

South Australia's first Biodiversity Bill

Explanatory Guide



Government
of South Australia
Department for
Environment and Water

Acknowledgement of Country

The South Australian Government respects the First Peoples of South Australia and recognises the cultural authority of all Traditional Owners. We acknowledge that caring for Country is a cultural obligation and that First Nations peoples have been stewards of the environment for many generations. We acknowledge the enduring impact of colonisation on First Nations peoples, families, communities, cultures, knowledges and languages, and the impact on the environment. We recognise the need for more respectful engagement with First Nations peoples, the need to empower First Nations peoples to continue to work with the government in caring for Country, and the need to work together for better outcomes for Country and people.





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Message from the Minister



Improving our state's biodiversity is not just essential for our wellbeing, it is also vital for the strength and sustainability of South Australia's economy. Biodiversity purifies our water, pollinates our crops, regulates our weather, and provides us with the natural beauty and resources that underpin our lives. As well as helping minimise the effects of climate change, healthy biodiversity underpins our economy.

However, our relationship with nature, both here in South Australia and worldwide, is in jeopardy and requires immediate action. The legitimate needs we have for agriculture, aquaculture, minerals, water, housing and infrastructure can contribute to biodiversity decline. If left unchecked, this decline will compound the effects of climate change, making each of these environmental pressures even more costly and difficult to reverse. We must act decisively and collaboratively to not only protect our biodiversity but also to restore it.

As South Australia responds to climate change by committing to net zero emissions by 2050 and positioning our state as a leader in renewable energy, we must adopt a similarly ambitious approach to biodiversity. Our responsibility is twofold – to protect what remains and to actively restore ecosystems that have been degraded. This is not only an environmental imperative but an economic one. The South Australian Government is committed to transitioning to a green economy and, in doing so, we have an opportunity to position our state as a reliable and attractive jurisdiction for investment in biodiversity restoration, which will create new financial opportunities in areas such as carbon markets, nature repair projects and ecotourism.

Recognising the urgent need to halt biodiversity decline, our government made a commitment to introduce South Australia's first Biodiversity Act. Our current legislative framework does not fully reflect the scale and complexity of the biodiversity crisis, particularly in the context of a changing climate. Stronger, more modern laws are needed to conserve ecosystems, safeguard threatened species and ecological communities, and prioritise biodiversity recovery.

The draft Biodiversity Bill proposes an integrated and progressive approach. This legislation will consolidate and modernise existing protections by absorbing the *Native Vegetation Act 1991* and key biodiversity provisions from the

National Parks and Wildlife Act 1972. In doing so, we aim to strengthen protections for threatened species and critical habitats and facilitate ecosystem restoration across the state. The Bill is also intended to enable earlier, clearer and more transparent decision making processes by streamlining regulations and reducing complexity.

By embedding restoration as a key pillar alongside protection, the Bill supports economic opportunities linked to biodiversity recovery, positioning South Australia as a leader in sustainable land management and restoration economies. This approach is designed to provide certainty for investors, developers, and communities alike, unlocking new partnerships and financial incentives for restoring degraded landscapes.

The development of this legislation has been guided by the voices of diverse stakeholders from developers, farmers and mining companies to conservationists, First Nations communities and local government. We believe that inclusive consultation leads to better, more enduring outcomes and we deeply value the contributions made throughout this process.

We invite you to share your views on this Biodiversity Bill and the extent to which you support or do not support the intentions of this proposed law.

Thank you for taking the time to engage in this vital piece of legislation to ensure a better outcome for the biodiversity in our state.



The Hon Susan Close, Deputy Premier

Minister for Climate, Environment and Water

Minister for Industry, Innovation and Science

Minister for Workforce and Population Strategy

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Introduction

The South Australian Government is developing a Biodiversity Act to better protect the state's unique and precious biodiversity. The proposed Act will consolidate and build upon existing legislation, creating a clearer and simpler framework to enhance biodiversity protection and restoration in South Australia.

The Department for Environment and Water (DEW) is leading the development of the new Act.



What are we asking from you?

South Australians are invited to provide their feedback on the draft Biodiversity Bill.

A survey has been developed to measure public support for key elements of the Bill, which takes 10-30 minutes to complete. The public is also welcome to provide more detailed written feedback by email to BiodiversityAct@sa.gov.au.

Online sessions will be held to seek feedback on the Biodiversity Bill from a First Nations audience. First Nations peoples or supporters who wish to register for these sessions can email BiodiversityAct@sa.gov.au.

How will I know what the Bill proposes?

This explanatory guide explains the intent and rationale of the Bill and provides detail on what is proposed in each section of the Bill.

The guide follows the structure of the Bill and will indicate whether the Bill's proposals would result in:

NEW PROVISIONS Entirely new provisions.

SOME CHANGES Some changes to existing provisions.

NO CHANGES No changes at all (a maintenance of existing provisions).

What are the next steps?

The responses will be analysed and summarised into a consultation report. Depending on the responses provided, there may be changes identified and the Bill may be modified to respond to feedback.

Once the Bill is finalised, it is intended that the government will provide approval to table the Bill in Parliament, where it will be debated. If passed by both houses, it will be assented to by the Governor and become an Act (law).

What consultation has already occurred?

DEW has engaged with First Nations peoples, key stakeholders, non-government organisations, peak bodies, interest groups and other government agencies to co-develop and seek feedback on the architecture of the Bill.

As part of the Bill's development, DEW undertook early consultation to understand community expectations on biodiversity conservation and priorities for the Bill. A total of 1,404 submissions were received during the 12-week consultation.

A summary of what was heard through the previous consultation can be found [here](#). Where support for certain measures has been indicated through this process, this will be noted within this explanatory guide. DEW has refrained from asking the same survey questions where strong support for the measures has already been provided by the public.

First Nations peoples and organisations were provided with several opportunities to give feedback during the development of the Biodiversity Bill. In early 2024, a series of workshops were held in Ceduna, Port Augusta, Berri, Adelaide and online to give First Nations peoples and groups an opportunity to provide input and help shape the legislation. Invitations were extended to all South Australian Native Title bodies and other representative groups. A report summarising those workshops can be found [here](#).

Incorporating other Acts

One of the key priorities highlighted in early consultation for a Biodiversity Act focused on alignment with other legislation and the potential duplication of processes.

Accordingly, the draft Biodiversity Bill proposes to absorb the entirety of the existing *Native Vegetation Act 1991* (NV Act) and wildlife provisions of the *National Parks and Wildlife Act 1972* (NPW Act). This is considered the best pathway to streamline current legislation to better protect South Australia's biodiversity.

The scope of the *Landscape South Australia Act 2019* – with respect to management of the state's natural resources, including land, soil, water, and native flora and fauna – was also considered. However, this Act is considered to operate effectively and in a complementary manner to the Biodiversity Bill. There are some proposed amendments to the *Landscape South Australia Act 2019* in the draft Biodiversity Bill that aim to achieve consistency and reduce overlap between the 2 pieces of legislation. Further changes to the *Landscape South Australia Act 2019* are being considered separately in response to the independent review undertaken from 2023 - 2024.



Strengthening protection

It is estimated that South Australia is home to more than 7,500 marine species and more than 12,500 terrestrial species, many of which are unique. Beyond its integral and priceless worth, South Australia's biodiversity underpins our economic growth and provides essential benefits we rely on – such as clean air, fresh water, and healthy soil for primary production, unique features that are the foundation of our agriculture, food, wine and tourism industries. Biodiversity is critical to our wellbeing and the resilience of the economy, providing a vital balance in mitigating and adapting to the effects of climate change.

South Australia's current legislative framework can be enhanced and modernised to build on the existing protection of native plants and animals to create a more holistic approach to safeguarding biodiversity that is more effective. The Biodiversity Bill proposes stronger laws for nature, including through these mechanisms:

- Expanding the definitions of native plants and protected animals to recognise algae, fungi, threatened invertebrates, threatened amphibians, and threatened fish.
- Strengthened native plant laws that apply to planted native vegetation more than 20 years old.
- Introduction of a new general duty requiring anyone undertaking an activity to take reasonable and practicable measures to avoid non-trivial harm to biodiversity.
- Tougher penalties will serve as a deterrent for those who commit an offence.
- New provisions for tackling serious and organised wildlife crime.
- New ability to establish a statutory list of threatened ecological communities, in addition to threatened species, to ensure their consideration in decision making under the Biodiversity Bill and other Acts.
- New process to identify and protect habitat that is critical for the survival of threatened species, threatened ecological communities and listed ecological entities.
- Ability to identify key processes which threaten biodiversity and for threat abatement plans to be developed accordingly.
- Greater access to state biodiversity data to inform land use decision making which is sensitive to biodiversity values.



Facilitating increased restoration

Improving the state of biodiversity in South Australia requires more than protecting what is left. By the time land clearance controls had been established in the 1980s, more than 70% of native vegetation – critical for biodiversity – had been cleared in the state's agricultural regions. Similarly, since colonisation, 70% of South Australia's wetlands have been lost, leaving only 1% of the remaining wetlands in an ecologically intact state. Active steps to restore species populations, their habitats and ecosystem function are needed.

The Biodiversity Bill proposes several provisions that will help direct our efforts to achieve this, including:

- The requirement to develop a State Biodiversity Plan to identify and map priorities for conservation and restoration.
- The inclusion of existing and new mechanisms for recognising and incentivising private land conservation and restoration, including biodiversity agreements, conservation agreements, sanctuaries, and other voluntary agreements.
- Provisions that allow for the development of action plans for threatened species, threatened ecological communities or critical habitats.
- Incorporating First Nations' knowledge in respect to culturally significant biodiversity entities when preparing action plans for threatened species or ecological communities and in the State Biodiversity Plan
- Support for voluntary investment in nature through setting clear signals about South Australian priorities and monitoring and reporting on the trend and condition of the state's biodiversity.
- A broader definition of native plants to include those native to all of Australia – not only South Australia – to enable restoration which supports climate adaptation.



Earlier and transparent decision making

South Australia's economy is intrinsically linked to our management of biodiversity. One of the primary ways human activity affects biodiversity is the conversion of land containing habitat for biodiversity and ecosystems to economic use, housing or public infrastructure. Importantly, biodiversity is often considered at the end of such a decision making process rather than at the outset of the planning process and this can be problematic for all parties.

Legislative reviews both within South Australia¹ and interstate² have found that a lack of cohesion and consistency in legislative frameworks does not provide for optimum biodiversity outcomes and that if more information is publicly available it enables faster and better decision making.

The creation of a Biodiversity Act in South Australia provides an opportunity to reduce regulatory complexity to improve the ability of all users – proponents and regulators alike – to interpret and apply the legislation. The Bill proposes several provisions that will help direct efforts to achieve this through:

- Creating a single focused legislative structure to protect biodiversity in its entirety which simplifies and streamlines the existing decision making processes.

- Enabling existing links to current legislation such as the *Planning, Development and Infrastructure Act 2016* (PDI Act) and the *Mining Act 1971* to consider biodiversity in its entirety.
- Requiring the development of a State Biodiversity Plan that identifies and publishes spatial priorities for conservation and restoration to inform land use change and decision making.
- Establishing a biodiversity register to ensure the basis of and evidence underpinning decisions is available to proponents and the public, which strengthens confidence and understanding of decisions.
- Consolidating state biodiversity data and making it publicly available for proponents and others.
- Creating standards and policies that clearly and practically describe the requirements, including those that are evidentiary, to meet the necessary outcomes and satisfy obligations created by the Act.
- Adopting a nationally unified approach to the listing of nationally threatened species, improving alignment with the *Environment Protection and Biodiversity Conservation Act 1999*.
- Clarifying the process for seeking information from proponents of clearance applications and opportunities for resubmitting revised applications.
- Creating simplified mechanisms for landholders dealing with impact causing and over abundant native species.

1 Environment, Resources and Development Committee 2017 'Inquiry into Biodiversity' accessed at <https://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

2 Samuel, G 2020 'Independent Review of the EPBC Act - Final Report' accessed at <https://www.dcceew.gov.au/sites/default/files/documents/epbc-act-review-final-report-october-2020.pdf>

Henry, K 2023 'Independent Review of the Biodiversity Conservation Act 2016' accessed at <https://www.parliament.nsw.gov.au/lc/tailedpapers/Pages/tailed-paper-details.aspx?pk=186428&houseCode=lc>





Part 1: Preliminary

SOME CHANGES

This part of the Bill contains elements common to most legislation, including a short title, commencement provision, an interpretation section, and details on interaction with other Acts. It also addresses the application and operation of the Bill, including where it applies.

The interpretation section contains various definitions. Some were carried over from the NV Act and NPW Act, and others are new or broadened to support concepts introduced in the Bill. Where possible, the Bill's definitions seek to achieve consistency with other Acts.

During early consultation on priorities for a Biodiversity Act, the public strongly advocated that the Act should provide greater clarity on the types of native species that can be considered threatened, including fungi and algae. This has been achieved by including fungi and algae under the definition of 'plant' for the purposes of the Act. Clearance consent will not be required for clearing fungi or algae, unless it is a prescribed species.

In addition, the Bill proposes the definition of 'native plant' include any plant indigenous to Australia, rather than a plant indigenous to South Australia. This aligns with the NPW Act's definition and recognises the intrinsic value of all native Australian plants. It also enables the Bill to be responsive to a changing climate, acknowledging that some species from interstate might be appropriate for providing habitat in South Australia into the future. The Bill contains other mechanisms that allow for the management of problematic native plants, including through providing for consistency with the *Landscape South Australia Act 2019* which can control

impact causing plants and allows for regulations to prescribe certain species to be excluded from the operation of the Act. It is not envisaged this broader definition of native plants would significantly increase the number of applications to clear native plants.

The Biodiversity Bill will apply across the state, but some parts of the Bill will have restricted geographical application. For instance, provisions relating to the clearance of native plants on private land will continue to apply to the same areas of South Australia as the NV Act currently does.

Survey questions



1. Do you support the definition of 'plant' to include fungi and algae to allow for their protection under the Act?
2. Do you support adopting the definition for 'native plant' from the *National Parks and Wildlife Act 1972*, meaning any plant indigenous to Australia can be protected?

Part 2: Objects, principles and general duty

NEW PROVISIONS

This part of the Bill includes the objects and principles of the Act, the general biodiversity duty and guidance for how the Act should be administered.

Objects

Objects describe the purpose of an Act and the goals it aims to achieve. These are used when interpreting and applying the law and can reduce ambiguity or uncertainty.

The objects in the draft Biodiversity Bill are:

1. To promote biodiversity conservation and restoration as a responsibility equally shared by all of society across all sectors and supported by individual accountability.
2. To 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.
3. To identify and prioritise biodiversity assets for conservation and restoration across the state to inform land use planning and decision-making frameworks.
4. To recognise and respect that First Nations persons are the enduring custodians of the lands and waters of the state and have a fundamental role in, and knowledge of, caring for Country, including in relation to conserving and restoring biodiversity.
5. To ensure that interactions with, management and use of biodiversity is sustainable and appropriate such that the current generation maintains or enhances the health and resilience of biodiversity for the benefit of future generations.

Principles for administering the Act

Principles provide guidance to decision makers about the interpretation or application of parts of an Act. They influence how decisions are made, rather than determining the decisions themselves or the goals that are being pursued.

The guiding principles in the draft Biodiversity Bill are:

1. That halting and reversing biodiversity loss, such that there is an improvement in the state of biodiversity, will require embracing new and transformative ways of thinking and acting to support the environment, economy and wellbeing of today's generation and future generations.
2. That the community has a right to know about and participate in environmental decision making.
3. That First Nations peoples, as Traditional Owners with a strong connection to Country, will be engaged in a way that is respectful and mindful of cultural sensitivities and the historical and persisting impacts of colonisation.
4. That decisions should be based on the best available evidence, including scientific evidence, First Nations' knowledge and local knowledge, and be made having regard to the long-term, medium-term and short-term impacts of climate change.

In addition to the principles, those administering the Act must also:

- Consider the State Biodiversity Plan (more detail in Part 10).
- Seek to apply First Nations' knowledge where it is possible, and with the full and informed consent of the knowledge holders.

General duty

The Bill introduces a new general duty to ensure the protection of biodiversity is a continuous legal and social responsibility shared by everyone. General duties exist in other environmental legislation such as the *Environment Protection Act 1993* and the *Landscape South Australia Act 2019*.

**Supported
by 94% of survey
participants during
consultation on priorities
for a Biodiversity
Act.**

The general duty encourages individuals, businesses and governments to take all reasonable prevention or minimisation measures before engaging in activities that could harm biodiversity.

Biodiversity harm could include direct and indirect adverse effects such as:

- Death of a native species or damage to ecological communities.
- The decline of a species or ecological community, including effects on their resilience and persistence.
- The impairment or loss of ecosystem functions.

The general duty would focus on significant harm to biodiversity. It would not cover trivial harm. Determination of what constitutes trivial harm would include:

- The extent and scale of the impact – for example, the death of a single member of a species, compared with the widescale effects to multiple members of multiple species.
- The sensitivity of the affected environment – for example, harm to a member of an abundant species, compared with a threatened species.

Various factors included in the Biodiversity Bill would inform what are considered reasonable prevention or minimisation measures. These measures are expected to progressively reflect best practice and aim to strike a balance between minimising harm to biodiversity and cost-effectiveness.

Determination of what constitutes reasonable prevention or minimisation measures include:

- The likelihood of harm arising from the action or activity and the consideration of factors, including the sensitivity of the affected environment or element of biodiversity.
- The potential effect of the harm, including its nature, extent and duration, and the extent to which the harm might have a cumulative effect.

- The extent to which the person knows or ought to reasonably know about, or have reasonably foreseen, the likelihood of harm and ways to avoid, eliminate or minimise it.
- The availability, suitability, and practicability, including cost, of measures to prevent or minimise harm or the risk of harm.

It is expected that such measures will be applied gradually and cooperatively with industry and business, in acknowledgment that this is a new duty and an evolving regulatory environment.

The Bill enables the development of biodiversity policies and regulations to provide further guidance on how individuals and organisations can comply with their general duty. In doing so, these documents provide a mechanism for recognising and accrediting acceptable practices, thereby filling a policy 'space' between the existing regulatory environment that the Bill creates through offences, and voluntary approaches that are adopted by society. For example, there may be agricultural practices in relation to the appropriate application of insecticides which are considered best practice and could be recognised as compliance with the general duty. The effect of this would be to provide confidence to industry, drive uptake of good practices and encourage innovation.

A breach of the general duty does not in itself constitute an offence under the Biodiversity Act, but it may allow the department to issue administrative or civil orders which require the person who breached their duty to remedy the harm they caused. This means that even where someone has committed an offence under the Biodiversity Act or other legislation, responding to a breach of the general duty with an administrative order may be a more efficient and balanced response to ensure that any harm is restored.

Survey questions



3. Do you support the proposed objects of the Biodiversity Act?
4. Do you support the proposed guiding principles of the Biodiversity Act?
5. Do you support what constitutes 'harm' and what is considered 'reasonable measures' for the purposes of the general biodiversity duty?

Part 3: Administration

SOME CHANGES

This part of the Bill includes information on how the responsible minister can delegate the powers provided by the Act. It also sets out governance arrangements for the successful administration of the Act, including by establishing statutory bodies. These include:

The Biodiversity Council that will:

Contribute to setting policy directions for biodiversity in the state, including through providing advice in relation to instruments and plans under this Act.

Advocate for biodiversity and bring together all sectors with interests.

Advise the minister and other members of government on biodiversity issues and opportunities.

The Scientific Committee that will:

Play a role in the assessment and listing of threatened species and ecological communities.

Provide advice about protecting threatened species and ecological communities through new instruments and planning.

The Native Plants Clearance Assessment Committee (NPCAC) that will:

Perform statutory functions, including providing consent for clearance and administering the significant environmental benefit scheme.

The First Nations Expert Biodiversity Committee that will:

Provide advice on the participation of First Nations peoples in decision making and other matters under the Act.

Co-develop frameworks for respectful First Nations engagement, identifying culturally significant biodiversity entities, and integrating First Nations' values, knowledge and expertise in managing the environment.

Minister
for Climate,
Environment
and Water



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Establishing a scientific committee was supported by 96% of survey participants during consultation on priorities for a Biodiversity Act.

First Nations peoples advocated for First Nations representation on any committee or body established under the Act.

The Native Vegetation Council, which currently operates under the NV Act, will no longer exist and will have its functions split between the Biodiversity Council and NPCAC.

The Scientific Committee and the First Nations Expert Biodiversity Committee are new statutory committees proposed to be established under the Act.

All the proposed committees will be appointed based on their skills and expertise, and the government will develop mechanisms for relevant peak bodies to be consulted on the appointment process. Having skills-based committees, instead of members representing their respective agencies or interest groups, will ensure they are best equipped to undertake

the statutory functions of the relevant committee and advise the government on matters relating to biodiversity. This approach is in line with contemporary governance practices for board composition.

The First Nations Expert Biodiversity Committee is not intended to be representative of all the state's First Nations groups. Instead, individuals would be appointed for their environmental and cultural expertise, and give general advice on statewide matters rather than specific advice about local matters.

The Bill also enables the establishment of committees and trusts to respond to emerging needs.

This part of the Biodiversity Bill also establishes several funds to support conservation, restoration and administration of the Act. These are:

1. Biodiversity Restoration Fund
2. Biodiversity Conservation Fund
3. Biodiversity Administration Fund

These funds are largely carried over from the NV Act and the NPW Act. The key difference is the establishment of a new fund – the Biodiversity Administration Fund – which will receive application/permit fees and other administrative monies and can be used to support the administration of the Act.

Accordingly, money that currently sits in the Native Vegetation Fund will be carried over and split between the Biodiversity Restoration Fund and the Biodiversity Administration Fund. The money transferred into the Biodiversity Administration Fund will comprise money paid into the Fund for administrative and operational purposes (e.g., application fees, state appropriation). Any payments that were made in lieu of achieving a Significant Environmental Benefit under the NV Act will be transferred into the Biodiversity Restoration Fund.

Survey questions



6. Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established?
7. Do you support committees being appointed based on their skills and expertise?
8. Do you support the establishment of a Biodiversity Administration Fund as a means of providing transparency on which funds can be used for the administration of the Act?

 Proposed fund:	Biodiversity Restoration Fund Previously Native Vegetation Fund under the NV Act	Biodiversity Conservation Fund Previously Wildlife Conservation Fund under the NPW Act	Biodiversity Administration Fund New
Responsible body:	Biodiversity Council	Minister	Minister
Receives funds from:	• Expiation fees and penalties from native plant-related offences • Payments by order of the Environment, Resources and Development (ERD) Court • Significant Environmental Benefit payments	• Expiation fees and penalties recovered from other offences under the Act not payable to the Biodiversity Restoration Fund or Biodiversity Administration Fund • Royalties paid under the Biodiversity Act	• Application and administrative fees • Money that is required or authorised under the Biodiversity Act or any other law to be paid into the Fund
Can spend funds on:	• Research, preservation, enhancement, re-establishment and management of native plants	• Plant and animal conservation programs • The promotion of research into problems relating to the conservation of plants and animals • Any other purpose for which the fund may be applied under the Biodiversity Act	• To support the operation or administration of the Biodiversity Act





Prioritising the avoidance and minimisation of impacts to biodiversity was **supported by 96%** of survey participants during consultation on priorities for a Biodiversity Act.

Part 4: Native plants

SOME CHANGES

*The Biodiversity Bill proposes some changes to the management of native plants from the current NV Act and NPW Act. The Bill also incorporates several of the changes proposed in the **Native Vegetation (Miscellaneous) Amendment Bill 2024**. The Bill seeks to streamline and modernise the regulatory settings for plants by introducing the concept of ‘regulated activities’, which require consent to undertake, and ‘unregulated activities’, which do not require consent.*

At a basic level, regulated activities would include:

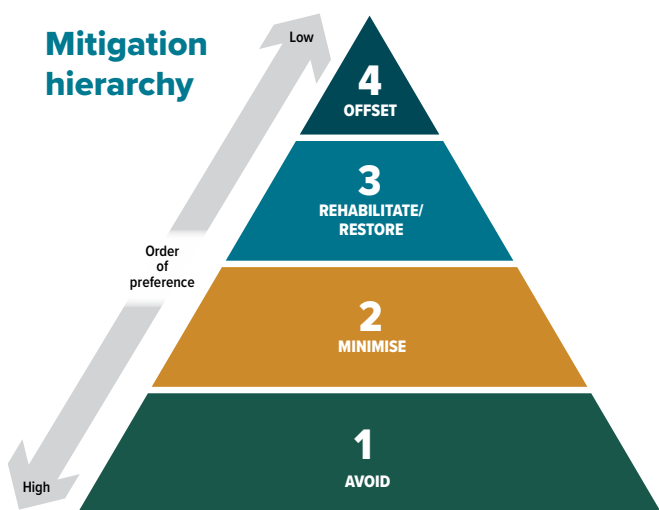
- Clearing (causing death or substantial damage to) native plants on public and private land, subject to the spatial application of the existing NV Act.
- Taking a plant on public land (collecting seeds, picking flowers etc).

The unregulated activities schedule (Schedule 2) of the Bill provides exceptions to the general rule of requiring consent of the NPCAC. These circumstances and activities are largely carried over from the existing *Native Vegetation Regulations 2017* (NV Regulations), with some amendments which are discussed in detail under Schedule 2 of this guide.

Importantly, these activities and circumstances are only considered ‘unregulated’ where someone has complied with the requirements set out by the schedule.

The policy settings that govern the taking of plants on public land remain largely the same but there are some changes to the settings for clearing native plants.

Prioritising the avoidance and minimisation of impacts to biodiversity was **supported by 96%** of survey participants during consultation on priorities for a Biodiversity Act.



The mitigation hierarchy is a simple tool for people applying to clear native plants to make sure they have done all they can to protect nature. The Bill requires a proponent to have regard to, and give effect to, the mitigation hierarchy in accordance with the guidelines. A guideline will be created to better help proponents understand how to apply the mitigation hierarchy in their applications. Before granting consent, the NPCAC must ensure that the mitigation hierarchy has been applied by the proponent correctly.

It is recognised that once planted native plants are established, they provide valuable and measurable benefits to biodiversity and to society. The Bill seeks to improve protections for planted native plants by introducing new protections after they reach 20 years old, such that they will be subject to the same native plant clearance consent processes and exemptions as existing native plants. This new provision is intended to be focussed on protecting planted native plants that provide important habitat values. This would not apply to native plants grown in commercial forest plantations specifically to be used or harvested for commercial purposes, or to plants in people's gardens.

The Significant Environmental Benefit (SEB) scheme outlined in the NV Act remains largely unchanged. This scheme enables the current Native Vegetation Council to approve the clearance of native vegetation if it is satisfied that actions, such as revegetation, will be taken that will result in significant environmental benefit. The Bill will require the development of a new biodiversity policy in relation to SEBs, which will provide an opportunity to review how the scheme should operate into the future. The Bill also clarifies that the NPCAC must be satisfied that an on-ground SEB is not possible before accepting payment in lieu of an SEB.

New provisions will clarify that the NPCAC can ask proponents for more information when making a decision and that there is nothing stopping a proponent from resubmitting a revised application where they receive an unfavourable decision. Following consultation with key stakeholders, these provisions have been considered to provide sufficient recourse where an unfavourable decision is received. Where an applicant believes that a decision is inconsistent with the legislation, they may make a complaint to the Chief Executive of the Department for Environment and Water and in some circumstances may be able to commence judicial review proceedings.

There are several other changes made throughout the Bill, for example in relation to the process for applying for consent, to make the Bill easier to read. One such change to the consent process is that the Chief Officer of the SA Country Fire Service will no longer be required to authorise clearance in certain circumstances. This authorisation was included in the NV Act to allow clearance for the purposes of bushfire risk, but it has never been used as there are alternative 'unregulated activities' which enable appropriate management.

First Nations peoples continue to be able to gather native plants for cultural purposes without needing a permit.

Survey questions



- 9.** Do you support the 'regulated activities' and 'unregulated activities' approach to native plants?
- 10.** Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy?
- 11.** Do you support the new measure aimed at protecting planted native plants more than 20 years old, excluding those in people's gardens or commercial forests?
- 12.** Do you support the ability for the NPCAC to request further information and allow clearance applications to be resubmitted in favour of a more formal review process?

Part 5: Native animals

SOME CHANGES

The Biodiversity Bill seeks to streamline and modernise the regulatory settings for native animals by introducing the concept of ‘regulated activities’, which require a permit, and ‘unregulated activities’, which would not require a permit.

Regulated activities requiring a permit would reflect the activities that currently require a permit under the NPW Act. However in future, permits will be required to keep any animal included in the definition of ‘protected animal’ in the Bill unless the animal is listed on the exempt list. This is a minor change as previously people were able to keep one animal from a defined list without a permit, but those rules have led to confusion and often inadvertent breaches of the legislation. The change will make it easier for people to keep and sell protected animals and comply with the requirements of the Act.

There will no longer be a list of ‘unprotected’ native animals akin to the list in the NPW Act. All native animals will be protected under the Biodiversity Act. This position recognises that all biodiversity is intrinsically valuable.

The Bill will still enable the management of impact causing species, which can be achieved through:

- Including specified animal management practices, which do not require a permit, via the schedule of ‘unregulated activities’.
- For example, this would enable the continued management of dingoes in South Australia in accordance with the government’s Wild Dog Management Strategy, and will not require a permit when they are controlled in line with the *Landscape South Australia Act 2019*, *Dog Fence Act 1946* or if the dingo is causing damage to stock.
- Making a declaration that enables the taking of a species in certain circumstances.
- For example, the minister may declare that, in certain parts of the state, a permit is not required to take a little corella where they are damaging agricultural lands or the environment, and specify how they may be taken.
- Using a valid defence under the Biodiversity Bill, including when a regulated activity is undertaken without a permit to comply with another Act.
- For example, it will be a defence to undertake a regulated activity without a permit where it involves controlling a pest species required under the *Landscape South Australia Act 2019*.

The Biodiversity Bill distinguishes between offences for undertaking regulated activities without a permit generally from undertaking regulated activities without a permit in conjunction with serious illegal wildlife trafficking which can often be associated with serious organised crime. The latter is given effect through the introduction of the idea of ‘trafficable quantities’ of species, which will be defined in regulations. By allowing different trafficable quantities to be set for species on a case-by-case basis, it will better reflect the level of vulnerability, threat and/or concern.

A new penalty – in a bid to tackle serious and organised wildlife crime – of a maximum of \$500,000 or 10 years jail for individuals, or \$1,000,000 for businesses, will apply for those convicted of possession or control of a trafficable quantity of protected animals.

It also continues to be an offence for a person to possess or control a protected animal or fertile egg of an animal that has been illegally taken or acquired.

The Biodiversity Bill proposes to extend the current offence for destroying, damaging, or disturbing wombat burrows (s68AA of the NPW Act), to other types of declared habitat. The Bill will allow for the minister to declare habitat and habitat protection zones for the purposes of requiring people to obtain a permit before affecting declared habitat.

First Nations peoples continue to be able to hunt native animals for cultural purposes without needing a permit.



Survey questions

- 13.** Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife?
- 14.** Do you support introducing targeted controls for managing impact causing species in favour of an 'unprotected' list of species?
- 15.** Do you support the approach of determining trafficable quantities of species with higher penalties?



Part 6: Threatened species, threatened ecological communities and other ecological entities

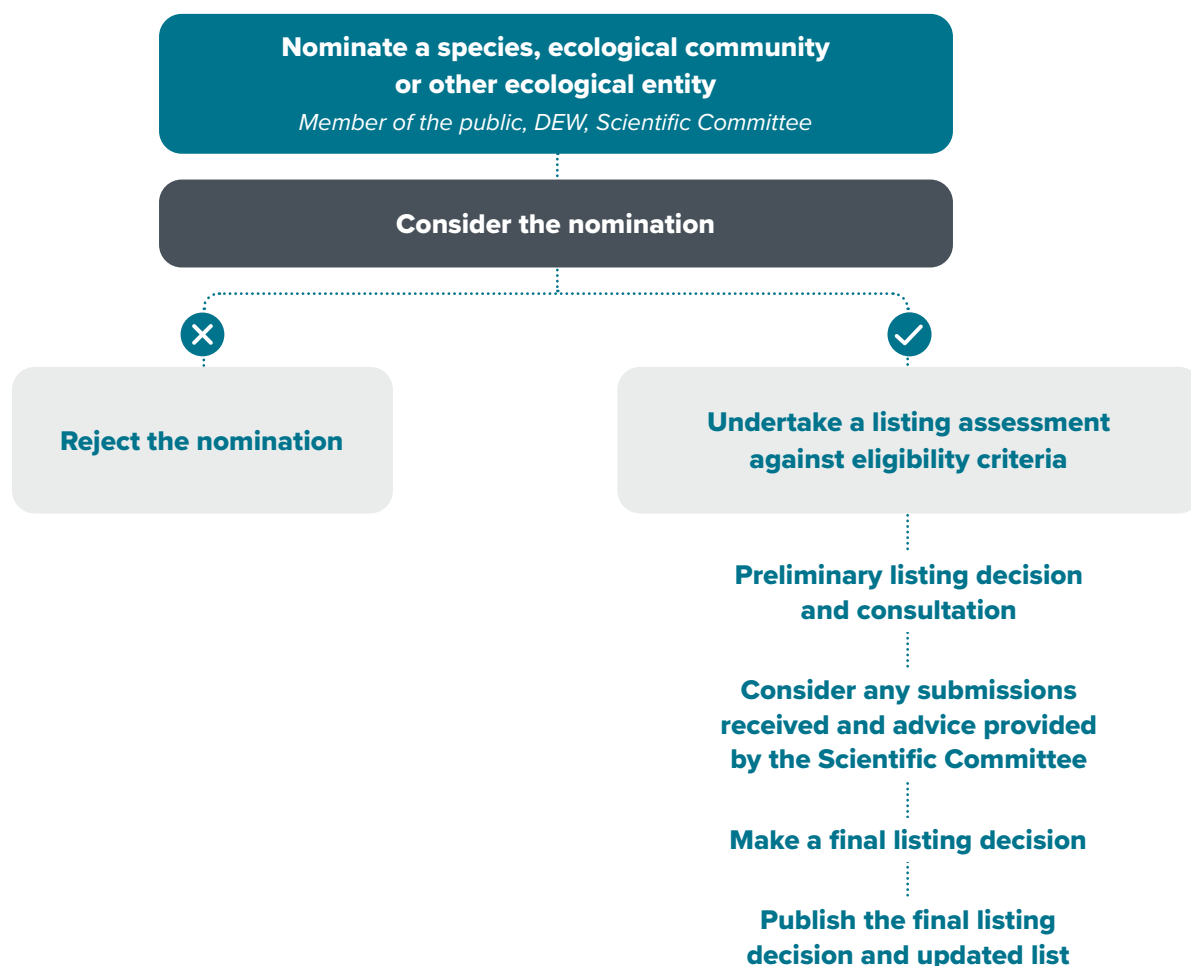
NEW PROVISIONS

Assessment and listing process

Currently, individual native species can be listed as threatened with extinction under the schedules to the NPW Act. The process for how a species can be listed is not currently legislated.

The Biodiversity Bill outlines a new process for listing threatened species, threatened ecological communities and other ecological entities.

This process gives effect to the Common Assessment Method – adopted by the Australian Government and all states and territories – in order to harmonise the listing of nationally threatened species.





**Establishing
a formal listing,
assessment and review
process was supported by
96% of survey participants
during consultation
on priorities for a
Biodiversity Act.**

An ecological community is a naturally occurring group of native plants, animals and other organisms that interact within a unique habitat. Similar to species, ecological communities can become at risk of extinction. The Biodiversity Bill proposes to be able to list threatened ecological communities akin to the process used for a threatened species. Most other Australian states and territories already recognise and protect threatened ecological communities, this change would bring South Australia into alignment with these jurisdictions. The Bill does not propose a separate offence for damaging or destroying a threatened ecological community, instead the existing offences for clearing or killing plants and animals will apply, and a higher penalty would be imposed where these plants or animals comprise part of a threatened ecological community.

The Biodiversity Bill proposes a head power that would allow for the future listing of other ecological entities. This is designed to ensure the Act can adapt to protect other types of biodiversity entities, beyond species and ecological communities, as needed. For example, this might include intact landscapes that provide outstanding conservation value or essential ecosystem services. The categories and eligibility criteria for listing additional ecological entities will be provided for in regulations.

The Biodiversity Bill will create a single list for threatened species and a single list of threatened ecological communities, each of these lists will contain both state and national categories. Species and ecological communities may be eligible for listing in either nationally threatened categories or state threatened categories that reflect the geographic scale of assessment (national or state) and the risk of extinction. The nationally threatened categories will be consistent with the Common Assessment Method, including a Conservation Dependent category for selected fish species, as per listing under the *Environment Protection and Biodiversity Conservation Act 1999*. A species assessed as nationally threatened will be given its national status only.

Other species that are not confirmed as nationally threatened may be listed in a state threatened category.

The Biodiversity Bill also allows for ‘provisional listing’ of species and ecological communities in certain circumstances, for example, where extinction risk is expected to have changed after a natural disaster or biosecurity event, and immediate protection is required to manage the extinction risk. A provisional listing decision does not need to undergo the fulsome assessment process and will expire after 2 years or may be replaced by a formal listing decision before that time.

Survey questions



- 16.** Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)?
- 17.** Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation?
- 18.** Do you support relying on the existing offences for plants and animals, instead of creating a new offence for threatened ecological communities or other listed ecological entities?
- 19.** Do you support the ability to apply a ‘provisional listing’ of species and ecological communities where appropriate?

Protecting species, ecological communities and other ecological entities

Division 5 of Part 6 of the Bill provides new mechanisms for protecting and recovering threatened species, threatened ecological communities and other ecological entities.

Critical habitat

Once a species, ecological community or other ecological entity is listed, the Bill requires the minister to decide if a critical habitat should be declared.

An area can be declared critical habitat if it contributes significantly to the conservation of a threatened species, threatened ecological community or other listed ecological entity. That means the loss of the area would increase the extinction risk for, or negatively affect the conservation or recovery of, that species, ecological community, or other ecological entity. This eligibility criteria tightens what can be declared critical habitat in a way that ensures these protections will only be used where it is really important. It should be noted that equivalent provisions exist in interstate biodiversity legislation and are not used often.

A critical habitat declaration is required to be spatially explicit and describe the features that make it critical. Critical habitat features could include areas that are important for the survival of the species or ecological community, or specific habitat elements such as tree hollows for threatened woodland birds to breed.

It will be an offence to damage, destroy or disturb critical habitat features without consent of the NPCAC. If granting consent, the NPCAC must be satisfied that the effects will not cause or contribute to an increase in extinction risk for the subject species or ecological community.

Where an application to damage, destroy or disturb critical habitat relates to habitat which comprises or constitutes native plants, and an application for consent to clear or take the plants is also required, the NPCAC will deal with these together so that a proponent will only undergo one authorisation process.

Action plans

The Bill allows the minister to develop an action plan for the protection and recovery of a threatened species, threatened ecological community or listed ecological entity. These plans can fully or partially incorporate recovery or action plans from other jurisdictions. The minister is required to take reasonable steps to implement and report on the action plan.

Action plans for a threatened species, threatened ecological community or other ecological entity may identify research and management actions to prevent further loss and support recovery. They may also specify the roles of various stakeholders involved in conservation efforts.

Extinction inquiries

The Biodiversity Bill proposes introducing extinction inquiries. If a South Australian endemic species goes extinct it would be mandatory to conduct an extinction inquiry. There will be a discretionary provision to conduct extinction inquiries for non-endemic species extinctions.

This will facilitate learning from species extinctions, helping to improve efforts to conserve nature.

The way an extinction inquiry is conducted is proposed to be detailed in regulations but is likely to involve an investigation into factors that led to the decline and extinction of the species. It may also provide recommendations for policy changes or further research where appropriate.



Investigating the reasons for extinction events was **supported by 93%** of survey participants during consultation on priorities for a Biodiversity Act.

Threatening processes

Division 6 enables the minister to declare a 'key threatening process'. The minister can make this declaration where the identified threatening process adversely affects one or more threatened species, threatened ecological communities or listed ecological entities, or could cause one or more to become threatened.

A framework for identifying threats to biodiversity was **supported by 96%** of survey recipients during consultation on priorities for a Biodiversity Act.

The minister may prepare a threat abatement plan for any key threatening process and take reasonable steps to implement and report on any plans.

Threat abatement plans typically identify research, management and other actions needed to ensure the long-term survival of native species and ecological communities affected by threatening processes. Threat abatement plans are not intended to have regulatory power but will be coordinating documents which identify actions, research and resourcing priorities. Their purpose is to guide agencies and stakeholders in collaborating effectively to achieve desired outcomes.

Example: Threat abatement plan for wildlife crime

If serious and organised wildlife crime was found to be a 'key threatening process' adversely affecting threatened species, the government could elect to develop a threat abatement plan accordingly.

A threat abatement plan for serious and organised wildlife crime in South Australia could aim to prevent and reduce the illegal exploitation of native species, such as poaching, smuggling, and habitat destruction. It would identify key threats, including the illegal collection of reptiles, bird poaching, and trafficking in exotic pets, while addressing the drivers behind these crimes, such as international demand and local black markets. The plan could include actions such as prioritising intelligence sharing among law enforcement agencies, targeted enforcement actions, public education campaigns to raise awareness about the effects of wildlife crime and hotlines for reporting suspicious activities. It could also include research activities into the drivers for illegal wildlife trade, how illegal markets operate to inform how to intervene in their operation, the impacts the illegal trade has on species and their habitats and the consequences on First Nations communities.

The threat abatement plan could also facilitate stakeholder coordination, for example through partnerships with conservation groups, rehabilitation centres and academic institutions to support the rescue and rehabilitation of confiscated animals and promote research into emerging threats. Regular monitoring and evaluation of enforcement effectiveness, community outreach and policy improvements would ensure the plan remains responsive and adaptive.

Survey questions

- 20.** Do you support the ability to declare critical habitat to provide increased protections for threatened species, threatened ecological communities, and other listed ecological entities?
- 21.** Do you support the ability to develop action plans for the protection and recovery of a threatened species, threatened ecological community, or listed ecological entity?



Part 7: Conserved areas

SOME CHANGES

Current mechanisms for private land conservation have been carried over into the Biodiversity Bill from existing legislation.

Sanctuaries are voluntary arrangements designed to support landowners create habitats for wildlife on their properties. They provide additional protection for the wildlife that inhabit these areas that exist in the NPW Act. Sanctuaries are proposed to be retained in the Biodiversity Act.

Heritage Agreements currently exist under the NV Act and are also proposed to be retained but will be renamed 'Biodiversity Agreements'. These will ensure that conservation areas on private land, established between the landholder and the minister, continue to apply in perpetuity to protect and enhance areas of native plants with high biodiversity value.

The Bill also introduces Conservation Agreements, which are a new type of protected area that can be applied to private land. Conservation Agreements are similar to Biodiversity Agreements in that they are voluntary agreements providing for the management and protection of areas of native plants with high biodiversity value but they are more flexible and can be time limited (though not for a period of less than 20 years).

The Bill also allows the minister to establish new voluntary conservation mechanisms for private land in the future. This aims to maximise opportunities under emerging markets such as the Australian Government's *Nature Repair Market* and *Other Effective area-based Conservation Measures Framework*.

Survey questions



- 22.** Do you support renaming Heritage Agreements to 'Biodiversity Agreements' to better reflect their role?
- 23.** Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements?

Broadening or creating schemes to **support conservation areas on private land** was supported by **96%** of survey participants during consultation on priorities for a Biodiversity Act.

Part 8: Enforcement

SOME CHANGES

Authorised officers

The powers of authorised officers are largely taken from those provided in the NV Act, NPW Act and *Landscape South Australia Act 2019*. There are some changes to modernise these powers to align them with similar legislation.

Administrative remedies

The Bill introduces new ways to manage breaches of the Act, including compliance and reparation orders which can be issued by authorised officers, the NPCAC or the minister. A compliance order can require someone to follow with a specified provision of the Act or a subordinate instrument to the Act – including regulations or agreements made under the Act. A reparation order can require a person who has committed an offence to remedy their impacts. These provide powers to respond efficiently to breaches of the Act without needing to apply to the court.

Additionally, the Bill includes provisions for enforceable undertakings. Where someone breaches the Act, they may draft an enforceable undertaking detailing the steps they will take to comply and rectify any damage caused and may also include commitments for future compliance. The minister will have the authority to accept an enforceable undertaking in lieu of initiating court proceedings where they consider it appropriate. Failure to comply with an enforceable undertaking will be considered an offence.

Contemporary enforcement tools were supported by 89% of survey participants during consultation on priorities for a Biodiversity Act.

Enforcement proceedings

Civil enforcement

This division deals with court enforcement. Many of the provisions are carried over from the NV Act and are standard practices.

The Bill proposes to introduce wider standing for people to make an application to the court for civil enforcement of a breach of the Act, including for First Nations peoples where the offence relates to a culturally significant biodiversity entity. First Nations peoples may also bring an action,

with permission of the court, based on their connection to Country. Any other person may apply to bring an action with permission of the court.

In granting permission for someone to bring an application to the court, the court must be satisfied that the proceedings would not be an abuse of court process, vexatious or frivolous and would, if successful, further the objects of the Act. Anyone who needs permission of the court to enforce a breach must first write to the minister, asking the minister to act within a reasonable time.

Examples

Some of the situations in which a third party may apply to the Environment, Resources and Development (ERD) Court to enforce a breach of the Act could include:

- Where someone has unlawfully cleared native plants.
- Where someone is taking native animals without a permit (and a permit would be required).

The types of situations in which a third party **may not** apply to the ERD Court for standing include:

- To challenge a decision made under the Biodiversity Act.
- In relation to a breach of the general duty.

Court orders for civil enforcement powers are carried over from the NV Act and are considered sufficiently broad to respond to a range of situations. The NV Act currently requires that the court make certain orders where plants have been unlawfully cleared. This requirement has been retained in the Biodiversity Bill with an extra provision to require the court to consider whether the applicant should be required to enter into a Biodiversity Agreement for the cleared land.

The Bill also empowers the court to make 'no development' orders, which are modelled on similar orders in the *Heritage Places Act 1993*. By restricting activities on unlawfully cleared land, 'no development' orders can eliminate any incentive to try and bypass the law.

The Bill also introduces civil penalties as a new enforcement mechanism. The minister or NPCAC may negotiate a civil penalty as an alternative to criminal proceedings with a person, or apply to the court for a civil penalty. A person may elect to be prosecuted instead of agreeing to a civil penalty.

Criminal enforcement

Penalties, included throughout the Bill, have been updated and benchmarked on other jurisdictions and equivalent legislation in South Australia.

Many maximum penalties have been increased, providing a strong disincentive for illegal activities, including:

- \$250,000 or 5 years jail for individuals, and \$500,000 for businesses, convicted of illegally killing, catching, restraining, injuring, keeping, or interfering with, a protected animal (from \$2,500 to \$100,000 depending on the species and activity).
- \$500,000 for individuals and \$1,000,000 for businesses, or the prescribed rate per hectare – whichever is greater – convicted of illegally clearing native plants (from \$100,000 or the prescribed rate per hectare).

A full list of penalties can be found in Appendix 1.

During sentencing, new provisions also require the court to consider:

- The extent of the harm caused, or likely to be caused, by the offence.
- The sensitivity of the receiving environment or component of biodiversity, including whether it is a threatened species, ecological community or other ecological entity listed or critical habitat declared under Part 6 of the Act.
- Whether the harm caused, or likely to be caused, affects a culturally significant biodiversity entity and the effect on First Nations peoples.
- Whether the harm caused, or likely to be caused, occurs on a protected area, including an area established under the new National Parks Act, *Wilderness Protection Act 1992*, *Marine Parks Act 2007* or a conserved area under Part 7.

Aligning penalties with other jurisdictions was supported by 93% of survey participants during consultation on priorities for a Biodiversity Act.

- Any benefit, including financial benefit, that the respondent sought to gain by committing the breach.
- Any other matter the court may consider relevant.

The evidentiary provisions and defence provisions are largely carried over from the NV Act and NPW Act.

Enforcement generally

It is proposed that the court may make an order for costs as it thinks just and reasonable and in doing so, have regard to whether the proceedings are brought in the public interest. Further, the court may only make a costs order against a First Nations applicant, bringing proceedings on the basis of a culturally significant biodiversity entity or connection to Country, where the proceedings are considered vexatious or frivolous.

The current appeals provisions provided for in NPW Act are carried over.

Survey questions



24. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act?
25. Do you support the proposal to introduce wider standing for people to make an application to the court for civil enforcement of a breach of the Act?
26. Do you support the concept of 'no development' orders?
27. Do you support the option of civil penalties for breaches of the Act?
28. Do you support the penalties for criminal offences proposed under the Act?



Part 9: Permits

SOME CHANGES

The provisions relating to permits are carried over from the NPW Act and have been consolidated into a single section of the Bill to improve readability.

A change has been made to require permits to keep any protected animal unless the animal is listed on the exempt list. This is a minor change as previously people were able to keep one animal from a defined list without a permit but those rules have led to confusion and often inadvertent breaches of the legislation. The change will make it easier for people to keep and sell protected animals and comply with the requirements of the Act.

Some changes have also been made to make it clearer in which circumstances the minister may refuse an application for a permit or suspend or revoke a permit.

Survey questions

- 29.** Do you support the permit provisions proposed in the Biodiversity Act?



Part 10: Miscellaneous

SOME CHANGES

State biodiversity data

New provisions clarify that the minister is responsible for compiling, maintaining, and updating state biodiversity data, and for providing access to such data. The Bill requires that public authorities must cooperate in providing data to the minister and allows for the regulations to prescribe other bodies or persons that might be required to provide data.

A framework to share biodiversity information was supported by 96% of survey participants during consultation on priorities for a Biodiversity Act.

In preparing or reviewing the State Biodiversity Plan, the Minister must:

- Consider listed threatened species, threatened ecological communities, listed ecological entities, culturally significant biodiversity entities, critical habitat and any key threatening processes.
- Seek the advice of the Biodiversity Council, NPCAC, First Nations Expert Biodiversity Committee and Scientific Committee.
- Undertake necessary consultation.

State Biodiversity Plan

South Australia currently does not have a statewide strategy for biodiversity restoration, recovery, and conservation.

The Biodiversity Bill requires the minister to prepare and publish a State Biodiversity Plan, and review and report on it every 5 years thereafter. Part 2 of the Bill also requires decision makers to consider this plan when administering the Act.

A State Biodiversity Plan is proposed to communicate the long-term vision for nature in South Australia. The plan would provide focus, guide investment of resources, and promote collaboration between government and non-government organisations.

The State Biodiversity Plan is required to:

- Set out principles, policies, and strategic directions for achieving the objects of the Act.
- Identify priorities for restoration, recovery, enhancement, and conservation, representing these priorities spatially where possible.
- Define measurable targets and set expectations for monitoring and evaluating the state and condition of biodiversity.
- Identify statewide biodiversity indicators.

A statewide biodiversity plan was supported by 94% of survey participants during consultation on priorities for a Biodiversity Act. 94% supported regular review

Biodiversity policies

The Bill empowers the minister to create biodiversity policies to fulfill the objectives of the Act.

These biodiversity policies could provide interpretive and practical guidance on matters, including general duty compliance, and set out standards, goals or guidelines.

The minister will be required to develop a biodiversity policy for the consideration and application of First Nations' knowledge, and the identification and management of culturally significant biodiversity entities. Culturally significant biodiversity entities include species or ecological communities that have cultural value to some or all First Nations peoples, and which are essential to their relationship with, and adaptation to, Country. The recognition of culturally significant biodiversity entities is not intended to influence or block individual decisions, such as clearance or development approvals. Rather, culturally significant biodiversity entities could influence on-ground restoration and recovery projects, the State Biodiversity Plan, threat abatement plans and action plans for threatened species.

The other biodiversity policies which the minister is required to make include:

- a policy detailing how the significant environmental benefit scheme will operate
- a policy for calculating civil penalties
- a policy detailing the approach for compliance and enforcement under the Act.

The Bill sets out the procedure for making biodiversity policies, which includes the need for public and targeted consultation. For First Nations matters, biodiversity policies will be co-designed with the First Nations Expert Biodiversity Committee.



Biodiversity Register

The Bill creates a Biodiversity Register, which will be an online portal containing a register of applications, decisions, spatial data and other information relevant to biodiversity in South Australia.

Having a public register to ensure disclosure of decisions that impact biodiversity was **supported by 96%** of survey participants during consultation on priorities for a Biodiversity Act.

Criteria for decisions of minister in relation to concurrence

The Bill proposes a new requirement for the minister when responding to requests for concurrence under the PDI Act. The minister must have regard to, and seek to further, the objects and the principles of the Biodiversity Act and have regard to the State Biodiversity Plan.

For more information about new concurrence requirements, see related amendments to the PDI Act.

Regulations

The Act conveys broad regulation making powers that are necessary for the purposes of the Act.

Transitional arrangements will largely be dealt with through regulations, and will ensure that the Act is implemented in a way and in a timeframe that is considerate of allowing time for society, business and industry to adjust to any new legislative settings. This will be complemented by additional educational initiatives that may be required to support the commencement of the Act.

Review of Act

The minister is required to appoint an independent person with extensive knowledge, skills and experience on biodiversity management to conduct a review of the operation and effectiveness of the Act 5 years after commencement, and at least every 10 years thereafter. The report is required to be prepared within 6 months of the review date and must be tabled in parliament.

Hunting

Hunting of non-native animals (pig, rabbit and deer) will continue to be allowed with a Basic Hunting Permit. Duck and Quail Hunting Permits will continue to be issued where a declaration has been made by the minister permitting the take of specified species during certain times and locations in the state.

First Nations peoples can continue to hunt animals and gather plants for cultural purposes without needing a permit.

Survey questions



- 30.** Do you support the provisions that set the scope of the State Biodiversity Plan?
- 31.** Do you support the recognition of culturally significant biodiversity entities?
- 32.** Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account?
- 33.** Do you support the proposal to establish a Biodiversity Register?
- 34.** Do you support the framework that the Bill proposes for the regular review of the Act?

Schedule 1: Regulated clearance area

NO CHANGES

The 'regulated clearance area' reflects the current spatial application of the NV Act. Consistent with current arrangements, clearance applications for native plants will only be required in this regulated clearance area and on public lands.

Schedule 2: Regulated acts or activities exclusions

SOME CHANGES

The clearance exemptions that sit in the NV Regulations will be moved across into Schedule 2.

The NV Act currently provides that consent for clearance is not required for prescribed activities or in prescribed circumstances. These prescribed activities and circumstances are detailed in the NV Regulations and do not require consent of the Native Vegetation Council, but may be subject to other requirements.

Most of these activities and circumstances, and any related requirements are carried over from the NV Regulations into Schedule 2 of the Biodiversity Bill as 'exclusions' from the regulated acts or activities which require authorisation under part 4 (native plants). They have been consolidated and simplified for readability.

Some changes to these exclusions, or 'unregulated activities', are proposed, including:

- changing the rules for clearance around houses to align with the regulated and significant trees rules under the State's planning laws to reduce confusion (trees can be cleared within 3 metres of a house)
- removing requirements to avoid and minimise impacts and instead require application of the mitigation hierarchy guideline which will contain this detail
- removing the clearance exemption relating to taking of seeds and specimens because these activities now fall under the definition of 'take'.

The current clearance exemptions relating to 'ongoing grazing practices', the 'maintenance of existing agriculture, forestry or farming' and the 'grazing of domestic stock' are removed

and replaced with one exemption that clarifies that farming and grazing does not require clearance consent if it does not result in permanent degradation. This removes the additional rules relating to historical management of the land, and instead focuses on the outcomes seeking to be achieved. This change also reflects the new definition of 'clearance' and seeks alignment with the goals of the *Pastoral Land Management and Conservation Act 1989*.

This schedule also clarifies that clearance controls on private land do not apply to intentionally sown plants that are less than 20 years old, or to planted native plants more than 20 years old in private gardens and growing in commercial forests or to fungi and algae unless they are a prescribed species.

Survey questions

35. Do you support moving the clearance exclusions into a schedule to the Act so they are in one place?

36. Do you agree with the changes to the unregulated activities in Schedule 2?





Schedule 3: Principles of preservation of native plants

SOME CHANGES

This schedule is carried over from Schedule 1 of the NV Act and is renamed ‘principles of preservation of native plants’ from ‘principles of native vegetation clearance’ to better reflect their purpose.

Importantly, in deciding whether to consent to an application to clear native vegetation, the NPCAC will be required to have regard to the principles of preservation of native plants so far as they are relevant to the decision and must not make a decision that is seriously at variance with those principles, save for a limited set of circumstances described in the Act. This is consistent with the current requirements in the NV Act.

The principles remain largely the same as they were in the NV Act, with, some terminology updates as per the table below.

Survey questions:

- 37.** Do you support updating the existing ‘principles of native vegetation clearance’ to ‘principles of preservation of native plants’ to align with provisions in the Biodiversity Act related to threatened species, threatened ecological communities and listed ecological entities?



<i>Native Vegetation Act 1991</i>	<i>Biodiversity Bill 2025</i>
Principles of native vegetation clearance	Principles of preservation of native plants
Native vegetation should not be cleared if, in the opinion of the Council—	Native plants are considered to be of particular value and should be preserved if, in the opinion of the NPCAC—
(a) it comprises a high level of diversity of plant species; or	(a) they comprise a high level of diversity of plant species; or
(b) it has significance as a habitat for wildlife; or	(b) they have significance as habitat for protected animals or native plants; or
(c) it includes plants of a rare, vulnerable or endangered species; or	(c) they include plants of a threatened species; or
(d) the vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered; or	(d) they comprise the whole, or a part, of a threatened ecological community or listed ecological entity; or

<i>Native Vegetation Act 1991</i>	<i>Biodiversity Bill 2025</i>
(e) it is significant as a remnant of vegetation in an area which has been extensively cleared; or	(e) they are significant as remnant plants in an area which has been extensively cleared; or
(f) it is growing in, or in association with, a wetland environment; or	(f) they are growing in, or in association with, a wetland environment; or
(g) it contributes significantly to the amenity of the area in which it is growing or is situated; or	(g) they contribute significantly to the amenity of the area in which they are growing or situated; or
(h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity; or	(h) their clearance is likely to contribute to continued or further soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, their clearance is likely to cause appreciable soil erosion or salinity; or
(i) the clearance of the vegetation is likely to cause deterioration in the quality of surface or underground water; or	(i) their clearance is likely to cause deterioration in the quality of surface or underground water; or
(j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding; or	(j) their clearance is likely to cause, or exacerbate, the incidence or intensity of flooding; or
(k) — (i) after clearance the land will be used for a particular purpose; and (ii) the regional landscape board for the landscape management region where the land is situated has, as part of its regional landscape plan under the <i>Landscape South Australia Act 2019</i> , assessed— (A) the capability and preferred uses of the land; and (B) the condition of the land; and (iii) according to that assessment the use of the land for that purpose cannot be sustained; or	This has been deleted as applications for consent are referred to regional landscape boards who will be able to make such a determination and make recommendations accordingly.
(l) the clearance of the vegetation would cause significant harm to the River Murray within the meaning of the <i>River Murray Act 2003</i> ; or	(k) their clearance would cause significant harm to the River Murray within the meaning of the <i>River Murray Act 2003</i> ; or
(m) the clearance of vegetation would cause significant harm to the Adelaide Dolphin Sanctuary.	(l) their clearance would cause significant harm to the Adelaide Dolphin Sanctuary.

Related amendments

NEW PROVISIONS

To ensure that other South Australian accurately reflects the new Biodiversity legislation, a number of related amendments are proposed.

The following pieces of legislation are being amended to require actions or decisions under the relevant Act to take account of the objects of the Biodiversity Act:

- *Coast Protection Act 1972*
- *Crown Land Management Act 2009*
- *Energy Resources Act 2000*
- *Mining Act 1971*
- *Pastoral Land Management and Conservation Act 1989.*

Several other pieces of legislation will receive consequential amendments to update relevant terminology (e.g., references to the NV Act will be changed to the Biodiversity Act).

Environment Protection Act 1993

It is proposed to amend the *Environment Protection Act 1993* to require State of the Environment reports to include an assessment of the statewide biodiversity indicators set out in the State Biodiversity Plan under the Biodiversity Act.

Landscape South Australia Act 2019

It is proposed to make several consequential amendments to the *Landscape South Australia Act 2019* where it currently references matters relating to the NV Act and NPW Act.

It is proposed to amend the *Landscape South Australia Act 2019* to require the State Landscape Strategy to consider the strategies and priorities set out in the State Biodiversity Plan.

It is proposed to require the minister responsible for administering the *Landscape South Australia Act 2019* to obtain the concurrence of the minister responsible for administering the Biodiversity Act in making a declaratory notice requiring the control of native animals or plants. Other requirements for consultation with the minister responsible for administering the Biodiversity Act are introduced throughout the *Landscape South Australia Act 2019*.

National Parks and Wildlife Act 1972

The *National Parks and Wildlife Act 1972* will become known as the National Parks Act. Provisions for wildlife are repealed and moved to the Biodiversity Act. Several consequential amendments will be made to ensure correct alignment with the Biodiversity Act and for consistency with new definitions.

Planning, Development and Infrastructure Act 2016

Special Legislative Scheme

It is proposed that the Biodiversity Act will be declared a Special Legislative Scheme for the purposes of the PDI Act.

This means that the minister responsible for administering the PDI Act must, by notice in the Gazette, establish a biodiversity State Planning Policy that complies with the requirements of the Biodiversity Act. A State Planning Policy already exists for biodiversity but it is envisaged that this will be updated, after the introduction of the Biodiversity Act, to reflect any new requirements.

The effect of declaring the Biodiversity Act to be a Special Legislative Scheme will also mean that where an Environmental Impact Statement (EIS) is required for a proposed development such as an Impact Assessed Development it must include a statement of the extent to which the expected effects of the development are consistent with the state planning policy for biodiversity. It must also include the proponent's commitments to meet conditions that should be observed in order to avoid, mitigate or satisfactorily manage and control any potentially adverse effects of the development on biodiversity. After the EIS has been prepared, the Planning Minister must refer the EIS to the Biodiversity Minister for comment.

When making a decision about an Impact Assessed Development, the Planning Minister will need to consider the views of the Biodiversity Minister.



Concurrence of Biodiversity Act Minister

It is proposed to amend the PDI Act to require the Biodiversity Minister to consent to any amendment to the Planning and Design Code that affects an overlay or zone, prescribed by regulation, to be an overlay or zone of importance to biodiversity. Effects would include altering or removing the boundary of an overlay or zone or, in the case of an overlay, a code amendment that would change the underlying zone(s).

Critical habitat

It is proposed to amend the PDI Act to allow the minister responsible for administering the PDI Act to amend the Planning and Design Code in order to include information about critical habitat that has been declared under the Biodiversity Act.

Wilderness Protection Act 1992

It is proposed to make consequential amendments to the *Wilderness Protection Act 1992* to update all references to the Wildlife Conservation Fund to the Biodiversity Conservation Fund.

Survey questions



- 38.** Do you support the amendments proposed to the *National Parks and Wildlife Act 1972*?
- 39.** Do you support the amendments proposed to other legislation?

Appendix 1: Penalties

Offence	Current Penalty	New Penalty
Part 3		
A person with delegated functions under the Act must disclose conflicts of interest	\$5,000	\$20,000
Part 4		
Undertake regulated activity without authorisation in relation to plants	For clearance: Sum calculated at the prescribed rate for each hectare of land or \$100,000 whichever is greater (expiation fee \$750) For take: \$2500 - \$10,000 or 0.5 – 2 years	For an individual, the prescribed rate per hectare or \$500,000 or imprisonment of 5 years For a body corporate, the prescribed rate per hectare or \$1,000,000 \$1500 expiation fee
Contravention of condition of consent in relation to plants	Sum calculated at the prescribed rate for each hectare of land or \$100,000 whichever is greater (expiation fee \$750)	For an individual, the prescribed rate per hectare or \$500,000 or imprisonment of 5 years For a body corporate, the prescribed rate per hectare or \$1,000,000 \$1500 expiation fee
Illegal possession of plant	\$2500 - \$10,000 or 0.5 – 2 years	Individual \$250,000 or 5 years For a body corporate \$500,000 (Expiation fee \$1500)
Part 5		
Undertake a regulated activity involving an animal without a permit	\$2500 - \$100,000 depending on the species and activity	Individual \$250,000 or 5 years Corp \$500,000 (Expiation fee \$1500)
Undertake a regulated activity involving a trafficable quantity of a protected animal	(NA new offence)	Individual \$500,000 or 10 years Corp \$1,000,000
Illegal possession of protection animal	\$2500 - \$100,000 or 0.5 – 2 years	Individual \$250,000 or 5 years Corp \$500,000 (Expiation fee \$1500)
Part 6		
Critical Habitat (damage without consent)	(NA new offence)	Individual \$500,000 or 5 years Corp \$1,000,000

Offence	Current Penalty	New Penalty
Part 8		
Offence to hinder/obstruct authorised officers	\$2500	\$15,000
Offence to assault authorised officer	\$5000	\$15,000 2 years
Failure to comply with compliance or reparation order	(NA new offence)	\$70,000 (\$1,500 expiation fee)
Offence to hinder a compliance order	(NA new offence)	\$10,000
Non-compliance with an enforceable undertaking	(NA new offence)	\$70,000
Offence to undertake development contrary to a no development order	(NA new offence)	\$500,000 individual \$1,000,000 corporation
Offence for owner/occupier to obstruct court order	\$10,000	\$10,000
Offence to contravene an ERD Court order	\$100,000	\$500,000 individual \$1,000,000 corp
Part 9		
Offence to contravene a condition of a permit		Individual \$250,000 or 5 years Corp \$500,000 (Expiation fee \$250)
Offences relating to failure to provide report following expiration or revocation of a permit	\$1000 (expiation fee \$150)	\$2,500 (expiation fee \$250)
Failure to provide information relating to a change of address (permit)	\$1250 (expiation fee \$160)	\$2500 (expiation fee \$250)
Part 10		
Offence to use a restricted device without a permit	\$1000 (expiation fee \$150)	\$20,000 (expiation fee \$1000)
False representation (permit)	\$2500	\$5000 (\$500 expiation fee)
Unlawful entry on land for the purpose of taking or hunting	\$1000 (expiation fee \$150)	\$5000 (\$500 expiation)
Failure to comply with request to leave land as soon as practicable	\$1000 (expiation fee \$150)	\$5000 (\$500 expiation)
Re-entering land without permission	\$1000 (expiation fee \$150)	\$5000 (\$500 expiation)
Offence to provide false and misleading information	\$2500	\$20,000 (expiation fee \$1000)
Offence to hunt without a permit	\$1000 (expiation fee \$150)	\$20,000 (expiation fee \$1000)



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