broad policy challenge in terms of a need to balance economic, social and environmental considerations. This ecologically sustainable development framing was commonplace at the time.*
>
> *In the past few years, a consensus has emerged that this balancing act gives insufficient weight to the interests of future generations. The present generation is the principal beneficiary of government efforts to promote economic activity and address obvious social issues, whereas the burden of any consequential environmental damage, especially that which is irreversible, such as species loss, is overwhelmingly borne by future generations. Future generations are also those forced to bear the negative economic and social consequences of long-term environmental degradation.*
>
> *Nature positive framing seeks to redress this imbalance. The Review Panel supports a nature positive framing of the Act, noting that this requires giving primacy to biodiversity considerations in a manner not previously contemplated. The Review Panel recognises that achieving nature positive outcomes will pose significant challenges for government in balancing various priorities, for example, housing and associated infrastructure requirements to support a growing population. A nature positive framing of the Act requires a substantial change in mindset, policy and program design, and dedicated resourcing. However, the Review Panel considers that nature positive is not only an environmental necessity, but crucial for underpinning future economic growth and wellbeing."*[9]

[9] p3-4, https://www.parliament.nsw.gov.au/lc/tabledpapers/Pages/tabled-paper-details.aspx?pk=186428&houseCode=lc

10. Review and apply lessons learned from the Independent Review of the *Landscape South Australia Act (2019),* with particular regard to the findings on the ESD-styled objects of that Act.

11. Align the objects of the Act with the United Nations Convention on Biological Diversity by including the following explicit object, for example: "*to support meeting Australia's international obligations in relation to biodiversity, including the Biodiversity Convention;*" (noting the following object from recent Commonwealth *Nature Repair Act 2023* [s 3(b)]: "*to contribute to meeting Australia's international obligations in relation to biodiversity, including the Biodiversity Convention;*"). Also note the relevance of this recommendation to Topic 8.

Community participation [Topics 1 & 3]

12. Legislate the required standards for all public consultations undertaken under the Act, including the proactive encouragement of First Nations people involvement and consultation.

Mitigation hierarchy / biodiversity offsetting [Topic 2]

13. Clarify how a mitigation hierarchy for biodiversity would augment the *Native Vegetation Act 1991* such that it does not undermine or otherwise detract from the process, or the outcomes delivered under that Act.

14. Adopt an 'unacceptable impacts' approach (i.e. an automatic stop light for developments with impacts that unacceptably destroy or degrade biodiversity) which applies before the mitigation hierarchy activates. It may be that an unacceptable impacts approach in a Biodiversity Act could be coupled with the existing process and mitigation hierarchy employed via the *Native Vegetation Act*, rather than seek to replicate the *Native Vegetation Act*. Separately – or consequentially – the environmental offsets regime under the *Native Vegetation Act* should still be strengthened.

15. Ensure the delivery of an absolute net gain in biodiversity – with a significant margin (e.g. at least 25%) – in any environmental offsetting regime that may be being contemplated for the Biodiversity Act.

16. Adopt a principle of last resort to environmental offset payments that may be being contemplated for the Biodiversity Act.

17. Require the availability of a like-for-like environmental offset be confirmed before contemplating whether an environmental offset payment be allowed. Rule out post-approval condition setting[10] as unacceptable.

Biodiversity planning, information and data [Topics 6 & 7]

18. Proceed with legislating the requirement for a state-wide biodiversity strategy that is regularly reviewed, monitored, and reported upon.

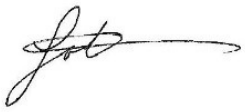
[10] Sometimes known as 'backloading'.

19. Proceed with legislating a framework for the collation, storage, sharing and public accessibility of biodiversity information, data, and knowledge, where it is in the public interest to do so, and where there are no objections from First Nations people.

Thank you again for the opportunity to provide DEW with recommendations for a Biodiversity Act for South Australian. ALCA and its members look forward to ongoing engagement with the Government to develop a strong Biodiversity Act that delivers for nature, and the South Australian community which depends so heavily upon nature for its economic prosperity, health, and social wellbeing.

If you have questions regarding the submission, please do not hesitate to contact ALCA via [redacted] (Mr Michael Cornish, Policy Lead).

Yours sincerely,



Dr Jody Gunn

Chief Executive Officer

Australian Land Conservation Alliance

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Our seventeen members are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nature Foundation
- NRM Regions Australia
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- World Wildlife Fund - Australia

ALCA member land conservation efforts have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds $325 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spill-over effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.