

To whom it may concern,

The Northern and Yorke Landscape Board of South Australia (NYLB) have reviewed the proposed '*Draft Biodiversity Bill 2025*' (the Bill). The NYLB provide this response to ensure the value of biodiversity within our state is appropriately protected for future generations. As an organisation, we are leading biodiversity values management with industry, private landholders, First Nations and community groups and government and non-government organisations (local, state and national). This proposed Bill will dramatically affect our core operations and ability as an organisation to appropriately manage biodiversity values across the Northern and Yorke region of South Australia.

For context, the Northern and Yorke region is currently subject to an unacceptable rate of native vegetation and critical habitat clearance. In the last 6 months, approximately **6,000 ha of native vegetation and critical habitat has been proposed to be cleared** or was approved to be cleared, including:

- **3,000 to 4,000 ha of clearance** – Neoen - Goyder Renewable Zone, inclusive of Goyder North - Stage 1 and Goyder South – Stage 2 major renewable energy developments. This development covers multiple areas including Goyder, Mt. Bryan, Burra, Mokota Conservation Park, Red Banks Conservation Park, Hanson, Gum Creek and surrounds.
- **1,023.75 ha of clearance** - Genaspi Battery Energy Storage System and Solar Project, Bright and Bunday SA.
- **533.34 ha of clearance** - Whyte Yarcowie Wind Farm Pty Ltd, Whyte Yarcowie, Hallett and Terowie, SA.
- **253.52 ha of clearance** - Carmody Hill Wind Farm Project, Carmody SA.
- **264.51 ha of clearance** – AMP Energy - Barn Hill Wind farm development, SA.
- **255.8 ha of clearance** – AMP Energy East Robertstown Solar Farm.

Majority of this development is impacting on the few remaining remnant vegetation communities and critical habitat areas in South Australia, posing an ever-increasing risk of extinction for many of our native plants and animals. It is therefore, clear that the **existing legislation does not provide appropriate protections for these communities**. In particular, the following biodiversity values are experiencing substantial impacts and without a strong Biodiversity Bill to protect them, face an increasingly uncertain future:

- EPBC Act **Critically Endangered Condition Class A, B and C** '*Iron-grass Natural Temperate Grassland of South Australia*' (INTG) threatened ecological community. This is one of the last remaining high quality and connected INTG communities left in Australia. INTG threatened communities can take over 100 years to develop with specialised conditions requirements, which cannot be replaced or replicated. **Once it is cleared, it cannot be restored.** This not only results in the loss of important vegetation diversity, but also loss of **critical habitat that supports many Federally and State listed threatened fauna species** (i.e. pygmy blue-tongue lizard, blue-winged parrots, southeastern robins, firetails, grassland wrens, southern whitefaces and raptors).
- EPBC Act **Endangered** '*Mallee Bird Community of the Murray Darling Depression Bio Region*'. This includes known presence of **a number of EPBC Act and South Australian listed bird species** (i.e. south-eastern hooded robins, southern whitefaces, diamond firetails, blue winged parrots and numerous grassland, raptor and migratory bird species).
- **EPBC Act and NPW Act listed threatened fauna** species such as pygmy blue-tongue lizards (*Tiliqua adelaidensis*), Flinders Ranges worm lizards (*Aprasia pseudopulchella*), as well as over 50 threatened bird and mammal species currently being subject to substantial fragmentation impacts.
- **EPBC Act and NPW Act listed threatened flora** species that are either endemic or close to extinction in South Australia or within the Northern and Yorke Region (i.e. orchids, ferns, lilies, grasses and mature remnant overstorey).

The above examples from the Northern and Yorke region clearly indicate that the new Bill needs to be significantly stronger than current legislation to protect biodiversity in South Australia. However, in its current state, we are concerned that **the new proposed Bill will not prevent this pattern of clearance and removal of critical habitat from continuing in our region.** It is critical that the new Bill is driven with the most up-to-date information on the state of ecosystem health and its future under a changing climate. Without this, the Bill will not allow appropriate protections or safeguards to ensure an ecologically sustainable future for the state.

The Northern and Yorke Landscape Board have identified the following concerns and recommendations for the proposed Biodiversity Bill:

Concerns

- Ensure a lack of knowledge is not a reason for a lack of protection and consider where this could be a barrier for protection in the Bill.
- Consideration of the potential disruption of necessary management of problematic native plants from interstate (e.g., Tasmanian blue gums).
- Consideration on the amount of resourcing required by Landscape Boards to manage governance and review of referrals by the Biodiversity Council, Native Plants Clearance Assessment Committee, First Nations Expert Biodiversity Committee and Scientific Committee all proposed to be established with this Bill.

This will put a considerable strain on resourcing and time efficiencies to appropriately assess and respond on local biodiversity matters.

- Provide more definitive powers and transparency for the proposed First Nations Expert Biodiversity Committee to be referred and to review any proposed developments impacting biodiversity matters on Country.
- Consideration of the clarity of messaging, particularly where this involves the accountability of decision makers and person(s) or corporate bodies undertaking clearance or illegal biodiversity actions..
- Consideration of any unintentional limitations to cultural practices.
- Consideration of how political pressure may influence the necessary controls for impact causing native species.
- There are a number of additional ministers with portfolios that conflict with the principles and objects of this Bill, including the Minister for Infrastructure and Transport, Minister for Housing and Urban Development, Minister for Energy, Minister for Forest Industries and Minister for Primary Industries and Regional Development.
- There are opportunities throughout the Act for entities to avoid undertaking measures that mitigate and prevent unacceptable harm to biodiversity. These include if the measures are deemed unfeasible and if the project has been approved by the *Planning, Development and Infrastructure Act*. These loopholes will prevent the Bill from successfully preventing ongoing harm to South Australia's biodiversity.

Recommendations

- Ensure cultural burning and other important cultural practices are excluded from the regulations.
- Ensure soils are included and protected.
- Ensure the general duty of care includes avoidance of harm as the first step,
- Ensure there is prescribed enforcement for a failure to comply with the Act for repeat-offenders.
- Ensure a greater emphasis on proactive environmental repair rather than mitigation or offsets.
- Ensure an offset is possible before the approval of clearance.
- Ensure critical habitat is protected from all types of development.
- Ensure greater transparency of key decisions made to reject or approve development and clearance applications.

Though the Northern and Yorke Landscape Board supports this new legislation, **ecological sustainability needs to be prioritised**. The region has been and continues to be subject to a substantial number of developments which may have a serious cumulative impact across the region, resulting in native biodiversity decline, habitat degradation, fragmentation, and declining landscape values.

Policy development with integrity along with a communication strategy that raises adequate public awareness of the joint responsibilities of biodiversity preservation and

restoration that this Bill advocates for will be a crucial step in its implementation. Consideration of these factors will ensure that best practice planning principles and sustainable development outcomes are achieved for the region.

Overall and detailed feedback to specific aspects of the Bill is provided in the below **Attachment 1**. If you would like to discuss any of the feedback provided, please contact Libby Duncan, Manager Project Planning and Reporting, Northern and Yorke Landscape Board on [REDACTED] or [REDACTED]



General Manager, Northern and Yorke Landscape Board

26/02/2025

Attachment 1

**Collated Responses by Northern and Yorke Landscape
Board – Draft Biodiversity Bill 2025**

Table 1 – Northern and Yorke Landscape Board, South Australia - Biodiversity Act 2025 response table

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
Part 1, Clause 10, Page 15	The definition of what is considered a protected animal, with particular exclusions of fish, amphibians and invertebrates needs to be revised. All fauna species types contribute as part of ecosystem function, productivity and services that they provide. If these species are impacted by a proposed development i.e. (a wetland with diverse fish, amphibians and invertebrates) they would not be granted the same level as protection that is required to maintain these areas and if needed, restored appropriately post impact. These species types need to be considered the same as birds, mammals and reptiles, with exemptions for fishery activities.
Part 1, Clause 12(d), Page 17	If the fence is on the boundary of a person's land—the width of the strip does not exceed 5 m; This is far too wide. Majority of roadsides in our region are less than 5m. In some council areas, the only remaining remnant vegetation is found on roadsides. This will not stop farmers clearing roadsides with the thin veil of 'protecting their fences'. Especially for properties that are not running livestock. Primary producers could in theory continue to blanket spray kilometres of roadsides without it being called clearance. Clearance of native plants undertaken in connection with subdivision of the land on which the native plants are growing or situated. What is classed as a subdivision? Does this exclude/include farmers subdividing a paddock? Subdivision is not listed in the interpretation section.
Part 1, Clause 35-40, Page 20 and 21	Mitigation hierarchy and how avoidance measures are achieved will be key to having any success with this legislation in providing protections to biodiversity. There needs to be an increase in penalties or deterrence for each level of the hierarchy that is missed (i.e. avoidance to minimise, minimise to restore, restore to offset) incurs additional substantial fees.
Part 2, Clause 7 and 8, Page 22	The importance of resilience and adaptation to climate change is highlighted in the Objects and Principles of the Bill, however this sentiment is notably absent from the rest of the Bill. It is absolutely critical that the impacts of climate change are considered when reviewing clearing and development applications. Impacts of the project by themselves may not be significant enough to result in mitigation actions or application rejection, however when climate change is taken into account this may significantly change the level of risk. For example, it may exacerbate the likelihood of coastal inundation, bushfire, habitat fragmentation, and/or species extinction.

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
Part 2, Clause 11 (5), Page 24	Failure to comply with this section of the Bill needs to have more prescriptive and include substantive consequences (i.e. jail sentences, serious, material or environmental harm penalties set out, restoration directives where biodiversity damage has been undertaken unlawfully).
Part 2, Clause 11.1, page 23	The allowance here that an entity must take all reasonable and practicable measures to minimise harm suggests that if harm is completely unavoidable in a project, then the activity would not necessarily be rejected/stopped even if this harm was completely unacceptable. There must be hard no's and no-go zones in place so that approvals can never be given for projects taking place in Threatened Ecological Communities, National Parks, Indigenous Protected Areas, Heritage Agreements and other important habitats. This will ensure these areas are protected, and also reduce the time and public funds spent on reviewing applications that should not be approved. This will also provide clarity to proponents of potential developments and remove significant planning a design costs prior to consideration of submission of project concepts.
Part 2, Clause 11.1, page 23	The clause here stating that the entity must take all reasonable and practicable measures to minimise harm, allows easy justification to undertake a proposed development to clear or cause significant biodiversity harm with no hard-line for the established councils to reject a proposal.
Part 2, Clause 11.2e, page 23	This clause infers if the cost of the measures to prevent biodiversity harm are too high or if the measures are otherwise unfeasible, then they will not be required. This provides a significant loophole that will legally allow entities to avoid mitigation or restoration works. It is important that this be amended to ensure that if the impacts to biodiversity are 'too high' then the project will not be approved or will be stopped.
Part 2, Clause 7 (Objects of the Act)	We are in agreement with most of what is being committed here, however it would be ideal for object (a) to include corporate or organisation responsibility, not just individual responsibilities.
Part 3, Division 1, Clause 13.a and b, page 25	There are a number of other ministers that have portfolios that are contrary to the principles and objects of the Biodiversity Bill and therefore should not be able to be delegated the power to administer this act, including: Minister for Infrastructure and Transport, Minister for Housing and Urban Development, Minister for Energy (as a separate consideration to mining), Minister for Forest Industries and Minister for Primary Industries and Regional Development. The Minister for Industry, Innovation and Science should also be considered for this exclusion list due to the conflicting nature of some science and innovation projects to biodiversity protection.

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
Part 3, Division 3, Subdivision 1, Clause 36.3h, page 33	It is deeply concerning that an entity or individual can make a payment 'in lieu' of having to achieve a significant environmental benefit. This should be amended to ensure that entities are not able to avoid contributing to the restoration of biodiversity by simply making a payment.
Part 4, Clause 60, Page 49	As part of Native Vegetation Management plans that are mandated by the section of the act, should promote, and include measures that improve environmental watering of native plant and vegetation associations dependent upon so (i.e. floodplain vegetation, riparian, coastal inlet wetlands). This could also mean promoting measures that include (removal of flow constraints onto vegetation (i.e. roads) or delivering water as part of a management plan as part of a restoration or offset management plan).
Part 4, Division 1, Clause 42, page 36	Activities that cause habitat, landscape and air and water quality degradation resulting in native plants or animals dying or not being able to grow/live is not currently considered here.
Part 4, Division 1, Clause 42.1a, page 36	The 'regulated clearance areas' listed in Schedule 1 are very Adelaide-centric, suggesting that across the rest of the state people are legally allowed to clear native plants on private land. This is dismissive of critical and threatened habitats on private lands across the state and the threatened fauna species that they house, for example Iron-grass Natural Temperate Grasslands and pygmy blue tongue lizards in the Northern and Yorke region.
Part 4, Division 1, Clause 42.1b and c, page 36	Who will enforce the clauses around taking native plants from public and private lands and how? For example, would a person picking a handful of native flowers on their own land be potentially prosecuted?
Part 4, Division 2, Clause 44.a, page 37	The penalty for undertaking unauthorised activities should also include a requirement to rehabilitate the habitat/land/water. Entities must not be able to ignore the Bill and clear the land, then simply pay the fine and continue on with the project. The land should instead be turned over and restored where possible.
Part 4, Division 3, Clause 12, page 41	The listed 'specified circumstances' clearly outline that the Planning, Development and Infrastructure (PDI) Act 2016 is going to take precedence over the Biodiversity Bill. This section details that clearing native plants for the purpose of roads, houses, buildings, dams or pathways is able to go ahead as long as the project has been approved under the PDI Act, even if no significant environmental benefit can be generated. This significantly undermines the Biodiversity Bill and would be a step back in terms of protection for threatened flora, fauna and ecosystems compared to current legislation.

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
Part 4, Division 3, Clause 50.3, 6b and 7b, page 40 And Part 4, Division 3, Clause 52.1c, page 43	As mentioned above, the clause to allow an entity or individual to make a payment in lieu of having to achieve a significant environmental benefit is deeply concerning and directly contradicts the other circumstances for consent outlined in this same section.
Part 5, Clause 62.1, page 51	Fragmentation, bio-connectivity loss and ecosystem function and service impacts from habitat loss should be captured as part of the listed regulated acts or activities. The list of 'regulated acts or activities' does not appear to include killing or maiming/injuring protected, culturally significant or threatened animals (i.e., killing without harvesting, dealing or taking the animal). For example, people killing bottlenose dolphins for taking their fish in the Adelaide Dolphin Sanctuary (or elsewhere) and farmers shooting wedge-tailed eagles for taking lambs.
Part 5, Clause 62.1i, page 51	We recommend expanding this from just 'protected habitat' to also include habitats relied on by protected, culturally significant or threatened animals. This would avoid potential cases where an important habitat is able to be degraded or destroyed because it was not listed due to data deficiency.
Part 6, Division 1, Clause 69, Page 55	The inclusion of 'threatened ecological communities' to be protected at State level is a great inclusion and long overdue.
Part 6, Division 2, Clause 73, Page 56	Removal or de-listing of a species, community or entity should be made in consultation with relevant experts prior to this decision being approved. This provides too much technical authority to the minister to de-list a species inappropriately and should instead be the responsibility of the scientific council.
Part 6, Division 4, Clause 81.2, page 60	This clause is contradictory and water downs appropriate protections required for threatened fish species in South Australia.
Part 7, Division 1, Clause 90.1, page 64	The Minister should also have the ability to declare areas of water to be sanctuaries. This clause currently only gives provision for declaring lands as sanctuaries.
Part 7, Division 2, Clause 92 and 94, pages 65 - 67	Will these biodiversity and conservation agreements act similar to Heritage Agreements? Will these agreements provide strong protection and deterrence against development impacts. Under current legislation, Heritage Agreements are not provided with adequate protection (e.g., Whalers Way with Heritage Agreement present, though approval was still granted).

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
	There appears to be significant overlap in the function and definitions behind the conservation and biodiversity agreements. Is it necessary to have two separate types of agreement, or can they be merged to simplify and reduce administrative burden?
Part 7, Division 3, page 68	Does this section apply to revegetation efforts proposed by Landscape Boards? This would add significant administrative burden for both the Council and Landscape Boards, particularly given that a lot of these works occur on private land holder properties.
Part 7, Division 4 , Clause 101, page 69	Consider adding restoring or enhancing 'Healthy Country' and First Nations cultural land connection restoration as additional purposes.
Schedule 3, page 134	Where the definition of native plant changed from 'indigenous to SA' has been changed to 'indigenous to Australia': Would the control of invasive Australian plants that are not native to SA require formal approval by the Native Plants Clearance Assessment Committee (e.g., where their removal is necessary to protect/restore habitat)? This would create a major bureaucratic burden and may delay immediate action when required to control new infestations. With this new definition, changes are required to the Landscape SA Act to clarify if this will prevent invasive Australian plants that are not native to SA from being declared for movement or sale or to require their control, and if this would mean the current declarations of invasive native plants become void.
	Regarding the assessment process, it the proposed scientific committee should provide the Landscape Boards with their initial NVC assessments for Landscape Board staff to make comment on, rather than providing comments in isolation without having oversight of their assessments. Transparency is needed around approved/denied clearance decisions.
Defence bases and commonwealth lands	As the legislation does not exempt defence lands or other commonwealth lands (i.e. Adelaide Airport), we understand that they would be subject to this Bill and associated regulations. We are supportive of this, as it will fill a gap in current biodiversity regulations and protection of threatened species and ensure that these sectors of society are compliant.
Penalties, fees and charges by the Act	We recommend that the fees be increased and annually updated to reflect inflation, so that these fees do not become outdated or obsolete in being a substantial deterrence.
Question to : South Australia's first Biodiversity	Additional clarity is needed on the proposed changes being considered to the Landscape SA Act 2019. These should be upfront and detailed given that they have the potential to alter/change interpretation change the focus of responsibility.

Section of the Act (reference Section, Clause and Page)	Raised comment i.e. (concern, suggestion, issue, positives with)
Bill Explanatory Guide "Incorporating Other Acts"	
Regulation of government bodies	How will this act be used to regulate other government bodies in the clearance or handling of threatened species including DEW and Landscape Boards? These organisations need to be held to a certain amount of accountability to ensure that activities concerning threatened plants and animals are being undertaken in accordance with regulations.
Reporting Suggestion	We recommend something similar to 'State of the Environment' reporting, such as a 'State of Biodiversity Reporting' every 3-4 years, to provide a biodiversity health assessment and score card to monitor the effectiveness of these new regulations and allow government to respond and address issues.