

South Australia's Biodiversity Bill

Frequently asked questions



What is biodiversity?

Biodiversity is all the different kinds of life on Earth and how they work together, including the different species of plants, animals, microorganisms, and the ecosystems they form.

Biodiversity occurs in all environments on Earth – on land, in rivers, lakes, seas and oceans – and is recognised at 3 levels: genetic diversity, species diversity and ecosystem diversity.

Why do we need a new Biodiversity Act?

The new Act aims to improve protections for biodiversity, on which we all rely for the provision of clean air, water, healthy soil, new medicines, food on our plates and a resilient Earth that can respond to and offset the effects of climate change.

Healthy biodiversity underpins the state's economic growth. In 2021-22, a total of 85% (\$11 billion) of South Australia's exports, 53% (\$70 billion) of the state's economic activity and 35% (282,000 FTEs) of SA's workforce have at least a moderate dependence on nature. From our food, wine, tourism and agriculture sectors, we produce a wide range of food and fibre products to feed, house and clothe people around the world.

Current state laws do not reflect the modern and significant challenge of biodiversity loss, particularly in a changing climate. Legislation is needed to help conserve and restore ecosystems and to prioritise the recovery of biodiversity to secure our future prosperity.

What is happening to the *Native Vegetation Act 1991* and *National Parks and Wildlife Act 1972*?

The Biodiversity Bill proposes to absorb the existing *Native Vegetation Act 1991* and wildlife provisions of the *National Parks and Wildlife Act 1972*, creating one streamlined piece of legislation to oversee the management of our biodiversity.

The introduction of a Biodiversity Act would repeal the *Native Vegetation Act*. It would also amend the *National Parks and Wildlife Act*, which would then become the 'National Parks Act' focusing on the

establishment and management of national parks and reserves.

The proposed consequential and minor amendments to the *National Parks and Wildlife Act* are included in the Biodiversity Bill.

The Biodiversity Bill also proposes changes to several other Acts. Most are minor amendments and are detailed in the explanatory guide.

Will the Bill affect the availability of housing or infrastructure development in South Australia?

The Biodiversity Bill does not propose to restrict the supply of land in South Australia.

An improved threatened species listing process, improved data collation and the spatial mapping of biodiversity priorities through a State Biodiversity Plan will assist land use planning decisions by identifying biodiversity hotspots that should be avoided for housing development or where innovative design will be required. These considerations will be used to inform planning and land use decisions at the early zoning stage, rather than later at the [development assessment](#) stage.

It is noted that certain types of development may not be able to avoid areas of high biodiversity value. In these circumstances, it is anticipated that the Biodiversity Bill will provide guidance to achieve a significant environmental benefit (offset) through identifying areas where conservation actions will achieve the best outcomes.

Existing policy settings in the [Native Vegetation Regulations 2017](#) relating to vegetation removal for the construction of homes will be retained.



What is the new general duty?

The Biodiversity Bill introduces a new general duty to ensure that the protection of biodiversity is a continuous legal and social responsibility shared by everyone.

The general duty encourages individuals, businesses and governments to take all reasonable prevention or minimisation measures before engaging in activities that could harm biodiversity.

General duties are not a new concept in environmental legislation; South Australia's *Environment Protection Act 1993* and *Landscape South Australia Act 2019* both include a general duty.

The explanatory guide includes details on what would be considered 'harm' and what constitutes 'reasonable measures'.

How does the Bill protect threatened species?

Currently, threatened species are listed in the schedules to the *National Parks and Wildlife Act 1972*, but the process for how a species can be listed is not legislated.

The Bill proposes to modernise how South Australia identifies and lists threatened species through a legislated process which includes public nominations, an assessment informed by a scientific committee, public consultation on proposed decisions and the publication of the final decisions.

This process would also give effect to the [Common Assessment Method](#) – adopted across all Australian jurisdictions – which harmonises the way nationally threatened species are assessed and listed in all jurisdictions. This aims to reduce confusion and complexity for development proponents seeking approval under both South Australian and federal legislation.

The Bill includes a range of other mechanisms that will benefit threatened species and help to streamline approvals processes including:

- the development of a State Biodiversity Plan, which may contain specific actions to protect threatened species
- the ability for the minister to declare areas of 'critical habitat'
- the ability to develop action plans for the protection and recovery of threatened species
- changes to definitions, such as including fungi and algae under the definition of 'plant'.

What is a protected animal?

'Protected animal' has a specific definition in the Biodiversity Bill, as does 'native animal'.

The term 'native animal' includes those indigenous to Australia, present in Australia before 1400AD, certain migratory species sometimes residing in Australia or any other animal as prescribed.

Most native animals are 'protected' under the Biodiversity Bill, with the exception of amphibians and invertebrates (unless they are threatened) and fish (unless they are prescribed and threatened).

In addition, the Bill also proposes that an animal can be exempted from the protected animal definition by regulation.

How will the Bill affect how I manage native animals on my property?

The Bill enables the continued management of 'impact causing' native animals that may be damaging your property.

The Department for Environment and Water continues to encourage landowners to first explore [non-lethal management methods](#), which includes things such as removing food or water sources, providing nest boxes, or modifying fencing. You will continue to be able to scare animals with noise (e.g., by using bird scarers), which has been included as a defence in the Bill.

The Bill allows for the lethal control of impact causing species, including by:

- enabling activities and species to be added to the schedule of 'unregulated activities' which would not require a permit
- making a declaration that enables the taking of a species in certain circumstances.

In other circumstances, you will still be able to apply for a permit to control protected animals. You can read more about these opportunities in the explanatory guide.

Why is the 'unprotected' species list being removed?

The current schedules to the *National Parks and Wildlife Act 1972* include 11 species on an 'unprotected' list, such as little corellas, budgies and dingoes.

The Bill proposes to remove the 'unprotected' species list to simplify the current management approach.

Instead of including an unprotected list the Bill includes a range of mechanisms to enable the management of 'impact causing' native species.

How will dingoes be managed in the future?

The Bill proposes to exempt the need for a permit when managing dingoes in accordance with the *Landscape South Australia Act 2019*, *Dog Fence Act 1946* and other impact causing situations. This also aligns with the [Wild Dog Management Strategy](#).

How are wildlife permits changing?

Provisions relating to permits are being carried over from the *National Parks and Wildlife Act 1972*, but have been consolidated into part 9 of the Bill to improve readability.

However, in the future, permits will be required to keep any protected animal unless the animal is listed on the 'exempt' list. This is a minor change as previously people were able to keep one animal from a defined list without a permit, but those rules have led to confusion and often inadvertent breaches of the legislation. The change will make it easier for people to keep and sell protected animals and comply with the requirements of the Act.

Will open season hunting be allowed under the Biodiversity Act?

Open season, for example, for hunting ducks and quails, will continue to be enabled through the Biodiversity Act. The Minister responsible for administering the Act can declare that a certain species may be taken for personal use and may impose any other restrictions as necessary. For example, a declaration could limit open hunting to a certain part of the state or only allow an animal to be killed by certain means (e.g., a firearm).

How are invertebrates, amphibians and fish treated in the Bill?

Invertebrates, amphibians, and fish listed as threatened or otherwise prescribed in regulations will be protected under the Biodiversity Act.

The Bill introduces a process for the minister responsible for the Biodiversity Act and the minister responsible for the *Fisheries Management Act 2007* to work together to ensure that threatened fish species are appropriately protected under each Act. This process would ensure adequate protection without duplicating permit requirements.

How will the Bill affect how I manage native plants on my property?

The Biodiversity Bill brings the existing provisions over from the *Native Vegetation Act 1991*, including overall policy intent and processes. Native plant clearance will still be allowed largely as exists currently. The current Significant Environmental Benefit scheme will also be retained from the *Native Vegetation Act 1991*.

There are some new provisions including:

- updating the definition of 'native plant' to include all species indigenous to Australia
- additional protections for planted native plants 20+ years old, which would require clearance consent (except where they are grown in private gardens or commercial forests) – discussed further below.
- better guidance in applying the mitigation hierarchy.

The Bill does not propose to regulate general gardening. The new rules are aimed at protecting native plants which provide important habitat and providing confidence that established revegetation projects will be protected.

Where an applicant receives an unfavourable decision, they may resubmit a revised application. Where an applicant believes that a clearance approval decision is not consistent with the legislation, a formal complaint can be made to the Chief Executive of the Department for Environment and Water for review.

What would new protections for 20+ year old planted native plants mean for me?

Once planted native plants are established, they provide benefits to biodiversity and to society.

The Bill seeks to improve protections for planted native plants by introducing new protections once they reach 20 years of age.

The new protections would not apply to native plants growing in people's gardens or in commercial forest plantations specifically to be used or harvested for commercial purposes.

Practically, this would mean that anyone seeking to clear planted native plants that are 20 years old (or older) would need to apply for, and receive, clearance consent. The current clearance exemptions will continue to apply to planted native plants that are over 20 years old. For example, if someone wished to clear planted trees forming a windbreak on an agricultural property, they are unlikely to need a clearance application as the exemptions for vehicle tracks or clearing along a fence line may apply.

Where can I collect firewood?

It will continue to be illegal to collect wood from national parks, public land, reservoirs, and reserves, even if the wood is dead or fallen.

The Biodiversity Bill will continue to allow for the collection of firewood on private land for personal use in line with the current exemption.

What is critical habitat? How does it affect me?

The Bill proposes that when a species, ecological community or other ecological entity is listed as threatened under the Biodiversity Act, the minister must decide whether to make a 'critical habitat' declaration.

Protecting the critical habitat of species which are threatened with extinction is a necessary step in arresting their decline and providing an opportunity for recovery.

Critical habitat can be declared if the area significantly contributes to the conservation of the threatened species, ecological community, or entity. Before deciding, the minister would undertake consultation.

The Bill also enables the minister to enter into voluntary agreements with landowners to facilitate the maintenance of critical habitat, including through biodiversity agreements.

Critical habitat is recognised in equivalent biodiversity legislation interstate. These experiences have demonstrated that it is not often used, but that it is a necessary tool for aiming to prevent extinctions.

How are the offences and penalties changing?

The Bill proposes retaining a range of offences currently in the *Native Vegetation Act 1991* and the *National Parks and Wildlife Act 1972*, though some of these have been reworded for ease of reading and administration. Some additional offences are being included to offer protection for new concepts, such as 'critical habitat'.

Many penalties have been increased:

- \$250,000 or 5 years jail for individuals, and \$500,000 for businesses, convicted of illegally killing, catching, restraining, injuring, keeping, or interfering with, a protected animal (currently \$2,500 to \$100,000 depending on the species and activity).
- \$500,000 for individuals, and \$1,000,000 for businesses or the prescribed rate per hectare – whichever is greater – convicted of illegally clearing native plants (currently \$100,000 or the prescribed rate per hectare).

Comparison of penalties interstate illustrated current South Australian penalties are demonstrably low and would not act as a sufficient deterrent for illegal activity.

A full list of penalties can be found in Appendix 1 of the explanatory guide.

Will there be any new fees, charges, or taxes?

No new levies, taxes or tax increases are proposed.

Who is responsible for enforcing breaches within the proposed Biodiversity Act and what are the enforcement options?

The Department for Environment and Water is responsible for administering the proposed Biodiversity Act as delegated by the minister.

The Bill introduces new ways to manage breaches, including reparation orders, compliance orders and enforceable undertakings. In general:

- A compliance order can require someone to comply with a requirement of the Act.
- A reparation order can require a person who has committed an offence to remedy the harm they caused.
- An enforceable undertaking can detail the steps that someone who has breached the Act must take to comply and rectify any damage caused.

Will the new third-party enforcement provisions result in increased or frivolous litigation?

The Bill proposes to allow third parties to take civil action in the Environment, Resources and Development Court against individuals who, and businesses that, breach the Biodiversity Act.

There are often perceptions that including a third-party standing provision will drastically increase litigation in this space. There is a range of literature available that demonstrates that this unfounded and equivalent third-party enforcement provisions already exist in other legislation such as the *Landscape South Australia Act 2019* and the *Planning, Development and Infrastructure Act 2016*.

While the Department for Environment and Water expects this provision to be used infrequently, it is considered an important opportunity to provide transparency and participation in environmental decision making. It also responds to feedback received through the previous public consultation and can contribute to meaningful litigation and law reform in South Australia.

The Bill does not provide any third party standing for review of decisions made under the Biodiversity Act.

What will happen to existing bodies and committees?

The explanatory guide includes details of bodies and committees that would operate under the proposed Biodiversity Act. These include the Biodiversity Council, the Native Plants Clearance Assessment Committee, the First Nations Expert Biodiversity Committee and the Scientific Committee.

The Native Vegetation Council which currently operates under the *Native Vegetation Act 1991* will no longer exist and will have its functions split between the Biodiversity Council and the Native Plants Clearance Assessment Committee.

The existing Parks and Wilderness Council will remain in the National Parks Act given its primary focus on the protected areas.

How will First Nations peoples be involved to support biodiversity?

The Bill seeks to respect First Nations peoples and their cultural obligations to care for Country. Where it is practicable and available, First Nations' knowledges will be considered alongside scientific evidence and local knowledge to help protect and restore our unique biodiversity.

A 'First Nations Expert Biodiversity Committee' (FNEBC) will be created to support First Nations peoples to provide advice about the way the environment is managed. In addition to the FNEBC, where all members will be First Nations peoples, all other committees created under the Act will include at least one identified position for First Nations people. This is in line with the broader commitment for the Biodiversity Act to include First Nations peoples in managing the environment.

One role of the FNEBC will be to co-design a process for identifying culturally significant biodiversity entities. Culturally significant biodiversity entities (CSBE) are native species which are important to First Nations peoples and their connection to Country.

It is proposed that recognition of CSBE would be completely voluntary and determined by First Nations groups at a local level, and recognition would apply across the area of land or water that each group determines.

The recognition of CSBE will not influence or block individual decisions, such as clearance or development approvals. Instead, where they are known, they could influence broader policy development, on ground restoration and recovery projects, the State Biodiversity Plan, threat abatement plans, and extinction enquiries.

How does the Bill align with reform of the *Environment Protection and Biodiversity Conservation Act 1999*?

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is subject to ongoing law reform and ensuring alignment with processes is difficult at this stage.

However, the Bill proposes a range of head-powers for the minister (and other statutory bodies under the Act) to create regulations, bodies, trusts, standards, policies and other instruments. This introduces flexibility and adaptability to respond to ongoing law reform at the national level and best practice as it evolves.

How does the Bill consider the Australian Government's Nature Repair Market?

The Australian Government's Nature Repair Market is just one example of a voluntary nature repair market in a rapidly evolving space.

The Bill proposes broad regulation making powers that would allow the minister to support markets in the future. For example, the Bill proposes that the minister is able to create new funds or trusts into the future if the market required it. This could include an independent statutory trust akin to the one in NSW which is responsible for directing public investment into nature.

The development of a State Biodiversity Plan will also support emerging nature markets as it will identify biodiversity priorities and conservation actions that assist to promote and guide the restoration of nature. Additionally, the plan will identify state-wide biodiversity indicators that can measure the trend and condition of biodiversity in SA.

How does the Bill interact with the government's proposed *State Development Coordination and Facilitation Bill (SDCF Bill)*?

The SDCF Bill and the Biodiversity Bill are expected to be mutually reinforcing of one another's objectives and will help to speed up development approval processes by directing proponents to the most appropriate areas. The SDCF Bill's concept of State Development Areas offers an effective mechanism to proactively assess and steer development towards environmentally appropriate areas and can also be used to facilitate environmental outcomes (e.g. proactive guidance and planning of development and significant environmental benefit (SEB)/biodiversity conservation areas).

There are opportunities for the Biodiversity Act to support the operation of the SDCF Bill, including through assisting in identifying areas of high biodiversity value that should be avoided or only developed with careful consideration and by contrast, areas with less biodiversity value. The Biodiversity Act, including through the State Biodiversity Plan, could also assist in identifying opportunities for regional SEB projects that would provide the most benefit to biodiversity while boosting the state's green credentials.