



Biodiversity Coordination Unit
Department for Environment and Water
GPO BOX 1047
Adelaide SA 5001

Email: biodiversityact@sa.gov.au

RE: Feedback on South Australia's Draft Biodiversity Bill

Dear Madam/Sir,

Thank you for the opportunity to provide comments on the draft Biodiversity Bill for South Australia.

This response is provided on behalf of the South Australian Arid Lands Landscape Board (Board). A collective response from multiple Landscape Boards will also be provided which reflects statewide sentiments and are supplementary to the views that are relevant to each individual region.

The Board is a statutory authority established under the *Landscape South Australia Act 2019* (LSA Act). The Board is responsible for the judicious and sustainable management of natural resources within arid South Australia. The Board therefore has a strong interest in biodiversity protection and management which benefits the environment, community, culture, and prosperity of the region.

The Board strongly supports the sentiment of the draft Biodiversity Bill advocating for a general duty of care to all to value and look after our State's biodiversity. The Board is also very supportive of the expansion of conservation agreements and the potential increase in land committed to biodiversity protection. The Board is looking forward to the expansion of biodiversity protections under the proposed Biodiversity Act (the Act) including the declaration and conservation of critical habitat.

The main questions (and concerns) are primarily around the definitions of native plants and animals in the Act and potential implications for their management when these native species are overabundant and impacting the environment or subject to management in order to protect livestock under other legislation. There are also several sections in the Act that could better connect or strengthen relevant sentiments in other Acts (e.g. *Pastoral Land Management and Conservation Act 1989*).

Specific feedback for each part of the Bill is provided below by quoting sections of the Bill, and suggesting changes, where possible. Please disregard the previous draft submission as this is the final response provided by the Board.

For further information regarding this matter, please contact the SA Arid Lands Landscape Board Office,

[Redacted contact information]

Yours sincerely

[Redacted signature]

[Redacted line]

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Part 1—Preliminary

Comments regarding native plant definitions are provided under part 4.

Part 2—Objects, principles and general duty

The Board strongly supports the notion in cl. 2(7)(a) which promotes a shared responsibility by all of society and across all sectors to conserve and restore biodiversity. **It is strongly recommended by the Board that this shared responsibility becomes a reality and a priority.** The Board agrees that it is the responsibility of all sectors (not just the environmental sector) to value and protect our biodiversity which benefits all.

For cl. 2(11)(1), this might apply to the construction of roads. If roads are not constructed in a way that considers surface water flows this can result in soil erosion features and a degradation of the surrounding environment as a result (e.g. reduction in soil function). Soil function is a biodiversity asset that supports native flora and fauna. The Board suggests some consideration of terrestrial soil management in the Act where it is explicitly mentioned rather than implied via the general duties in the Act. This is captured in the *Pastoral Land Management and Conservation Act 1989* in s. 1(3)(1), and s. 2(4)(b)(iii), but it would be strengthened if this was echoed in the Act as functioning soils have implications for production and environmental values. There is mention of the impacts of soil erosion in reference to vegetation clearance in watercourses in Schedule 3 cl. (h) but this could also be extended to consideration of soil erosion in terrestrial systems as well due to mismanagement of roads or other contributing factors, potentially under Schedule 2, cl. 2(11)(3).

Part 3—Administration

The Board is generally supportive of the proposed administration of the Act. However, there are currently limited details on the roles of each statutory body provided. If the scope of the Biodiversity Council could include oversight on referrals and approved/active development applications statewide this would be a very useful function and could be added to cl. 3(16). Due to the collective impacts of developments statewide it would ensure some evaluation or reporting back on these impacts as they apply to biodiversity. Similarly, reporting back on how money paid into the Fund is being used would be useful to evaluate how much is being 'spent' back in the region and for what purpose (e.g. for addressing key threatening processes to native vegetation and other biodiversity values) for increased transparency.

The Board strongly suggests that any policies which relate to First Nations cultural practices (e.g. cultural burning, cultural trade) be developed by the First Nations Expert Biodiversity Committee (FNEBC) not the Biodiversity Council and that First Nations are adequately represented and included in developing these policies. Although this is mentioned in cl. 3(22)(d) it could be explicitly excluded as a function of the Biodiversity Council in cl. 3(16)(c-d) to avoid confusion.

Part 4—Native plants

The Board is generally supportive of the broader definition for native plants extending to all plants native to Australia with some provisions. Where the native plant is invasive and outcompetes or has the potential to outcompete indigenous SA vegetation, clearance of such species should be considered an unregulated activity due to the detrimental effects on recipient ecosystems. Although this is somewhat addressed in Schedule 2, cl. 2(15)(b) it could be more explicit and include reference to a detrimental effect on ecosystems rather than just natural resource management. In all other circumstances, the Board agrees that the clearance of native plants should be considered a regulated activity. Retention of mature, native vegetation (indigenous to SA or not), that is not invasive, provides a lot of benefits for a variety of reasons (e.g. shade trees for livestock, tree hollows, carbon sequestration), which should be



adequately considered before clearing vegetation. However, the clearance of vegetation which is indigenous to SA, relative to the clearance of vegetation that is non-Indigenous to SA, should be associated with a payment or offset commensurate with the greater conservation benefits of retaining remnant vegetation.

Setting a 20 year threshold beyond which the clearance of vegetation is considered a regulated activity may encourage clearance of younger vegetation as this may be perceived by the public as a way to avoid the permit process. This may be mitigated somewhat through well-considered community engagement and public awareness but is there any thought to how this risk may be further mitigated (e.g. through protections for revegetation projects)?

The term “domestic garden” which is mentioned in Schedule 2, cl. 2(3)(b) requires a definition (e.g. in Schedule 2 cl. 1(1)) as this may be a bit of a grey area in some regions.

Part 5—Protected animals

The Board requires more information on how overabundant native animals will be managed before it can fully support the targeted controls or how activities are deemed as regulated or unregulated.

In the context of kangaroo/Macropod prescribed management, the stipulation that protected animals are unable to be taken from protected areas or sanctuaries (cl. 5(67)(2)(c)) may mean that the resources (e.g. meat) generated from large prescribed culling operations are wasted and cannot be used by First Nations groups, other groups or businesses. Similarly, current practises which are permitted under the current *National Parks and Wildlife Act 1972* (e.g. kangaroo meat used by landholders for bait manufacture) would be in breach of cl. 5(62)(1) unless covered through kangaroo permits or regulation. Additionally, the terms ‘harvest’ and the ‘taking of a native animal’ are used interchangeably in the Act (e.g. cl. 5(66)(1) and cl. 5(66)(2)(a)) and it is hard to follow what restrictions apply to each. The Board suggests separating out the relevant restrictions that apply to the management of an overabundant native species to the harvesting of one to avoid confusion.

By stipulating that First Nations are unable to take a protected animal or protected egg for non-commercial domestic or communal needs (cl. 5(63)(2)) may inadvertently limit First Nations innovation, empowerment and cultural practices. The Board suggests removing the non-commercial stipulation at cl. 5(63)(2).

This legislation creates an opportunity to bravely address the shortcomings and complexities of over abundant macropods for both protection and pragmatic management. The status quo is not working.

Part 6—Threatened species, threatened ecological communities and listed ecological entities

The Board is generally supportive of the declaration and protection of critical habitat for threatened species, threatened ecological communities, and other listed ecological entities. However, more detail is required on what data will be required to declare critical habitat, particularly for species where this is less certainty around habitat requirements. The Board would be particularly interested in how critical habitat protections might apply to threatened ecological communities dependent on the Great Artesian Basin (GAB) Springs, and how this might strengthen enforcement or protection of *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) listed ecological communities.

A duty of the head power could also include the review and triggering of a referral process for State listed species similar to the current process for species listed under the EPBC Act. Not all State listed species are also listed nationally under the EPBC Act meaning that impacts to State listed species are



not fully considered in development applications. This could be added in the Gazette. At a time of increased development in SA it is very important to ensure maximum protections and reduced 'loopholes' as it applies to threatened or endangered biodiversity – that transcends which list they are on or catalyses species being placed on both.

The Board is also generally supportive of the concept of provisional listings, but believes this could be further expanded to afford protections under other circumstances not currently listed under cl. 6(76)(1). A category for species which are currently being assessed, before a final listing is reached, requires some form of protection for such species. Current categories do not include species at risk of extinction due to developments which are progressive in nature and do not necessarily happen rapidly (for it to apply for cl. 6(76)(1)(d)) which could have significant and irreversible impacts to a species. The Board suggests adding an additional category to cl. 6(76)(1) which covers these circumstances.

Given current lengthy assessment processes, there should be consideration to allowing for the extension of the 2-year provisional listing period where delays in the listing process may lead to a gap in the protection of a species (at cl. 6(76)(3)). The precautionary principle should apply here.

Part 7—Conserved areas

The Board supports the increased flexibility afforded by the introduction of new types of Conservation Agreements. The increased options to commit land to biodiversity conservation should be accompanied by greater support for landholders wanting to apply for these agreements. This will be critical to ensuring that more agreements are made in the region. Consideration around a greater uptake of conservation agreements on individual pastoral leases (where the duration of the lease permits) should also be considered. There are several benefits to conservation agreements in marginal country which is currently at the greatest risk of biodiversity loss for economic gains and more rapid onset of drought and extreme climate variability conditions.

Part 8—Enforcement

The Board is generally supportive of proposed inclusions around enforcement in the Act. However, it is currently unclear how First Nations exclusions for taking a protected animal or plant will be practically vetted by authorised officers in the field. Will an authorised officer have the right to ask for proof of identity if a person(s) are intercepted undertaking such an activity? This needs to be clearly addressed in the regulations or policy. Ideally, the legislation should be an enabler not a blocker to these activities and support longer term sustainable takes to work concurrently alongside any mainstream commercial harvesting.

Part 9—Permits

The Board is supportive as long as the comments to Part 4 and 5 are considered.

Part 10—Miscellaneous

Clarity on the declaration of a Culturally Significant Biodiversity Entity (CSBE) and how this interacts with other legislation is required before the Board can fully support this notion. Dingoes are a known, culturally significant species which could potentially be declared as a CSBE under this Act (cl. 2(10)(a)). It is unclear how the protection of dingoes as a CSBE which are declared for control under the *Dog Fence Act 1946* (Dog Fence Act), and LSA Act, both south and north of the Dog Fence, and as stated in the Act in Schedule 4, cl. (b), would then be a breach of cl. 8(114)(1)(e). Additionally, to consider, replacement of the term "wild dog" with "dingo" (in conflict with the Dog Fence Act) could further inflame the issues around the control of dingoes south of the fence and their cultural recognition. Some well-considered public awareness or community engagement is needed to mitigate these risks. The Board recommends



that they should remain as dingoes outside of the fence and wild dogs within it, in line with the duties to destroy or manage accordingly.

The declaration of a CSBE should also link to the current *Native Title Act 1994* (Native Title Act) or other relevant legislation. Native Title does not currently extend to protections or declarations on private land. This should be explicitly stated in the Bill or reference made to the Native Title Act to clarify this.

The Board is supportive of the establishment of a Biodiversity Register. However, determining who has access to this information and why will be important. There are a lot of potential benefits to the Biodiversity Register being a central repository of development approvals and clearances and could inform regulatory bodies (e.g. Landscape Boards) when providing advice on referrals or water affecting activities or other assessments undertaken by Landscape Boards and other regulators.

Schedule 2—Native plants—regulated acts or activities exclusions

The Board is supportive of the clearance exclusions being addressed together in Schedule 2. Landholders who require this information (e.g. allowable vegetation clearance for fencing and roads) have all of the relevant exclusions in one place making it much easier to find.

The Board is supportive of the changes to the unregulated activities as stated in Schedule 2 as long as the previous comments in Part 2, 4 and 5 are addressed.

Schedule 3—Principles of preservation of native plants

Nil.

Schedule 5—Related amendments and repeals

The Board is supportive of better alignment of the *Planning, Development and Infrastructure Act 2016* with the new Biodiversity Act. The proposed biodiversity State Planning Policy should include some consideration of developments and subsequent clearances permitted (e.g. buffer zones around infrastructure as per Schedule 2 e.g. cl. 2(19)) and the biodiversity values of the vegetation to be cleared.