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Biodiversity Bill

Submission - February 2025

Contents

Executive summary 2

Consultation process..... 5

LGA submission 5

 Objects, Principles and General Duty 6

 Statutory bodies 8

 Funds..... 10

 Significant environmental benefit offsets 12

 Planning system 14

 Roads..... 15

 Native plants 18

 Schedule 2 18

 Native animals 21

 Enforcement 21

 Other matters 23

 Conclusion 23

Executive summary

LGA welcomes the opportunity to provide commentary on the exposure draft of the proposed Biodiversity Bill¹ (the Bill). We appreciate the contemporary regulatory framework that makes this legislation easier to read and navigate. LGA has a range of recommendations to strengthen the Bill and to reduce the potential for unintended consequences for the local government sector.

As the peak body proudly representing 68 councils across South Australia and the Anangu Pitjantjatjara Yankunytjatjara, we champion the needs of our members every single day. With a focus on leadership and representation, our work is driven by a shared passion for making a difference in the lives of South Australian communities.

Through this submission, we outline our recommendations and insights to ensure the Bill delivers a balanced and effective framework for biodiversity management.

As the Bill proposes to absorb the existing *Native Vegetation Act 1991* (NV Act), and all wildlife components of the *National Parks and Wildlife Act 1972* (NPW Act), this will become the overarching piece of legislation protecting biodiversity in South Australia. LGA has a keen interest in native vegetation legislation and has advocated for a substantive review of the NV Act, to effectively resolve longstanding policy conflicts across a range of portfolios.

Through the development of a new Biodiversity Act, our sector remains an advocate for a holistic biodiversity management process that is simple and transparent in application for those administering the Act, decision makers and those seeking to make application for clearance.

We know ongoing biodiversity decline threatens the sustainability and prosperity of our regions. A sophisticated approach to biodiversity conservation and enhancement is needed to ensure the system is balanced and enables our communities to adapt, thrive and grow.

The following statements summarise our submission with full commentary and recommendations set out in the remainder of the submission.



Objects, principles and general duty

LGA strongly urges the state government to adequately consult directly with affected local councils in metropolitan Adelaide where the Bill proposes to expand the spatial application to include 'public land'. Given the limited experience in applying the current NV Act in these locations, it is essential to

¹ [South Australia's Draft Biodiversity Bill | YourSAy](#)

understand the information and training needs across the local government sector.

The state government must also find ways in the objects and principles of the Bill to resolve competing policy aims, such as economic development, road safety and function, and planning alongside protecting and enhancing biodiversity, in an effective way to address community expectations.

While we do not oppose the introduction of a General Duty, the Bill should ensure councils can still act in the interests of public safety.



Statutory bodies

LGA seeks the ability to make nominations direct to the Minister for appointment to the Biodiversity Council and Native Plants Clearance Assessment Committee (NPCAC).



Funds

LGA supports measures to increase accountability and transparency of the new Restoration, Conservation and Administration funds, including mandated Parliamentary reporting on how funds are spent across the state and for what purpose.

Non-administrative funds collected should be used to maximise on-ground benefit for biodiversity conservation and protection in South Australia.

LGA opposes any increase in administrative fees that are likely or will go toward general administrative activities of DEW.



Significant environmental benefit scheme

Consideration should be given to exclude application of the Biodiversity Act in regional townships, to support regional economic development objectives.

The local government sector should also be actively engaged in development of the new significant environmental benefit (SEB) scheme.

LGA recommends the Bill be aligned with other environment protection legislation and provide an avenue of merits appeal.



Planning system

Greater consideration should be given to resolve longstanding policy conflicts between the *Planning, Development and Infrastructure Act 2016* (PDI Act) and

the NV Act as recommended by the Expert Panel for the Planning System Implementation Review.



Roads

LGA supports the development of new guidance under the Biodiversity Act that simplifies and clarifies the approach to roadside plant management while prioritising the safe movement of people and goods across our road network throughout the state.

This work should be led by a working group of experts from across multiple disciplines including biodiversity, road management and maintenance (state and local), road safety and regional landscape boards.



Liability

LGA strongly recommends liability aspects be addressed through targeted amendments to the Bill, including provision for statutory indemnities to councils that are consistent with existing obligations under the section 7(d) of the *Local Government Act 1999* (LG Act).



Schedule 2

Changes are recommended to Schedule 2 of the Bill addressing stormwater infrastructure, roadside plant management, safety, and fungi and algae as contained in this submission. This should be done along with permitting councils to assess and determine what is maintenance pruning on a case-by-case basis, assisted by experienced arboriculture experts.



Native animals

LGA supports aspects of the Bill designed to provide more targeted and effective frameworks for the management of impact causing native species, including permissible control activities which do not require a permit.



Enforcement

Appropriate statutory immunities must be provided for authorised officers, who are employees of a local council, where an honest act or omission in the discharge of duties leads to a civil liability by an individual authorised officer.

Any council employees the Minister may wish to appoint as authorised officers must be with the consent of council and with appropriate remuneration for these services.

Consultation process

This submission has not been endorsed by the LGA Board as the consultation timeframes provided by state government did not allow for this process to occur. Therefore, this is a provisional submission prepared by LGA and is informed by:

- existing policy positions of the local government sector in relation to native vegetation.
- limited feedback heard from members during the consultation period.
- analysis of matters that are likely to be consequential to the local government sector by way of additional resourcing, cost, administrative or other impacts.

LGA thanks officers from the Department for Environment and Water (DEW) for their webinar presentation to the local government sector on the development of the Bill, held on 29 January 2025.

LGA observes that consultation timeframes provided by the state government are increasingly ambitious, with many consultation processes on legislative reforms or statewide strategies only allowing four weeks for commentary and submission, including for this Bill.

This is concerning because often items for consultation are complex, multi-faceted and require consideration and thought of the practical application in real world settings. LGA regularly requests a minimum eight week consultation period so that we have adequate time to consult with our members and their communities on the issues raised.

LGA submission

Through developing the Bill, and its proposed framework for administering biodiversity conservation in South Australia, LGA advocates for the state government to resolve longstanding policy conflicts and provide clearer paths for both local and state governments to balance key objectives to:

- enable the provision of safe and functional access to road infrastructure and the corresponding cost-effective maintenance requirements.
- undertake economic development functions to allow our communities to develop, thrive and grow.

Noting the Bill proposes to absorb other legislation, by way of background, LGA made a submission² to the process commenced in mid-2024 on Amendments to the NV Act³. In

² LGA [Native Vegetation Act Review - Submission - June 2024](#)

³ [Amendments to the Native Vegetation Act 1991 | YourSAy](#)

addition, in 2021 LGA also made a submission⁴ to the Inquiry into the operation of the NV Act which was held by the Natural Resources Committee of the Parliament of South Australia. Both these submissions remain relevant to the development of this Bill.

Objects, Principles and General Duty

Operation of the Act

Section 6(1) of the Bill provides that subject to that section, the Act applies to the whole of the state. Section 6(2) then provides that in relation to the clearance of native plants (that do not comprise critical habitat), the Act:

‘...only applies to land (whether public land or otherwise) within the regulated clearance area specified in Schedule 1 and to public land outside the regulated clearance area.’

Schedule 1 replicates the context of the current NV Act. However, bringing in ‘any public land outside of the regulated clearance area’ provides a significant expansion of the operation of the Biodiversity Act. The term ‘public land’ is defined in section 3(1) of the Bill to include community land (within the meaning of the LG Act), and land reserved for, or dedicated to, public purposes. As such, this will have the effect to considerably expand the spatial application of clearance controls to include land not currently controlled.

The underlying principle behind this change may be supported by some of our metropolitan members, who already voluntarily choose to preserve and maintain urban tree canopies and have, alongside LGA, advocated for the introduction of the Urban Greening Strategy⁵.

However, the proposed change also provides challenges that must be addressed. The effect of this change will be to bring into this Act, public land within those councils whose areas fall within the Hundreds of Adelaide, Munno Para, Noarlunga, Yatala and Port Adelaide. This will affect just under one third of our member councils, which may never have previously had any interaction with the operation of the NV Act.

We urge the state government to seriously consider and consult directly with these affected councils on:

- what resources may be required to provide adequate clear information and guidance for officers within these council areas who will, for the first time, need to navigate this regulatory framework. This could include DEW delivered training modules, information sessions, training videos, written guidance and/or other guidance materials etc. Consideration could also be given to utilising LGA’s strategic partnership with Local

⁴ LGA [Inquiry into the Native Vegetation Act - Submission - July 2021](#)

⁵ [Urban Greening Strategy for metro Adelaide | Green Adelaide](#)

Government Professionals South Australia⁶ to help deliver some suitable training and information.

- activities that councils must undertake, such as management and maintenance of both open spaces and road corridors, including holistic tree management by arborists (for example, Marion council has a Tree Asset Management Plan⁷, how might documents such as this be affected by the application of the Biodiversity Act?).
- liability aspects of councils and in particular the dual responsibilities that councils have under section 7(d) of the LG Act⁸ ‘...to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards...’ and comply with the current NV Act (and moving forward the proposed Biodiversity Act). LGA has previously advocated for bespoke liability issues that affect councils to be considered within the legislative drafting process⁹.
- the interaction of this proposed change with the existing ‘Community Land’ provisions of Chapter 11 of the LG Act, which sets out a complex regulatory scheme for the management of community/public/council-owned land and proposals to change its use.

Further commentary is made in the remainder of this submission about the interaction of other sections of the proposed Biodiversity Act and where the Act itself is proposed to apply across South Australia.

Of further note, the Governor’s power to exclude parts of the state by regulation [Schedule 1, clause 1(3)] only apply to the definition of ‘regulated clearance area’. As such, this power will be ineffective to exclude areas which are outside the regulated clearance area. For example, new ‘public land’ areas captured in metropolitan Adelaide for the first time under such legislation. It is unclear if this is by design and may leave a gap in the legislative framework where the state government will be unable to recommend a change be made without a subsequent amendment Bill, even if there is a strong evidence-based case why this may be required after the Act is adopted.

Recommendation 1

The Biodiversity Act proposes to expand the spatial application to include ‘public land’ across South Australia. LGA strongly urges the state government to adequately consult directly with affected local councils in those areas where there is likely limited

⁶ [LG Professionals SA - Home](#)

⁷ [Tree Asset Management Plan | City of Marion](#)

⁸ [Local Government Act 1999 \(legislation.sa.gov.au\)](#)

⁹ LGA [Native Vegetation Act Review - Submission - June 2024](#) (page 8)

experience in the application of the current NV Act, to understand and deliver training across the local government sector in applying the proposed Biodiversity Act.

Objects and principles

Through the development of a new Biodiversity Act, LGA remains an advocate for a holistic biodiversity management process that is simple and transparent in application for those administering the Act, decision makers and those seeking to make application for clearance. To this end, LGA does not oppose the objects and principles outlined in the Bill.

However, we would also like to see an acknowledgement that state government has a duty to resolve potentially competing policy objectives in an effective way by seeking to balance and consider competing community priorities.

LGA also makes commentary throughout this submission where improvements can be made to the Bill to better support real world outcomes this legislation seeks to achieve.

Recommendation 2

LGA does not oppose objects and principles of the Bill. However, submits that state government must find ways to resolve competing policy aims in an effective way to address community expectations.

General Duty

LGA understands the General Duty which will apply under the proposed Biodiversity Act, is likely to operate in a similar manner to general duties under other legislation such as the *Environment Protection Act 1993* (EP Act) and the *Landscapes South Australia Act 2019* (LSA Act). On this basis, LGA does not oppose this measure to support the objects and principles of the Act.

The General Duty should not inhibit councils pursuing other activities preserving public safety, that are required or contemplated by statute.

Recommendation 3

LGA does not oppose the introduction of a General Duty in the Bill but seeks to ensure councils can still act in the interests of public safety.

Statutory bodies

LGA notes the intent to establish several new statutory bodies to assist in administering the Act, including a Biodiversity Council, a Native Plants Clearance Assessment Committee

(NPCAC), a First Nations Expert Biodiversity Committee (FNEBC) and a Scientific Committee. With their roles further described in the Explanatory Guide to the Bill¹⁰.

With the establishment of each of these bodies, the Bill as drafted only outlines the proposed composition of a skills-based Biodiversity Council (section 15), and that consultation will occur with peak bodies, such as LGA, on these appointments. The Bill does not prescribe how this consultation will occur. The required skill sets and appointment processes for the remainder of statutory boards under the Biodiversity Act are proposed to be prescribed later by regulation (sections 18, 21 and 24).

LGA continues to advocate for a process that enables it to have meaningful engagement in appointments to boards under the proposed Biodiversity Act, including in particular the Biodiversity Council and NPCAC.

Enabling this at an initial point of contact within the legislation ensures that a diversity of view points from a range of areas including expertise in local governance, is incorporated into significant and strategic decision making across the state; especially where policy settings are likely to impact the local government sector in consequential ways.

LGA's first preference is to retain the ability to make nominations direct to the Minister for appointment to both the Biodiversity Council and NPCAC. This is an advocacy position that is shared by the Conservation Council SA and Primary Producers SA, which under the Bill as drafted, are similarly disadvantaged by these changes.

If looking to other examples where LGA is consulted on similar board appointments, section 15(5) of the LSA Act outlines that peak bodies, such as LGA, must be provided 21 days to make a submission to the Minister in relation to proposed appointments to regional landscape boards. In practise¹¹, bringing in LGA for consultation at a point where the Minister is already well advanced in considering the respective nominees, and by only providing minimal information about these nominees (in most cases just their name), limits the ability of LGA to provide meaningful input into this process.

Therefore, LGA advocates for a different consultation model to be considered for statutory bodies to be constituted under the Biodiversity Act. If the Bill is passed in its current form, LGA then seeks further opportunities to make representation to both the Minister and DEW to:

- develop a meaningful engagement process for consultation with LGA and other peak bodies on appointments to the Biodiversity Council.

¹⁰ [South Australia's Draft Biodiversity Bill | YourSay](#) – see link to Explanatory Guide (page 12)

¹¹ For example, with the current process for appointments to regional landscapes boards.

- make representations and recommendations for inclusion to the proposed regulations outlining the required skill sets and appointment processes for the remainder of statutory boards under the Biodiversity Act.

Recommendation 4

LGA strongly advocates to retain the ability to make nominations direct to the Minister for appointment to the Biodiversity Council, and to include provision for LGA to make nominations for appointment to the NPCAC.

Recommendation 5

We advocate for a process that enables us to have meaningful engagement through appointments to all statutory bodies constituted under the proposed Biodiversity Act.

Funds

LGA notes the intent to establish several funds to support the administration of the Biodiversity Act:

- the Biodiversity Restoration Fund (previously the Native Vegetation Fund).
- the Biodiversity Conservation Fund (previously the Wildlife Conservation Fund).
- the Biodiversity Administration Fund (new).

In general, the LGA seeks transparency and accountability over the collection and expenditure of all funds collected by the state government, including new funds and funds that will serve similar regulatory functions as previous funds (e.g. in the case of the above proposed funds). LGA supports measures to increase accountability and transparency of fund use through mandated Parliamentary reporting (or other reporting as appropriate). LGA also supports measures to provide transparent reporting about how, what and where funds are spent across South Australia for the promotion of positive biodiversity outcomes.

LGA also advocates for the use of the bulk of the funds, and in particular all of the funds collected under the proposed Biodiversity Restoration Fund, to be applied to the maximum direct on-ground benefit to remediate native vegetation/native plants in South Australia.

LGA notes that one of the key income streams for the new Biodiversity Restoration Fund, will be from the payment of significant environmental benefit (SEB) offsets. This is likely to be carried over in the main from the NV Act. However, the Bill requires the development of a new biodiversity policy in relation to SEBs. LGA makes further commentary on this below.

In using funds from both the Biodiversity and Conservation Funds, LGA recommends the state government consider how best to partner with councils in co-design and co-delivery of on-ground programs for the benefit of communities across the state.

During LGA's 2024 consultation with members on native vegetation matters, some member councils observed that where they had contributed to the (current) Native Vegetation Fund (in the form of an SEB offset), communities were often keen to see how this money was proactively used for an on-ground benefit, within the relevant region and for the direct benefit of the local community. LGA supports measures in the Bill for this to occur.

The Bill separates the funds for administrative purposes from those funds collected for direct on-ground biodiversity benefit works, which is an improvement on the current NV Act. However, the creation of the proposed Biodiversity Administration Fund provides new powers to levy fees for administrative purposes, by permitting the NPCAC to determine amounts in respect of administration, monitoring and enforcement measures, actions or requirements to achieve a significant environmental benefit (SEB) offset. It is unclear from the Bill whether increased administration fees may be payable under the new Biodiversity Act in respect of an application for clearance.

We seek further clarity from state government about the proposed process for administrative fee setting under the Bill.

The Bill does not propose other mechanisms to generate revenue or levies to support any additional administrative or other activities that may now be in scope of the Biodiversity Act that were previously not within scope of the NV Act. As such, there is concern the Biodiversity Administration Fund may be used as a mechanism to raise these funds if needed. This has the ability of directly and disproportionately affecting those applying for land clearances, and this will only occur in areas where the Biodiversity Act itself is now to apply. This would be an unfair approach, particularly in regional locations, and for councils which own and/or maintain 'public land'.

Recommendation 6

LGA supports measures to increase accountability and transparency of fund use through mandated Parliamentary reporting, including how funds are spent across the state and for what purpose.

Recommendation 7

LGA advocates for non-administrative funds collected to be used to maximise direct on-ground benefit for biodiversity conservation and protection.

Recommendation 8

LGA opposes any increase in administrative fees that are likely or will go toward general administrative activities of DEW, noting some administrative fees may be required for certain activities to support the administration of the Act. These should be minimal.

Significant environmental benefit offsets

The operation of the significant environmental benefit scheme (SEB policy) is inherently linked to both the collection and use of funds collected in the administration of the Biodiversity Act and the consideration of where the Act itself applies (as outlined under 'Operation of the Act' above).

Section 161 of the Bill outlines that the Minister may make a range of biodiversity policies for the purpose of the Act. With section 161(4)(c) relating to a policy on significant environmental benefit scheme (the SEB Policy) which must be made by the Minister. The Bill does not go into details about how this SEB Policy will be crafted and implemented, beyond high level statements that an SEB may be achieved through measures by an individual or third party, or by applying a value for the environmental offset.

As outlined in detail in LGA's submission¹² to the process commenced in mid-2024 on Amendments to the NV Act¹³, LGA advocates for native vegetation overlays (and consequently now, biodiversity overlays) to be considered as part of a strategy to seek proactive engagement within current regional planning processes being run by the State Planning Commission¹⁴, in partnership with the local government sector.

The six regional plans (Kangaroo Island, Yorke and Mid North, Eyre and Western, Far North, Limestone Coast and Murray Mallee) will set the direction for future planning and development of regional South Australia.

Part of this engagement and review could also consider whether to provide an exclusion of the application of the NV Act (and consequently now, the Biodiversity Act) in a 'township' (as defined in section 4 of the LG Act). This approach would need to provide adequate protections:

- for preserving and maintaining existing areas of strategic remnant native vegetation within townships.
- against rezoning of townships for the purpose of avoiding the native vegetation or biodiversity overlays.

This approach needs to be considered in conjunction with reviewing the current regulatory framework of the NV Act, which the LGA contends is not fit for purpose for adoption under the Biodiversity Act as it:

¹² LGA [Native Vegetation Act Review Submission June 2024](#) (see page 14 – 19)

¹³ [Amendments to the Native Vegetation Act 1991 | YourSAy](#)

¹⁴ [Plan SA - Digital Regional Plans](#)

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- requires most applications to be assessed by experts who are accredited by the regulator, being the Native Vegetation Council (NVC) (with administrative support from DEW). This could arguably be seen as stifling the ability for those experts to provide frank and fearless advice about the true context and value of the respective individual parcel of land with remnant vegetation, for the risk of removal of accreditation for this purpose.
- effectively prohibits the NVC from making a decision which is 'seriously at variance' to the Principles of Clearance [section 29(1)(b) of the NV Act], even where it may arguably be of most holistic community benefit to do this.
- provides no ability within the NV Act itself for an appeal or review process, leaving applicants with limited options to attempt to reach a resolution.

The Bill will allow applicants to receive feedback (section 53) and resubmit a clearance application for further assessment (section 48), in lieu of a formal review process for decisions made by the NPCAC. While this may go some way to improving transparency, a right of merits appeal would help to ensure administrative decision-makers remain accountable for decisions. In this way, the Bill remains an outlier in terms of equivalent environment protection legislation. For example, the EP Act, the LSA Act and the PDI Act, all of which provide an avenue of merits appeal against decisions made in relation to applications for consent or permission under the relevant Act.

Further, it will not address the fundamental issues with the current SEB scheme. The current Policy for an SEB¹⁵ and Guide for calculating an SEB¹⁶ are lengthy and complicated and can only be understood and applied by consultants (at considerable cost).

LGA submits that a regulatory system under the Biodiversity Act would work more effectively if it was simplified so that decision-making about whether a clearance should or should not proceed, could be undertaken by appropriately trained and experienced officers, with clear and simplified guiding documentation/instructions. What this would do is enable greater confidence in the system that it is working to both achieve the objectives of the Biodiversity Act, while providing avenues for legitimate developments to proceed where a clear community benefit outcome is certain.

Further, in the case of the local government sector, a simplified process enables these outcomes to be more readily understood by local government elected members, administrative officials and the communities they serve. This will increase transparency and confidence in the SEB scheme.

¹⁵ [Native Vegetation Significant Environmental Benefit Policy - 1 July 2020](#)

¹⁶ [Native Vegetation Significant Environmental Benefit Guide - 1 July 2020](#)

Recommendation 9

LGA advocates for consideration to be given to excluding the application of the Biodiversity Act in regional townships, to support regional economic development objectives.

Recommendation 10

LGA seeks more information about the proposed process to develop the SEB Policy and, as a key stakeholder, a commitment to be part of the process to both develop the SEB Policy and for a minimum 8-week consultation period for member councils to have their say on any new SEB Policy developed.

Recommendation 11

The Bill should be aligned with other environment protection legislation and provide an avenue of merits appeal.

Planning system

The Expert Panel for the Planning System Implementation Review made a recommendation at item #36¹⁷ that the state government should ‘...review and refine the intersection between the PDI Act and the NV Act to remove confusion within the community and development sector, to ensure native vegetation is retained’.

LGA contends the work done by this Bill, while improving some aspects, still has some way to go to align these Acts to simplify the regulatory scheme, particularly to clarify exemption criteria such as:

- prescribed buildings
- planted trees
- 20 metre fire hazard reduction
- dead trees
- urgent tree removal

The time afforded to provide a response to this draft Bill consultation means that LGA has not gone into detail in this submission about the current limitations of these aspects. However, LGA can provide further detailed commentary to DEW after the consultation closes.

LGA has previously provided in principle support to the findings of the Expert Panel for the Planning System Implementation Review, which stated that further investigation is required into the intersection of the NV Act and PDI Act and that while larger policy and legislative

¹⁷ [Final report - Expert Panel for the Planning System Implementation Review](#) (page 111)

reform is considered, the preparation of appropriate guidance materials should be progressed as a matter of priority.

That these matters are not resolved through the development of the Bill represents a missed opportunity for harmonisation of this aspect which has caused issues for regulators and applicants alike.

Recommendation 12

LGA seeks greater consideration to resolving longstanding policy conflicts between the PDI Act and the NV Act as recommended by the Expert Panel for the Planning System Implementation Review.

Roads

Significant environmental benefit offsets for road management purposes

Any new SEB Policy to be adopted under the Biodiversity Act also needs to consider activities that are only performed by government bodies, for example in the care and control of state and local roads, road reserves and (in the case of local councils) roadside verges. Of particular interest to the local government sector is in ensuring road safety, function and management is prioritised for our communities, especially as we observe a stubbornly high rate of fatalities and serious injury crashes on our road network in South Australia¹⁸.

LGA asks for similar provisions to be applied for roads that are under the care and control of local councils, as outlined in section 50(12)(a) of the Bill which states that consent can be given by the NPCAC for 'clearance of native plants incidental to work being undertaken by or on behalf of the Commissioner of Highways'.

In addition, LGA is advised by regional members that there are longstanding issues with accessing rubble pits for suitable road base for road construction purposes. To ensure cost benefit ratios are achieved, these need to be suitably located within a reasonable distance of the end location for use. The cost of transporting road base material for roads over long distances is prohibitive and significantly increase the cost per kilometre of road building and maintenance.

In some areas, such as the Eyre Peninsula, most remaining suitable road rubble is located under remnant native vegetation, with most arable land already in use and not containing material suited to this purpose. SEB offset payments are increasingly making the material

¹⁸ [SAPOL - Traffic statistics](#)

cost prohibitive to extract and use. Feedback indicated that some additional regard to native vegetation clearances for this purpose should be considered.

Recommendation 13

LGA seeks amendments to the SEB scheme that facilitates the use of rubble pits, with native vegetation/plant considerations accounted for in an efficient manner.

Roadside and rail corridor plant management

As outlined in detail in LGA's submission¹⁹ to the process commenced in mid-2024 on Amendments to the *Native Vegetation Act 1991* (NV Act)²⁰, the current guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation²¹ present issues to member councils in their practical application.

Schedule 2, Part 2 of the Biodiversity Bill discusses clearance of native plants. Section 8 ('Roadside or rail corridor plant management') of Schedule 2 outlines that new guidelines for this purpose will be created. LGA supports a process to make new guidelines for the management of plants in roadside and rail corridors that takes a risk management approach.

This represents a significant positive opportunity to establish simplified and clear guidance about managing biodiversity, while balancing a key need of councils to provide safe and functional access for the community to our road networks across the state.

With the remaking of the guidelines, LGA continues to recommend that:

- consideration be given to establishing new guidelines with expert input from an independent road advisory body (e.g. Austroads or National Transport Research Organisation) and road and vegetation experts across the local government sector, to harmonise road safety and function more closely with the requirements to manage and maintain native plants in roadside verges.
- the proposed new Biodiversity Council engage in a continual renewal and improvement process for all guidelines issued, including regular periodic review and input by a multi-discipline panel of subject specialists from a range of areas, including with local government representation, to ensure guidelines remain current and fit for purpose.

However, it is noted that subclause 8(1)(d) provides that the relevant guidelines adopted under section 61 may also require preparation of a native plant management plan that is subject to the approval of the NPCAC. In keeping with LGA's desire to see a simplified

¹⁹ LGA [Native Vegetation Act Review Submission June 2024](#) (see page 14 – 19)

²⁰ [Amendments to the Native Vegetation Act 1991 | YourSAy](#)

²¹ [Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation \(September 2020\)](#)

framework for biodiversity management, if the relevant guideline document is fit for purpose, there should be no need to require councils to individually prepare a native plant management plan. Preparation of such plans is likely to come at significant cost to the sector (for example to engage consultants), while also introducing regulatory uncertainty if either the Biodiversity Council or the NPCAC delays or refuses to approve a native plant management plan.

Recommendation 14

LGA supports a process for making new guidance under the Biodiversity Act that simplifies and clarifies the approach to roadside plant management, while prioritising the safe passage of people and goods across our road network throughout the state.

Recommendation 15

LGA recommends in making new guidance, this work should be led by a working group of experts from across multiple disciplines including biodiversity, road management and maintenance (state and local), road safety and regional landscape boards.

Recommendation 16

LGA strongly advocates to amend and simplify Schedule 2, subclause 8 so it provides a full exemption for clearance of roadside plants, provided the clearance is undertaken in accordance with relevant guidelines adopted by the Biodiversity Council. As above, these should be developed in close consultation with a range of subject matter experts to ensure they are clear and concise.

Liability

In addition, LGA's prior submission sought to address the needs of the dual responsibilities that councils have (e.g. under the current NV Act and the LG Act). Section 7(d) of the LG Act²² states a function of council is: 'to take measures to protect its area from natural and other hazards and to mitigate the effects of such hazards...'. The existing application approval pathway under the NV Act provides a barrier for the local government sector to provide effective and timely remediation of safety risks or 'immediate hazards' (e.g. foreseeable risk of injury or death) that do not fall within the established clearance envelopes outlined in the Guidelines for the Management of Roadside Native Vegetation and Regrowth Vegetation. Ensuring this matter is addressed under new legislation is essential.

²² [Local Government Act 1999 \(legislation.sa.gov.au\)](https://legislation.sa.gov.au)

Recommendation 17

LGA continues to recommend that liability aspects be addressed through targeted amendments to the Bill, including provision for statutory indemnities to councils that are consistent with existing obligations under the section 7(d) of the LG Act. If agreed in principle, LGA proposes meeting with DEW officers to confer on potential legislative solutions and wording.

Native plants

LGA notes the definition of 'native plant' in the Bill. In contrast to the NV Act, which defines the term 'native vegetation' by reference to plants which are indigenous to South Australia, the Bill proposes to expand the definition to also include other plant species indigenous to Australia.

The legislative framework needs to contemplate the management of native plant species that may not be suited to South Australian environments. Not all native plants to Australia are suitable to be protected if found in South Australia, and indeed in some cases, some Australian native plants may be considered invasive species. Similar to the provisions for impact causing native animals, the Bill should address management avenues for any impact causing native plant species.

In addition, with the proposal in the Biodiversity Bill to include the broader definition of 'native plant', LGA is concerned the threshold to make an application for clearance may be increased where legitimate and worthy goals are being pursued, particularly by local councils for the benefit of their local community and particularly in regional settings, including in townships.

LGA flags the potential impacts of this change may not have been fully considered in the context of the activities conducted by the local government sector. This also needs to be considered in conjunction with the expanded spatial application of the Biodiversity Act to 'public land', which will bring in areas of metropolitan Adelaide that were previously excluded from the application of the NV Act.

Recommendation 18

LGA recommends that state government further consider the scope of the definition of 'native plant' in the Bill.

Schedule 2

Schedule 2 lists act and activities that are specified as not being regulated, which means they are exempt from clearance consents.

Some proposals for amendments that LGA believes should be considered for Schedule 2 include:

- Maintenance of infrastructure, Schedule 2, clause 5. It is noted that the treatment or disposal of stormwater is not included in the definition of 'infrastructure', section 3(1)(a) of the Bill. While 'flood mitigation works' are included at section 3(1)(d) of the Bill. LGA contends there is uncertainty about whether the definition of infrastructure includes stormwater infrastructure, even if it's related to flood mitigation. Specific inclusion of 'stormwater' to the definition would clarify and resolve this issue.
- Roadside plant management in Schedule 2, clause 8 is discussed above under 'Roads' heading.
- Safety, Schedule 2, clause 18. This exemption applies to clearance of a native plant exceeding 2 metres in height which is posing a risk of personal injury or damage to property. While exemption may be able to be used by local government, the requirement for assessment by a plant health expert (subclause (d)) followed by preparation of an expert report for approval by the NPCAC (subclause (e)) is unnecessary and oppressive in relation to local government. This is because in general, the sector relies on qualified and experienced staff to make informed, risk-based decisions around tree management. LGA therefore seeks an amendment to exclude local councils from the requirements of subclauses (d) and (e). LGA also seeks further consideration to be given to aligning the requirements of this exemption with the terms of section 136 of the PDI Act which allows for the urgent removal of a regulated tree.
- Fungi and algae, Schedule 2, clause 22. This exemption applies to native fungi and algae 'on private land'. By implication, approval may be required to clear fungi and algae on public land, which is likely to place an unreasonable burden on local government, therefore LGA seeks removal of the phrase 'on private land'.

Recommendation 19

LGA recommends making changes to Schedule 2 of the Bill addressing stormwater infrastructure, roadside plant management, safety, and fungi and algae as contained in this submission.

Maintenance pruning

LGA is supportive of the exemption provided in Schedule 2, clause 29 which discusses maintenance pruning. It is preferable that the Bill remains as drafted for this section as similar attempts to define this in the PDI Act have led to increased confusion and uncertainty. For example, in 3H(6) of the PDI Regulations, an attempt was made to control pruning by

limiting it to 30 per cent of the tree canopy, together with other requirements. Experience has shown that it is difficult to apply the quantitative element in practice.

Recommendation 20

Councils should have the ability to independently assess and determine what is maintenance pruning on a case-by-case basis, assisted by experienced arboriculture staff or consultants as necessary.

Mitigation hierarchy

LGA is concerned about including the mitigation hierarchy in the Biodiversity Act. As per our previous submission²³, introducing the mitigation hierarchy as a tool for the assessment of clearance applications may be problematic in so far as it seeks, as the number one priority, to avoid clearance. Therefore, if the hierarchy applies to all clearance applications, it may have the unintended consequence of establishing a de facto presumption in the minds of decision-makers that applications should be refused, except in exceptional circumstances. This may inadvertently result in perverse outcomes, such as conflicting policy objectives and delays in development and infrastructure.

LGA has considered this in conjunction with the proposal 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.’²⁴

On the face of it, these changes may increase the clearance approval threshold and increasingly disadvantage regional economic development and growth, pending further guidance to be developed under section 61 of the Biodiversity Bill for the application of the mitigation hierarchy.

Recommendation 21

LGA submits that under the Biodiversity Act, there should not be an increase in requirements for clearance processes and that processes should be able to consider holistic regional economic and social benefit for communities where there is a clear need and benefit.

²³ LGA [Native Vegetation Act Review Submission June 2024](#) (see page 5)

²⁴ [South Australia’s Draft Biodiversity Bill | YourSAY](#) – see link to Explanatory Guide (page 17)

Native animals

LGA notes the intent of the Bill to continue enabling management of impact causing species²⁵.

While by no means the only example of an impact causing species, the management and control of little corellas has long been a frustration of state and local governments and demonstrates why such management frameworks are required. LGA has long been an advocate for a statewide management strategy for little corellas and included further commentary about them and a range of other species of concern in a 2018 submission²⁶ to the Inquiry into overabundant and pest species conducted by the Natural Resources Committee of the Parliament of South Australia.

Acknowledging the continuing impact of little corellas in regional and peri-urban settings, in November 2024, LGA committed funds from its Research and Development Grant Scheme towards a project on this matter. The funding recipient was the Department for Primary Industries and Regions, which is investigating development of a new bait for pest birds of the grains industry²⁷.

It is noted also as an example, that Schedule 4 allows the taking of a dingo for the safety of people and livestock.

Recommendation 22

LGA supports aspects of the Bill, for example the creation of further exempted acts, designed to provide more targeted and effective frameworks for the management of impact causing native species, including permissible control activities (e.g. culling where necessary) which do not require a permit.

Enforcement

As one of the three tiers of Australian government, it is generally not appropriate for local government to be subject to the criminal justice system for breaches of legislation aimed at enhancing social and environmental outcomes. The statutory scheme should instead encourage parties to collaborate. If breaches occur, there should be a statutory mechanism for a council to rectify the issue rather than, for example, paying a monetary penalty.

²⁵ [South Australia's Draft Biodiversity Bill | YourSAy](#) – see link to Explanatory Guide (page 18)

²⁶ [LGA submission - Overabundant Species Inquiry 2018](#)

²⁷ [Developing a new bait for pest birds of the grains industry | LGA South Australia](#)

Authorised officers

LGA notes the proposed powers of 'authorised officers' under the Biodiversity Act are largely taken from those provided in the NV Act, the NPW Act and the LSA Act.

The Minister currently has the option, under section 33A(1) of the NV Act, to appoint authorised officers who are employees of a local council. LGA is of the understanding that there are no current council employees who are authorised officers for the purpose of the NV Act. Further, this specific provision has not been brought across to the Biodiversity Bill, with section 102 differing from the NV Act. However, it is noted the Minister may still appoint 'a person' under section 102 of the Biodiversity Act to be an authorised officer and this may be an employee of a local council.

Local councils are independent decision-making authorities. LGA does not have a position on whether council officers should perform the function of an authorised officer under the Biodiversity Act, as there may be individual cases where this is appropriate, depending on the needs and wants of the community a council serves. However, any nomination of an authorised officer who is a person employed by a local council should only be undertaken with the express written consent of the administrative or elected body of that council; and be someone who has received adequate and appropriate training to perform this function.

In general, LGA's position is that if local council employees are engaged to perform functions as an authorised officer (as per authorisation pathways available under a range of other state legislation) the cost of undertaking these services on behalf of the state government should be appropriately compensated or remunerated to the council providing these resources.

Indeed, with the possibility of bringing in 'public areas' to the spatial application under the Biodiversity Act, there may be circumstances where individual councils may wish to have appointed, authorised officers for the purposes under the new Act. Given these circumstances, LGA contends that it is even more essential that:

- individual statutory immunities are provided to authorised officers who are also council employees.
- the respective council approves the appointment of these employees as an authorised officer.
- where these functions would otherwise be conducted by DEW, remuneration to council for these services is provided.

The Bill should contemplate these aspects regardless of whether it is proposed that the Minister may appoint authorised officers who are also council employees to undertake enforcement and compliance actions under the Biodiversity Act.

A suitable example of an appropriate indemnity clause appears in section 260(6) of the LG Act, which states: 'No civil liability attaches to an authorised person for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this or other Acts.'

Expressly bringing this provision from the LG Act to the Biodiversity Act would make the intention of the Parliament clear and provide a supportive framework for councils to consider appointments of authorised officers if requested by the Minister in the future.

Recommendation 23

A statutory indemnity clause for local government should be considered to provide adequate coverage for any council employees who are appointed as 'authorised officers' under the Biodiversity Act.

Recommendation 24

Any council employees the Minister may wish to appoint as authorised officers must be with the consent of council and with appropriate remuneration for these services.

Other matters

LGA notes that the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is currently undergoing an extensive reform process in response to the Samuel review²⁸. Given this process, it is difficult to determine any impacts of the intersection of the proposed South Australian Biodiversity Act and the EPBC.

Recommendation 25

To the extent that it is possible, the regulatory framework for both state and federal biodiversity conservation should be harmonised.

Conclusion

LGA looks forward to further active and collaborative engagement from state government over the coming months as the Bill is finalised and enters State Parliament for discussion and debate.

²⁸ [Second Independent Review of the EPBC Act - DCCEEW](#)

