



**SUBMISSION TO CONSULTATION FOR SA's (NEW)
DRAFT BIODIVERSITY BILL 2025**

18 February 2025



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EXECUTIVE SUMMARY

RSPCA SA is contracted by the South Australian Government to undertake enforcement of the *Animal Welfare Act 1985*. As the primary investigative and enforcement agency for this Act, the RSPCA advocates for all animals to be treated humanely, including wildlife and animals considered overabundant or “pests”. We work with the community to advocate for better animal welfare outcomes for all animals, regardless of their status (e.g. protected, unprotected, vulnerable, endangered) or the different ways in which those animals are being interacted with or used.

The community expects the welfare of all animals, whether wild or domesticated, to be properly considered when land development decisions are being made. Similarly, where impacted animals must be managed, the public expects humane treatment for each individual animal, regardless of its status.

South Australia’s recently updated *Animal Welfare Act* acknowledges the sentience of animals and our responsibility to care for them:

“Animals are recognized as living beings that can feel, perceive, and experience positive and negative states” and... “the owners of animals have a duty of care in respect of those animals”¹

Consistent with this obligation, the Objects of the Draft Biodiversity Bill encourage individuals and sectors to promote the conservation and restoration of biodiversity (i.e. the variety of animals, plants & ecosystems). The objects also aim to ensure that people interact and use biodiversity in a way that maintains and enhances its health and resiliency - for the benefit of future generations.

The RSPCA’s primary concern is animal welfare but we acknowledge that good animal welfare is not possible without healthy habitats and ecosystems. This submission does not answer every survey question. Instead we provide suggestions to enhance the Act’s capacity to improve outcomes for animals, people and the broader ecosystem.

Whilst we are encouraged by the new Draft Act, our overriding impression is that it largely omits animal welfare. Biodiversity includes all species of animals. Millions of individual animals and their habitats will be impacted by the land use decisions that will be made under this Act. To assist people to interact with animals and ecosystems in a manner that maintains their wellbeing for future generations we must consider the animal welfare impacts of land use decisions. We strongly recommend that an expert animal welfare body be added to this governance framework. Respecting animals’ intrinsic value and including the guidance of animal welfare experts, the framework can chart a course towards higher welfare outcomes for people, animals and ecosystems.

RECOMMENDATIONS

RECOMMENDATION 1: Amend the Biodiversity Act's approach - to recognise animal sentience, prioritise non-lethal (animal) management and promote the duty of care to ensure humane outcomes for all impacted animals, regardless of their status.

RECOMMENDATION 2: Add 3 Objects to the Biodiversity Act's existing Objects - because large numbers of animals will be impacted by the decisions made under this Act:

- the sentience and intrinsic value of the animals impacted;
- the obligation to promote positive states of welfare for animals and prevent cruelty, and
- the commitment to educate the community about the Act's objects.

RECOMMENDATION 3: Add the Precautionary principle to the Act's guiding principles - because it assists decision making in situations where there is uncertainty or incomplete data.

RECOMMENDATION 4: Include potential harm and ill treatment to animals in relation to what is considered 'harm' and 'reasonable measures' for the purpose of the general biodiversity duty - definitions of harm and ill treatment should align with these terms in South Australia's *Animal Welfare Act*. Also provide more guidance re actions to take to comply with the general biodiversity duty.

RECOMMENDATION 5: Amend the governance framework of the Act to include a source of expert animal welfare advice - the framework is fundamentally flawed because despite animals being seriously impacted by the decisions made under the Act, the framework's advisory bodies/committees, roles and reporting structure omit animal welfare consideration altogether.

RECOMMENDATION 6: Curb the powers of the Minister - When selecting members for the Biodiversity Council, and other bodies, the Minister should take advice from peak or expert groups to reduce the risk that members may be selected based on their political persuasion. Further, the Minister should not, have the sole power to declare the taking of an animal (especially without a permit).

RECOMMENDATION 7: Increase expiation fees - to provide a meaningful disincentive to people who expose animals to a high risk of suffering. For instance, people hunting without a permit (i.e. potentially lack competence and understanding of their animal welfare obligations).

RECOMMENDATION 8: Clarify that "unregulated activities" involving animals must be performed in compliance with relevant animal welfare regulation - consider introducing regimes and permits.

RECOMMENDATION 9: Explicitly require permit holders to comply with all applicable animal welfare or environmental regulation - as a condition of their permit.

RECOMMENDATION 10: Broaden standing provisions to allow civil enforcement - as well as third party standing to review decisions made under the Act.

RECOMMENDATION 11: Where the taking of an animal or its eggs is illegal or not compliant with relevant animal welfare regulation - this illegality should also apply to Aboriginal persons.

RECOMMENDATION 12: Prescribe conditions that must be met before a decision is made to cull animals - under this Act.

RECOMMENDATION 13: Differentiate between the terms "culling" and "harvesting" in relation to animals.

ANSWERS TO SURVEY QUESTIONS

PART 2 - OBJECTS, PRINCIPLES & GENERAL DUTY:

11. Do you support the proposed objects of the Biodiversity Act? Yes, but they are incomplete because a large range of species (including individual animals) will be impacted by decisions made under this Act. Thus, the Act's Objects should also expressly recognize:

- the sentience and intrinsic value of the animals impacted;
- the obligation to promote positive states of welfare for animals and prevent cruelty, and
- the commitment to educate the community about the Act's objects.

12. Do you support the proposed guiding principles of the Biodiversity Act? Generally, but these are also incomplete. Suggest including 'the precautionary principle' which is an accepted principle (giving weight to the value to be protected, in this case biodiversity) to help decision makers in situations that involve uncertainty or incomplete data.

13. Do you support what constitutes 'harm' and what is considered 'reasonable measures' for the purposes of the general biodiversity duty? Disagree because it is incomplete. The "matters including" section should more explicitly cover potential harm and ill treatment to animals. Perhaps add a (d) to the "matters including", which aligns with the definition of harm and the ill treatment section (p.2, s.13) of South Australia's *Animal Welfare Act*. This Act defines harm to animals as: "any form of damage, pain, suffering or distress (including unconsciousness), whether arising from injury, disease or any other condition."

In addition, we believe that more guidance is required to help individuals and organisations understand what actions they must take to comply with their general biodiversity duty.

PART 3 - ADMINISTRATION:

15. Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established? Disagree. It is incomplete because the suggested committees and bodies advising the Minister (i.e. The Biodiversity Council; The Scientific Committee; The Native Plants Clearance Assessment Committee and the First Nations Expert Biodiversity Committee) omit a source of animal welfare expertise. We suggest an additional committee to cover this. For instance, the additional committee could be the 'Animal Welfare Impacts Assessment Committee'. This additional committee is important because decisions made under the new Biodiversity Act will have significant animal welfare impacts on large numbers of animals. For instance, when clearing bush in Mt Lofty, the community expectation is that every individual animal impacted must be considered when assessing impacts, regardless of whether that animal is considered threatened or not.

16. Do you support committees being appointed based on their skills and expertise? **Neither agree or disagree. Suggest that there should also be:**
- Community representation and animal welfare representation, and
 - Question whether the Minister may have been given excessive power, especially in relation to selecting committee members. Prefer that the Minister select Biodiversity Council members and Native Plant Clearance Assessment Committee members from the names recommended by relevant peak body groups.
17. 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? **Agree, so long as there is transparency about the purpose the funds are being used for. The public should know the proportion being used to administer the Act versus that being used for other purposes and what those purposes are.**

PART 4 - NATIVE PLANTS:

19. Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife? **Disagree for several reasons:**
- i) because animals considered overabundant or "pests" have the same capacity to suffer as other animals. For some species and "unregulated activities", this Act exempts the people involved in killing animals from having to obtain a permit or a competency benchmark for humane treatment. This Act's approach fails to recognize:
 - The intrinsic value of all animal species;
 - the need to adopt non-lethal animal management wherever possible, and
 - the duty of care that biodiversity users and government regulators have to monitor wildlife management (including lethal control) effectively to ensure humane outcomes for animals.
 - ii) Excessive power is placed in the hands of the Minister of the day - to declare the taking of an animal with no permit (e.g. the Little Corella, is claimed to be damaging crops). These declarations should not occur without having formally verified the damage claimed and ensured that non-lethal mitigation strategies have first been exhausted. If lethal management is justified, it should be as part of a formal government program that monitors control activity, ensures humaneness and assesses the success of the program in mitigating the problem.
 - iii) Excessive power placed in the hands of the Minister by s.150 of the Act that allows the Minister to "...grant to any person a permit to hunt for the purpose of section 153"....with the exception that the permit cannot authorize hunting within the Adelaide Dolphin Sanctuary.
 - iv) Section 153, the \$1000 expiation fee for hunting or possessing a firearm for hunting,

without a permit should be increased. With little formal monitoring of killing activity, the risk of unacceptably cruel animal welfare outcomes is already significant. Those who kill animals without a permit have not been subject to training (e.g. species identification, shooting competency, applicable codes, animal welfare & other regulation) or formal monitoring – thus the risk of causing animals' unacceptable suffering is higher, so the penalty must be significant.

v) The term “unregulated activities” suggests that there is no requirement for the activity to be undertaken in a prescribed way, which is misleading. This increases the risk of unacceptable animal welfare outcomes, so it should be amended to highlight that the activities must occur in compliance with required standards.

20. Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy? [Agree but it must be accompanied by data on wildlife and biodiversity values \(e.g. critical habitat for native wildlife\). One key aim of the mitigation hierarchy is to avoid negative animal welfare impacts, and habitat clearance.](#)

22. 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? [Agree](#)

PART 5 - NATIVE ANIMALS:

25. Do you support introducing targeted controls for managing impact causing species in favour of an ‘unprotected’ list of species? [Generally, so long as non-lethal control has been exhausted and the control is the most humane & administered in a competent manner, as explained elsewhere in this submission.](#)

26. Do you support the approach of determining trafficable quantities of species with higher penalties? [Agree.](#)

PART 6 - THREATENED SPECIES, THREATENED ECOLOGICAL COMMUNITIES & OTHER ECOLOGICAL ENTITIES:

28. Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)? [Agree](#)

29. Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation? [Agree](#)

30. 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? [Neither agree or disagree due to insufficient information.](#)

31. Do you support the ability to apply a 'provisional listing' of species and ecological communities where appropriate? [Agree](#)

32. Do you support the ability to declare critical habitat to provide increased protections for threatened species, threatened ecological communities, and other listed ecological entities? [Agree](#)

33. 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? [Agree, but scientific committee and animal welfare committee advice should be relied on regarding action plans, not just Ministerial discretion. Action plans should also be developed for animal species, ecological communities and ecological entities who are not yet listed as threatened. Leaving the plans until the listing is 'threatened' may be too late.](#)

PART 7 - CONSERVED AREAS:

35. Do you support renaming Heritage Agreements to 'Biodiversity Agreements' to better reflect their role? [Agree](#)

36. Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements? [Agree](#)

PART 8 - ENFORCEMENT:

38. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act? [Agree, where it is used properly as an alternative tool prior to prosecution.](#)

39. 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? [Strongly agree and we also support third party standing for reviewing decisions made under the Act.](#)

40. Do you support the concept of 'no development' orders? [Agree](#)

41. Do you support the option of civil penalties for breaches of the Act? [Agree](#)

42. Do you support the penalties for criminal offences proposed under the Act? [Agree.](#)

PART 9 - PERMITS:

44. Do you support the permit provisions proposed in the Biodiversity Act? [Disagree for several reasons including:](#)

- The permit provisions that relate to the hunting of animals are not sufficiently explicit about the requirement that hunters must still comply with the provisions of the state's *Animal Welfare Act*. The Act should specify that it is a condition of permit that permit holders comply with all other applicable regulations, codes etc.
- The expiation for hunting without the required permit are not sufficiently high to disincentivise this non-compliance.
- The Minister has excessive power to declare hunting permits without first having taken advice from a committee with animal welfare expertise.
- Where the taking of a protected animal or its eggs is illegal, this illegality should also apply to Aboriginal persons.

PART 10 - MISCELLANEOUS:

47. Do you support the recognition of culturally significant biodiversity entities? [Agree](#)

48. Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account? [Agree](#)

49. Do you support the proposal to establish a Biodiversity Register? [Agree](#)

50. Do you support the framework that the Bill proposes for the regular review of the Act? [Agree](#)

SCHEDULE 2 & 3 - REGULATED ACTS OR ACTIVITIES EXCLUSIONS & PRINCIPLES OF PRESERVATION OF NATIVE PLANTS:

52. Do you support moving the clearance exclusions into a schedule to the Act so they are in one place? [Agree](#)

53. Do you agree with the changes to the unregulated activities in Schedule 2? [Neither agree or disagree due to insufficient understanding.](#)

54. 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? [Neither agree or disagree, insufficient understanding.](#)

RELATED AMENDMENTS:

55. Do you support the amendments proposed to the National Parks and Wildlife Act 1972?

- Disagree with the deletion of 'vulnerable species' from Section 5's Interpretations, which tells you that the vulnerable species of plants and animals are in Schedule 8. The Brown Quail and the Freckled Duck are both listed as Schedule 8 of the current NPW Act.
- Disagree with 58-Amendment of s.22 – Powers of wardens - reducing the wardens' powers by deleting s.22(1)(ca), s22(1a) to (1c) inclusive and s.22(4) subsection 4.
- Disagree with 63 – Insertion of s.43BA after s.43B because the proposed '43BA Culling of protected animals' is missing important principles that should be included if the culling of animals is justified, whether those animals are considered protected or not. Suggest adding that animal culling should only occur under the following conditions:
 - Verifiable evidence that a species has caused serious damage or that the species is suffering serious welfare issues (from overabundance, starving, sickness etc.)
 - All non-lethal strategies to mitigate the problem have been exhausted and have failed to mitigate the problem.
 - A bonafide government management/control program has been developed. The program employs only competent operators, uses only the most humane methods, effectively monitors control methods and evaluates its success in mitigating the problem caused by (or suffered by) the species.
 - Animals' sentience and entitlement to the most humane treatment available does not depend on the status that we afford them. The above principles should apply to all animals regardless of whether they are considered protected, unprotected, vulnerable, threatened, invasive or native.
 - Culling and "harvesting" are very different concepts in relation to animals and they should be separated. When the term harvesting is used in relation to animals, it suggests there is a commercial motivation for the killing. In contrast, when the term culling is used in relation to animals, the motivation for killing tends to be for damage mitigation purposes. This is a crucial distinction because the social licence to kill wild and native animals is generally based on use of the most humane methods to mitigate damage, not killing for profit.
- Disagree with 70 Amendment of s.68D – Hunting and food gathering by Aboriginal persons, (3) s.68D(3) & (4) & (5) the insertion of "Despite any other provision of this Act or any other Act or law, it is not illegal." Animals being hunted deserve to be protected from inhumane and illegal treatment by the State's Animal Welfare Act. This protection should apply regardless of who is hunting the animal.
- Disagree with deleting s.74 (Additional penalty) & 74A (Maximum penalties re wilderness protection areas and zones). Rather we suggest that expiations and penalties in these original sections should be significantly increased.
- Disagree with deleting s.75(5) & (6).

56. Do you support the amendments proposed to other legislation?

Neither agree or disagree, due to insufficient understanding.