Biodiversity Act discussion paper

Frequently asked questions



Understanding the importance of biodiversity

What is biodiversity?

Biodiversity, short for biological diversity, is made up of all living organisms, ecosystems and the genetic variation within them. It includes the variety of species we might find in a given area, as well as the variety within species, between species, and among ecosystems. This diversity can be found in terrestrial, marine, and other aquatic ecosystems, as well as the interconnected systems they create.

Biodiversity is present at a molecular level, or between the DNA of individuals within a species. This genetic diversity within species determines how unique each individual is from another.

The United Nations' Convention on Biological Diversity refers to biological diversity (or biodiversity) as *"The variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems"*[1].

In its broadest sense, biodiversity encompasses the variety of life forms on Earth, from the tiniest microorganisms to the largest plants and animals, including humans.

What is an ecosystem?

An ecosystem is a geographic area where plants, animals, and other organisms, as well as the physical environment, interact and exist together. Ecosystems can be of different sizes and can be marine, aquatic, or terrestrial – from the small, such as the tide pools near the ocean shore, to the very large, such as the arid zone of central Australia. Ecosystems with higher biodiversity tend to be more stable and have greater resilience when faced with disturbance.

Why is biodiversity important?

Biodiversity is a fundamental aspect of our planet's health and resilience, playing a crucial role in maintaining ecological balance and stability. It contributes to ecosystem services like pollination, water purification, and nutrient cycling – all essential for human survival. It also enhances the resilience of ecosystems, making them more capable of withstanding environmental changes and disasters. Additionally, biodiversity provides a vast genetic pool, which is essential for developing new medicines, crops, and technologies.

Biodiversity also enriches our lives by providing the natural places, green spaces and home gardens we enjoy here in South Australia, where we can rest within nature and be close to our unique wildlife and plants.

Biodiversity also underpins the world's economy. The World Economic Forum estimates that $44 trillion (over half of global GDP) is dependent on nature[2]. In South Australia, biodiversity underpins tens of billions of dollars of our state's economy by supporting the continued success of our food, wine, tourism, and agricultural sectors.

Is worldwide biodiversity in crisis?

Yes. Globally, biodiversity is in danger and it is more threatened now than it ever has been. Scientists are concerned and have revealed that currently 1 million species are at risk of extinction. This is primarily due to modern human-led activities and land use changes including habitat destruction, the overexploitation of natural resources, invasive species, pollution, and climate change. The unprecedented rate of biodiversity loss not only threatens the planet as we know it, but also risks our way of life.

Is South Australia's biodiversity at risk?

Sadly, yes. Here in South Australia our unique biodiversity is in decline and unfortunately, we have one of the highest extinction rates in the nation. Over 1,100 native plant and animal species are listed as threatened in South Australia, and many more are likely threatened but have not yet been assessed.

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[1] Secretariat of the Convention on Biological Diversity (2011) Convention on Biological Diversity. Adopted 22 May 1992 [online] accessed: 19/9/2023 URL: https://www.cbd.int/doc/legal/cbd-en.pdf

[2] WEF (2020) Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy. World Economic Forum, Geneva, Switzerland [online] accessed 13/9/23 URL: https://www3.weforum.org/docs/WEF_New_Nature_Economy_Report_2020.pdf

Is preserving and restoring biodiversity different to the need to tackle climate change?

The biodiversity crisis is now considered just as urgent as the climate emergency. Tackling climate change and biodiversity loss together is imperative because these 2 crises are deeply interconnected.

Biodiversity loss and climate change often have cascading effects on ecosystems. A warming climate can alter habitats, disrupt species' distributions, and ultimately threaten their survival. Biodiversity loss can reduce ecosystems' ability to adapt to climate change, making them more vulnerable to its impacts.

In South Australia, the government is focused on building a strong, net zero emissions future and the development of renewable energy to adapt to climate change.

At the same time, it is crucial to better protect and restore biodiverse ecosystems so our state can be more resilient to environmental changes, including those driven by climate change. Healthy native vegetation, wetlands, and oceans store significant amounts of carbon which can help to reduce higher atmospheric carbon dioxide levels and reduce the impacts of climate change.

That's why the state government has committed to addressing biodiversity loss with the creation of a new Biodiversity Act, pursuing a holistic approach to safeguarding our environment, complementing climate change strategies and ensuring the wellbeing of both current and future generations of South Australians.

What is the Australian community telling government about the need to protect biodiversity?

Preserving biodiversity is not just an environmental concern; it's a matter of human wellbeing. As people continue to alter the natural world, recognising the importance of protecting and restoring biodiversity is becoming increasingly critical to sustain our planet and ourselves.

It's clear the Australian community want to see action on biodiversity loss. A 2023 nationwide survey[3] of over 4,000 Australians found that 97% of Australians want more action on biodiversity. Three-quarters of Australians would support policy reform to better protect biodiversity.

Over 2,500 South Australians participated in the Department for Environment and Water's 2023 Survey on Nature. 79% of the people who responded said they are concerned that there are native plants and animals in South Australia that are at risk of serious decline or becoming extinct. 84% said they were concerned about the clearing of trees and bushland.

The role of a new Biodiversity Act

Why do we need a Biodiversity Act?

South Australia's unique biodiversity has been repeatedly reported as being in decline. The ongoing rate of decline, coupled with the fact that many of the threats are getting worse, demonstrates that existing approaches are not adequate to halt and reverse biodiversity loss. South Australia has many unique and special natural landscapes, plants and animals that deserve protection and restoration for future generations.

Biodiversity has touchpoints in almost everything society does. Despite this, South Australia does not have a dedicated piece of legislation to safeguard biodiversity nor any legislated statement of intent around biodiversity conservation. This has led to a situation where biodiversity is not given primacy and its protection is continually undermined.

What legislation do we have that protects biodiversity?

Whilst South Australia does not have dedicated legislation for biodiversity protection and enhancement, there are various provisions in a range of different Acts, including:

- *National Parks and Wildlife Act 1972*
- *Native Vegetation Act 1991*
- *Landscape South Australia Act 2019*
- *Wilderness Protection Act 1992*
- *River Murray Act 2003*
- *Pastoral Land Management and Conservation Act 1989*
- *Marine Parks Act 2007*

These key South Australian Acts, together with the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999*, protect South Australia's biodiversity. However, biodiversity loss and degradation is still occurring despite these existing provisions.

What are the key problems with our existing legislation?

There is a need to do things differently and reform South Australia's current legislative framework to improve biodiversity outcomes. The gaps in South Australian legislation relating to biodiversity have been

[3] Borg, K., Smith, L., Hatty, M., Dean, A., Louis, W., Bekessy, S., Williams, K., Morgain, R. & Wintle, B. (2023) Biodiversity Concerns Report. The Biodiversity Council, University of Melbourne, published June 2023 [online] accessed 30/8/23 URL: https://biodiversitycouncil.org.au/media/uploads/2023_6/202305_biodiversity_concerns_survey_report.pdf

the subject of several internal government reviews, which have recommended substantial change.

Some of the key issues identified are that:

- biodiversity is considered under multiple pieces of legislation which causes complexities due to lack of cohesion, consistency and narrow scope
- penalties are disproportionate and inconsistent
- the enforcement approach needs modernisation to ensure additional tools and compliance action options are available
- there are inadequate provisions relating to identifying and protecting species at risk of extinction
- there is misalignment with national legislation and/or international obligations and approaches.

You can read more about this in the 2017 Biodiversity Report[4] prepared by the Environment, Resources and Development Committee of Parliament.

What could a new Biodiversity Act aim to achieve?

Often when people think of conserving biodiversity, they think of efforts to save endangered species. While protecting single species is important, it is also important to protect whole ecosystems. Adequate legislation could play a pivotal role in safeguarding South Australia's biodiversity by providing a framework for conservation and restoration efforts and regulating human activities that may harm ecosystems and species.

A new Biodiversity Act could be seen as the state's key piece of environmental legislation with strong influence over actions taken within the state that are likely to have impact on matters involving biodiversity.

Will changes to other legislation be necessary due to a new Biodiversity Act?

There is a range of legislation regulating actions that may impact biodiversity. Given the complex nature of biodiversity and the many intersections it has with other areas administered by not only the Department for Environment and Water but other state government departments, it is likely a new Biodiversity Act will also need to provide guidance and influence over other legislation and may require consequential amendments to be made. Where changes to other South Australian legislation may be necessary, corresponding changes to administrative arrangements may also be required to ensure alignment with a new Biodiversity Act. The full extent of any necessary changes to other legislation would be determined as part the development of the draft Bill.

The process to develop the new Act

Who is involved in developing the new Act?

The Department for Environment and Water (DEW) is the government agency charged with leading the development of the new Act. DEW is partnering with key stakeholders and partners across government and in the community to assist in determining the scope of the new Act.

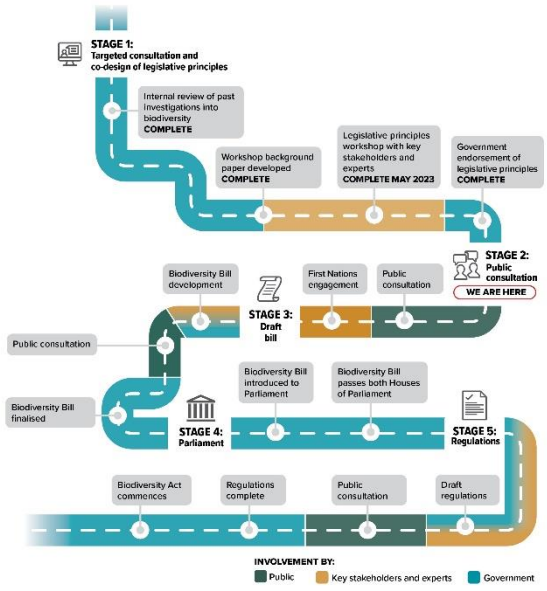
Who has provided input so far?

In May 2023, DEW led a workshop with a diverse group of key stakeholders representing conservation, primary production, tourism, mining, higher-level education, health, local and state government, First Nations peoples and non-government organisations to help shape foundational principles for a new Biodiversity Act.

These principles have led to the development of the goals for the Act and have also been used to inform the structure of the discussion paper and topics for public consultation. We are now seeking the views of all South Australians to help further shape the draft Biodiversity Bill, and in 2024 will be undertaking additional targeted engagement and consultation with First Nations peoples.

What are the steps to create the new Biodiversity Act?

The diagram below identifies the broad stages and opportunities for input by different parties throughout the course of developing the new Biodiversity Act. Multiple formal (such as this consultation) and informal opportunities are proposed. Input by First Nations



[4] Environment, Resources and Development Committee (2017) Biodiversity. 78th Report of the ERD Committee. Tabled in the House of Assembly, 29 March 2017. Parliament of South Australia [online] accessed: URL: https://committees.parliament.sa.gov.au/committee/390/Environment,%20Resources%20and%20Development%20Committee/55/55th%20Parliament%205%2F3%2F2022%20-%20Current/55 *Follow the links to* ***Biodiversity Report Final.pdf*** *via Committee Files - 07 Completed Inquiries and Reports up to 2018 - 78 Biodiversity.*

peoples, key stakeholders, experts, partners, industry and other interested parties will be critical in developing the new Act.

Who should participate in this consultation?

This consultation is open to everyone. Nature touches all our lives and you do not need to be an expert on biodiversity to participate and share your feedback.

Will there be additional opportunities for input?

The feedback on the discussion paper will be used to assist in the development of the draft Biodiversity Bill. Targeted stakeholder consultation will continue to occur as the draft Bill is developed. Once the draft Bill is ready, it will also be shared with the community via YourSAy for further feedback.

Following this next stage of public consultation and finalisation of the Bill, it will be introduced into the South Australian Parliament and debated in both Houses. If both Houses agree to the Bill, it will be made law by the Governor of South Australia. You can read more about this process here.

How do I keep up to date with progress?

DEW will use YourSAy to provide further information as work progresses. A summary of the feedback received will also be published after the consultation closes. You can also sign up here to receive updates, including future opportunities to have your say, or visit https://environment.sa.gov.au/biodiversity-act.

Introducing our Biodiversity Champion – Who is Tim Jarvis?

Tim Jarvis is an internationally recognised South Australian environmental scientist and adventurer, with more than 25 years of experience in both disciplines. Tim is passionate about South Australia's environment and its future which is reflected in the wide range of initiatives he supports and works on, including supporting conservation charities, his recent 4 years of patronage at Nature Play SA and 5 years' service on the Zoos SA board who are leading work in endangered species conservation. Tim was also recently named as South Australia's 2024 Australian of the Year.

Tim will be supporting engagement on the Act by helping to inform the community and key stakeholders about the development of the Act and how they can participate in the consultation.

Topic 1 – Biodiversity and South Australia's First Nations people

How are you engaging with First Nations peoples and how will their perspectives be incorporated into the Act?

The South Australian Government acknowledges and deeply respects the cultural heritage and enduring knowledge of First Nations peoples in caring for Country. First Nations peoples have been managing Country and living harmoniously on Australia's lands and waters for more than 65,000 years. First Nations peoples' knowledge of Country and perspectives on biodiversity are governed by cultural protocols. The ecological knowledge of First Nations peoples is not only specific and detailed regarding plant and animal species, but also encompasses seasonal variations and essential land management practices that contribute to the productivity of the landscape. Information and observations passed down through generations enables tracking and monitoring of changes to biodiversity and deep insight into the intricate relationships between people, plants, animals and the land.

A separate targeted process of engagement with First Nations peoples is underway. By engaging directly with First Nations groups, more focussed discussions on the biodiversity legislation can be facilitated to ensure that the aspirations and perspectives of First Nations peoples are considered in the drafting of the new Act.

How does biodiversity relate to Country?

Country is broader and more complex than the western definition of biodiversity. As described by the Australian Institute for Aboriginal and Torres Strait Islander Studies, Country is the term used by First Nations peoples in Australia to describe their relationship with the land, waterways and seas[5]. First Nations peoples' connection to Country includes multiple elements of community, spirituality, health and wellbeing, reciprocity, stewardship and the connectedness of all things. The laws and cultures of First Nations peoples are embedded in their Country, and this extends to their connection with biodiversity.

What is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)?

Australia is a signatory to UNDRIP[6], which establishes a universal framework to advance and protect the rights of First Nations peoples and recognises that respect for knowledge, cultures and cultural practices contributes to sustainable and equitable development and proper management of the environment.

With respect to biodiversity, Article 24 (1) of UNDRIP seeks to uphold access to traditional medicines, including the conservation of medicinal plants and animals. Article 29 (1) seeks to achieve conservation and protection of the environment and the productive capacity of land and resources.

UNDRIP also sets standards for the Free, Prior and Informed Consent of First Nations peoples, which is to be met before the following actions are taken:

- projects or decisions that affect traditional lands, including mining, development and the use of sacred sites
- the use of biological materials, traditional medicines and knowledge, including artwork, dance and song
- making agreements or treaties between government and First Nations peoples
- the creation of laws or policies that affect First Nations peoples.

What is the Nagoya Protocol?

The Nagoya Protocol on Access and Benefit Sharing[7] is a supplementary international agreement to the United Nations Convention on Biological Diversity[8] that fulfils 1 of the 3 commitments in the convention. The Protocol was developed in 2010 and includes obligations for the sharing of benefits arising from the use of genetic resources. Importantly, it recognises and respects the significance of knowledge and genetic resources held by First Nations peoples, and aims to ensure they benefit from any use of this knowledge. Although Australia is not formally a party to the Nagoya Protocol, Australian law is consistent with it, and a new Biodiversity Act in South Australia will aim to reflect the commitment outlined within the Protocol.

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[5] AIATSIS (2023) What is Country? Australian Institute for Aboriginal and Torres Strait Islander Studies [online] accessed 19/9/2023 URL: https://aiatsis.gov.au/explore/welcome-country#toc-what-is-country-

[6] United Nations (2007) United Nations Declaration on the Rights of Indigenous Peoples. Adopted by the General Assembly on 13 September 2007 [online] accessed 19/9/2023 https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

[7] Secretariat of the Convention on Biological Diversity (2011) Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. Adopted 29 October 2010 [online] accessed: 19/9/2023 URL: https://www.cbd.int/abs/doc/protocol/nagoya-protocol-en.pdf

[8] Secretariat of the Convention on Biological Diversity (2011) Convention on Biological Diversity. Adopted 22 May 1992 [online] accessed: 19/9/2023 URL: https://www.cbd.int/doc/legal/cbd-en.pdf

Topic 2 – Avoiding impacts

What is the mitigation hierarchy?

The mitigation hierarchy is a widely accepted tool intended to help projects prepare for impacts to, and ultimately reduce and control any negative effects on, the environment. The hierarchy contains four steps: (1) avoidance, (2) minimisation, (3) restoration and (4) offsetting. The hierarchy must be followed sequentially and progress from one step to another should only occur if there are residual impacts that could not be resolved in the prior step.

What are the steps of the mitigation hierarchy?



The first step is to **avoid** causing harm or negative impacts to biodiversity. This means finding ways to design projects or activities that prevent harm to existing biodiversity. Considerations can include alternative designs, locations, or technologies. Avoidance is the most effective and preferred way of mitigating environmental damage.

If avoidance is not possible, **minimisation** can reduce the scale of impacts on the environment. This can involve reducing the intensity, extent, duration, or frequency of impact; or by altering the timing to limit effects on species and habitats.

If a project is unable to avoid or minimise impacts, **restoration** is the next step. Restoration, or rehabilitation, aims to return an impacted area to its pre-project state and restore ecological function to support a variety of species and provide ecological services such as clean water and air. Considerations may include tree planting, wetland restoration, soil remediation and native species reintroduction.

The final step is **offsetting**. This refers to compensating for any negative impacts on biodiversity caused by a project by providing equivalent environmental benefits in another location. However, offsetting will involve losses and gains. While losses are known and happen immediately, gains are often imperfect predictions of what is expected to happen in the future. Consequently, there is a risk that the intended outcome may not be achieved and biodiversity may ultimately decline. For this reason, offsetting should only be used as a last resort when all other mitigation measures have been exhausted.

Topic 3 – Transparent decision-making

What is Ecologically Sustainable Development (ESD)?

The goal of ESD has been described as living within the Earth's ecological limits[9]. That is, degradation of the Earth's natural capital must be prevented for the sake of future generations, where development needs to improve the total quality of life now and in the future, in a way that maintains the ecological processes upon which life depends.

ESD encapsulates several elements or principles and those commonly applied in decision-making processes are highlighted below. Achieving ESD requires the principles or elements to be considered as a package:

1. **Principle of sustainable use**: natural resources should be used in a manner which is "sustainable" or "prudent" or "rational" or "wise" or "appropriate".
2. **Principle of integration**: requires the mutual respect of and reciprocity between economic development, social development and environmental protection considerations in the decision-making process.
3. **Precautionary principle**: if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
4. (a) **Intra-generational equity**: involves people within the present generation having equal rights to benefit from the use of natural resources and from the enjoyment of a clean and healthy environment.

   (b) **Inter-generational equity**: requires the present generation to ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.
5. **Conservation of biological diversity** (genetic, species and ecosystem diversity) **and ecological**

[9] Preston BJ (2018) The Judicial Development of the Precautionary Principle. Environmental and Planning Law Journal 35:123-141 [online] accessed 1/11/2023 URL: https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3284899_code1005507.pdf?abstractid=3284899&mirid=1

integrity: requires conservation to be a fundamental consideration in decision-making, including in the formulation, adoption and implementation of any economic and other development plan, program or project.

6. **Internalisation of external environmental costs**: requires the internalisation of environmental costs into decision-making for any economic and other development plan, program or project.

Topic 4 – Threats to biodiversity

What are the key threats to South Australia's biodiversity?

As outlined within South Australia's last State of the Environment Report[10] prepared by the Environment Protection Authority (EPA), biodiversity in South Australia is at serious risk from a range threats, including:

- habitat loss and fragmentation due to native vegetation clearance (historical and current), land use change (including intensification and urbanisation), a growing population and infrastructure development
- invasive plants and dieback caused by plant diseases, such as the root rot fungus *Phytophthora cinnamomi*
- invasive animals, including competition and land degradation by rabbits, feral goats and camels, and predation by feral cats and foxes
- inappropriate livestock grazing regimes
- degradation of water bodies and the loss of drought refuges
- altered fire regimes
- climate change caused by human-generated emissions of greenhouse gases.

Many of these threats vary in extent, severity and impact. Many are present across the state, while others affect specific regions such as the pastoral or agricultural zones.

Future threats to the state's biodiversity will be intensified by climate change impacts and its interaction with other major threats (e.g. urbanisation, changing land use, invasive species, and the limitation and prohibition of First Nations peoples land management practices which have shaped the ecology and interactions between native plant and animal species for millennia).

Are threats to biodiversity currently addressed in legislation?

Threats to biodiversity are currently addressed at the national level through the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* as 'key threatening processes'. Unlike South Australia, some states and territories have legislation that includes provisions for identifying threats to biodiversity.

Topic 5 – Assessing the risk of extinction

Why do we list species as threatened?

Threatened species lists are based on categories that correspond with the assessed extinction risk level of the species. Including a species on a threatened species list is intended to offer that species a level of protection through legal and administrative mechanisms.

How are threatened species currently recognised in South Australia?

In Australia, species can be formally listed as threatened at the national level (through the *Environment, Protection and Biodiversity Conservation Act 1999*) and at the state or territory level. In South Australia, a threatened plant or animal species can be listed as 'Endangered', 'Vulnerable' or 'Rare' under the *National Parks and Wildlife Act 1972*.

What are some of the things a scientific committee could do?

South Australia is the only Australian jurisdiction that does not have a scientific committee involved in providing advice or assessment of threatened species for listing. In all jurisdictions except Western Australia and the Northern Territory, scientific committees have been established through legislation.

A scientific committee could increase community confidence in the listing process. It could do this by:

- ensuring integrity and scientific rigor in threatened species assessments and advice
- involving community in the listing process
- providing technical input and assurance that listing decisions are based on scientific evidence
- providing oversight of governance processes including public consultation and response to nominations

providing oversight of the adequacy, currency and timeliness of assessment and listing. In addition, the committee could have a range of other responsibilities, such as leading independent inquiries into any extinction that occurs.

[10] EPA (2018) State of the Environment Report. Environment Protection Authority, Government of South Australia [online] accessed 4/9/23. URL: https://www.epa.sa.gov.au/soe-2018/

Topic 6 – Biodiversity planning and reporting

Why do we need a state-wide biodiversity plan?

A state-wide biodiversity plan is a way to communicate the long-term vision for nature in South Australia. A plan could set state-wide biodiversity priorities and targets, communicate the issues and guide the areas where action will have the biggest impact. The planning process itself is valuable as it can provide the opportunity to bring various stakeholders including government agencies, business, environmental organisations, academic institutions and First Nations peoples together to agree on a vision, actions and priorities. A plan can ensure government and non-government organisations are working toward a common goal.

What are some of the things that could be included in a state-wide biodiversity plan?

A state-wide biodiversity plan should be specific, spatially explicit and actionable and could:

- be clear about what is driving to biodiversity loss in South Australia
- identify gaps in data
- require the development of mapping or spatial descriptions of biodiversity, identifying 'priority' biodiversity to better inform decision makers
- identify goals, or areas for improvement and action, helping managers to understand the pathway for change to occur
- assist regions to plan for and prioritise local biodiversity conservation action
- improve accountability of government and land managers by requiring reporting against set targets, leading to increased transparency in decision making
- enable and support broader adoption of action across government and industry
- define links to global, national and state-based policy, including international agreements, such as the *Kunming-Montreal Global Biodiversity Framework*[11] and national strategies, for example *Australia's Strategy for Nature 2019–2030*[12]
- mandate a timeframe for review of the plan itself
- build on the state government's previous nature conservation initiatives such as 2007's *No Species Loss Strategy*[13], The Nature of SA program and 2020's Nature Conservation Directions Statement[14]
- enable and support education and awareness raising
- enable co-investment from public and private sources for action.

Topic 7 – The benefits of information

What is the BDBSA and what information does it contain?

DEW manages the Biological Databases of South Australia (BDBSA). BDBSA and environmental data is available to the community through a variety of online mapping platforms and open data services, including NatureMaps, Data.SA and the Atlas of Living Australia. The range of that spatial data includes plant and animal records, vegetation and ecosystem mapping, surface and ground water information, and soil and topographic data.

BDBSA informs development processes, mining assessments, and emergency response as well as a suite of regional and environmental planning processes, including threatened species, fire, water and climate adaptation planning. Due to the current age and functionality of BDBSA however there is a range of data not currently within the system that must be sourced from external systems and repositories to help provide a more comprehensive evidence base.

What is BioData SA and what does it aim to improve?

BioData SA is a new open data system aimed at improving the quality of information that can be made available for better evidence-based decision-making. It will modernise the way biodiversity records are captured, managed and shared with scientists, government, business and the community. BioData SA will be developed over the next 4 years.

[11] Conference of the Parties (COP) to the Convention on Biological Diversity (2022) Kunming-Montreal Global Biodiversity Framework. Adopted at COP15 on 19 December 2022 [online] accessed 19/9/2023 URL: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf

[12] Interjurisdictional Biodiversity Working Group for the Meeting of Environment Ministers (2019) Australia's Strategy for Nature 2019–2030, Commonwealth of Australia [online] accessed: 19/9/2023 URL: https://www.australiasnaturehub.gov.au/sites/default/files/2020-11/australias-strategy-for-nature.pdf

[13] DEH (2007) No Species Loss – A Nature Conservation Strategy for South Australia. Department for Environment and Heritage, Government of South Australia, Adelaide [online] accessed 19/9/2023 URL: https://cdn.environment.sa.gov.au/environment/docs/nsl_overview.pdf

[14] DEW (2020) Nature Conservation Directions Statement. Department for Environment and Water, Government of South Australia, Adelaide https://cdn.environment.sa.gov.au/environment/docs/nature-conservation-directions-statement-gen.pdf

Topic 8 – Achieving 30 by 30

What is the 30 by 30 target?

'30 by 30' has become short-hand for a key target included in the Kunming-Montreal Global Biodiversity Framework (GBF) agreed at the 15th Conference of Parties to the Convention on Biological Diversity (COP15) in 2022. The full wording of the target is as follows:

> *Ensure and enable that by 2030 at least 30 per cent of terrestrial, inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures, recognizing indigenous and traditional territories, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories.*[15]

Australia, as a party to the GBF, is committed to the 30 by 30 target and planning is currently underway through the Australian and state governments for how to best achieve the target.

What is clear, is that in order to meet the target a combination of different conservation approaches is needed. This includes collaborating with communities, non-government organisations and First Nations peoples, as well as restoration and stewardship of land owned by private landholders among other options. The need for such an approach is reinforced by an analysis of threatened species across Australia according to land tenures that concluded coordination and collaboration of efforts within and across tenure types is vital to halt Australia's biodiversity loss[16]. The results of the analysis showed that 1 in 7 threatened taxa occur almost entirely on a single non-protected tenure type, with the majority of these occurring solely on freehold lands.

What is the Kunming-Montreal Global Biodiversity Framework?

The December 2022 United Nations Biodiversity Conference (COP15) ended with a global agreement, known as the Kunming-Montreal Global Biodiversity Framework (GBF)[17]. The GBF was adopted by 188 Parties to the Convention on Biological Diversity, including Australia. The GBF outlines worldwide actions to be taken to tackle the biodiversity crisis and is made up of 4 global 2050 goals and 23 global 2030 targets. A key target of the GBF is to protect 30% of the planet's land and 30% of oceans by 2030, commonly known as the global 30 by 30 target.

What is the National Reserve System?

The National Reserve System (NRS) is Australia's network of protected areas. As of 2022, 22.1% of Australia's landmass was protected under the NRS[18]

All Australian governments have agreed to minimum standards that protected areas must meet to be included in the NRS, which are:

- the land must be designated a 'protected area' to be conserved forever, with effective legal means guaranteeing its perpetual conservation
- the land must meet certain scientific criteria and strategically enhance the protected area network to achieve the objective of a 'comprehensive, adequate and representative' system of protected areas
- the land must be managed to protect and maintain biological diversity according to one of six international classes developed by the International Union for Conservation of Nature according to their management objectives, which range from strict nature conservation to multi-use reserves.

Under what legislation are government protected areas established in South Australia?

Protected areas on government land and waters are recognised through:

- National Parks, Conservation Parks, Recreation Parks, Game Reserves and Regional Reserves under the *National Parks and Wildlife Act 1972* (NPW Act)
- Wilderness Protection Areas or Zones under the *Wilderness Protection Act 1992*
- Marine Parks under the *Marine Parks Act 2007*
- Conservation Reserves under the *Crown Land Management Act 2009.*

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[15] Conference of the Parties to the Convention on Biological Diversity (2022) Kunming-Montreal Global Biodiversity Framework. Adopted at the 15th Conference of Parties to the Convention on Biological Diversity (COP15) on 19 December 2022 [online] accessed 19/9/2023 URL: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf

[16] Kearney, S. G., Carwardine, J., Reside, A. E., Adams, V. M., Nelson, R., Coggan, A., Spindler, R., & Watson, J. E. M. (2022). Saving species beyond the protected area fence: Threats must be managed across multiple land tenure types to secure Australia's endangered species. Conservation Science and Practice, 4(3), e617 [online] accessed 5/10/23 URL: https://doi.org/10.1111/csp2.617

[17] Conference of the Parties (COP) to the Convention on Biological Diversity (2022) Kunming-Montreal Global Biodiversity Framework. Adopted at COP15 on 19 December 2022 [online] accessed 19/9/2023 URL: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf

[18] Department of Climate Change, Energy, the Environment and Water (2023) Protected Area Locations [online] accessed 5/10/23 URL: https://www.dcceew.gov.au/environment/land/nrs/science/protected-area-locations

What are Native Vegetation Heritage Agreements?

The most common mechanism to recognise conservation on private land in South Australia is through a Native Vegetation Heritage Agreement (NVHA) established under the *Native Vegetation Act 1991*. NVHAs help maintain important ecosystems and are established in perpetuity to protect and enhance the natural character of the site's plants and animals. Eligibility for a NVHA considers a range of criteria including its size, location, connectivity, proximity to other protected areas, biodiversity values, total vegetation cover, condition, management arrangements and significance.

Since 1980, over 2,800 landholders have entered into NVHAs in South Australia. As of 2022, over 1.8 million hectares of South Australia's native vegetation was under a NVHA. NVHAs are an agreement established under the *Native Vegetation Act 1991* in perpetuity meaning a lease, transfer or sale will not change the status of the NVHA – it is permanent and remains binding on the property title holder.

A range of incentives are available for landholders who are wishing to enter into or have a NVHA. Periodically other assistance, such as grants for land management activities including management planning, weed and pest control, fencing, restoration and revegetation. Support through technical assistance is also available.

What are Indigenous Protected Areas?

Indigenous Protected Areas (IPAs) are recognised through an agreement between the Australian Government and the First Nations owners of the land. IPAs are managed for environmental and cultural outcomes, but do not have formal legal protection status in South Australia. IPAs account for more than 50% of Australia's National Reserve System.[19]

What are Native Forest Reserves?

ForestrySA manages more than 16,000 hectares of proclaimed Native Forest Reserves under the *Forestry Act 1950* in South Australia's Mount Lofty Ranges and Limestone Coast regions, for conservation. These areas contain a variety of vegetation types including native forest, woodland, grassy woodland, shrub land, grassland and wetland. They are legally protected and actively managed to conserve and enhance their plant and animal communities for the long-term benefit of South Australians.

Topic 9 – Biodiversity – a shared responsibility

Does a general duty of care to the environment exist in other legislation?

Yes, a general duty of care is not a new concept and already exists in other South Australian environmental legislation including:

- *Marine Parks Act 2007* (Section 37), which states that:

  "A person must take all reasonable measures to prevent or minimise harm to a marine park through his or her actions or activities. […]"
- *Environment Protection Act 1993* (section 25), which states that:

  "A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm. […]"
- *Landscape South Australia Act 2019* (section 8), which states that:

  "A person must act reasonably in relation to the management of natural resources within the State. […]".

Topic 10 – Consequences of doing the wrong thing

What are the limitations of the 'command and control' approach that has been historically used in biodiversity conservation regulations?

The traditional command and control approach to biodiversity conservation legislation has been the prevailing method for decades. The approach typically involves setting strict regulations and prohibitions (the command) enforced by government authorities through penalties (the control). While it has some advantages and is certainly a critical component for the overall effectiveness of the legislation, it also has several shortcomings:

- **Lack of Flexibility** - Command and control regulations are often rigid and do not adapt well to changing circumstances or new scientific insights. This lack of flexibility can hinder the effectiveness of biodiversity conservation efforts, especially in the face of rapidly evolving threats such as climate change.
- **Inefficient Resource Allocation** - Traditional regulations can be resource-intensive for enforcement agencies, as they require constant monitoring, inspection, and punitive actions. This

[19] Department of Climate Change, Energy, the Environment and Water – Indigenous Protected Areas. Commonwealth of Australia, [online] accessed 25/10/23 URL: https://www.dcceew.gov.au/environment/land/indigenous-protected-areas

allocation of resources may not always be the most efficient way to achieve conservation goals.

- **Limited Engagement** - The command and control approach can alienate stakeholders, including local communities, who feel excluded from the decision-making process. This lack of engagement can lead to resistance, non-compliance, or even active opposition to conservation efforts.
- **Adversarial Relationships** - Strict enforcement can lead to adversarial relationships between regulatory authorities and those subject to regulations. This adversarial dynamic may hinder cooperation and collaboration, which are often essential for effective conservation.
- **Focus on Punishment** - Traditional approaches tend to prioritise punitive measures against violators. While penalties have their place, this punitive focus may not always be the most effective way to encourage long-term compliance or to address the root causes of biodiversity loss.

What issues have been identified with our current enforcement provisions relating to biodiversity?

The South Australian Environment, Resources and Development Committee's inquiry into Biodiversity[20] concluded that when taken as a whole, current enforcement provisions in multiple pieces of South Australian legislation linked to matters of biodiversity do not provide for effective and proportionate compliance. They considered them to be uneven in their approach with duplication in offences and inconsistency in the types of sanctions and penalty ranges.

What is a civil remedy?

A civil remedy is a type of legal action that can include orders granted by the courts that require a person to comply with particular obligations in legislation. The court can order the person to stop engaging in a specific conduct, or to take a specific action. The court can also order compensation for harm that a victim has experienced from the person's failure to comply. A civil remedy is generally separate form a criminal remedy, although in certain situations the civil and criminal remedy may be related.

Acknowledgement of Country

The South Australian Government acknowledges Aboriginal people as the First Peoples and Nations of the lands and waters we live and work upon and we pay our respects to their Elders past, present, and emerging. We acknowledge and respect the deep spiritual connection and the relationship that Aboriginal and Torres Strait Islander people have to Country.

First Nations peoples is used throughout this document in reference to Aboriginal and Torres Strait Islander peoples as the sovereign people of this land. It recognises various language groups as separate and unique sovereign nations. The Department for Environment and Water respectfully acknowledges this term is not universally used by all First Nations peoples in South Australia.

[20] Environment, Resources and Development Committee (2017) Biodiversity. 78th Report of the ERD Committee. Tabled in the House of Assembly, 29 March 2017. Parliament of South Australia [online] accessed: URL: https://committees.parliament.sa.gov.au/committee/390/Environment,%20Resources%20and%20Development%20Committee/55/55th%20Parliament%205%2F3%2F2022%20-%20Current/55 *Follow the links to* ***Biodiversity Report Final.pdf*** *via Committee Files - 07 Completed Inquiries and Reports up to 2018 - 78 Biodiversity.*



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