

Biodiversity Bill – Consultation Submission

Thank you for the opportunity to comment on the proposed Biodiversity Bill. My interest in the new bill is primarily around absorbing the Native Vegetation Act 1991 and subsequent regulations. My submission is broken down into three parts:

1. Areas of Support
2. Areas of Concern
3. Additional Recommendations

Most of my comments relate to how trees will be treated under the bill. For each area I have included a recommendation to address any concerns.

Overall, I believe the Biodiversity Bill will make positive improvements on the current Native Vegetation 'protections' and hope that going forward, we have the ability to not only halt biodiversity decline but actually improve our natural environment for future generations.

Areas of Support

1. Better alignment with the updated Regulated and Significant Tree Regulations

Division 7, part 19, refines the definition of a tree to having a trunk circumference of 1m. This is much needed and will reduce confusion.

Division 2, part 4, refines the clearance allowed for maintenance of a prescribed building to 3m. This is also a much needed and supported change that should reduce confusion.

Areas of Concern

1. Recommendation 36

The Planning System Implementation Review handed to the State Government in April 2023 contained a specific recommendation to:

“The State Government review and refine the intersection between the Planning, Development and Infrastructure Act 2016 and Native Vegetation Act 1991 to remove confusion within the community and development sector, to ensure native vegetation is retained.”

This **recommendation was supported** by the Government with further investigation required.

The introduction of the new Biodiversity Bill should be the opportunity to improve this overlap. I cannot imagine modifications to the Act once it is passed for a decent length of time. Therefore, now is the time to resolve this conflict. For areas in a medium-high bushfire zone + native vegetation + regulated and significant tree protections, there is a “choose your own exemption” game being played.

It is clear however, that the proposed bill does not address this, aside from the minor clarifications to trunk circumference etc as mentioned in Point 1 above. Primarily, this confusion is less about the assessment pathways and more about what is ‘native’ in my opinion. There have been numerous incidents where development applications that involve tree removal have included reports from a qualified arborist and Native

Vegetation Consultant. The arborist believes the trees in question were planted and therefore not native. The Native Vegetation Consultant believes they are self-seeded and therefore require a SEB to be paid. Not only does this increase unnecessary costs on an applicant but leaves the assessment authority in a position of uncertainty and opens the door to different exemptions being used from two different bits of legislation.

I had initially thought that the draft bill addressed this with the updated definition of 'native plant', especially with the 20-year clause. However, the exemption for native plants in backyards means you end up in the same situation currently. Is the tree native or not? Native wildlife certainly doesn't care if someone planted the tree 20 years ago.

I have heard some talk regarding the potential of having either Native Vegetation Overlay apply to an area or the Regulated and Significant Tree Overlay - not both. I do not support this and believe that the current confusion can be fixed.

Recommendation:

*Option A: Trees which are older than 20 years and native to the **locality**, should be classified as 'native' regardless of if they are planted in a backyard. It is much easier to determine the rough age of a tree than determine if it is self-seeded or planted.*

Option B: Trees which are older than 20 years and native to Australia, should be classified as 'native' regardless of if they are planted in a backyard.

2. Fence Loophole remains

The bill carries over the current definition of a fence from the Native Vegetation Regulations 2017.

"fence means a fence consisting of posts and wire fixed permanently to land and designed for the purposes of controlling access by people or the movement of animals"

The issue with this definition is how the application of Schedule 2, Division 4, part 12 is applied. This allows for the clearance of native plants within 5m of the fence for the purpose of maintenance without requiring approval. Traditionally, this has also included 'large' trees. While this exemption is mainly designed for primary production properties, it can and has been used in the peri-urban areas of Adelaide on residential land. Especially in the case of trees, there is nearly no reason to clear for the maintenance of the fence.

E.g. Is your typical colorbond 'good neighbour' fence covered by this exemption if they put a bit of wire along the top of it? While it might not be the intention, it is what the draft bill says.

Recommendation: *Schedule 2, Division 4, Part 12 (1) should apply to primary production properties only.*

3. Whose property do the exemptions apply to?

The draft bill brings across current exemptions from the *Native Vegetation Regulations 2017* into the Act. There are positives and negatives to this. One aspect that should be clarified is how these exemptions (Under Part 2, Division 4 and Division 7, Part 19) are used. E.g. Can you use your neighbour's shed to clear 20m of native plants on your land? Or can you use that shed to clear a large tree? The proposed bill leaves this open to interpretation.

Recommendation: Removal of trees using a neighbour’s building should require the neighbour’s written consent. This would bring these exemptions inline with New South Wales and Victoria.

Additional Recommendations

1. Perpetual Clearance Grandfathering

Previous iterations of the Native Vegetation Act 1991 have seen the approval of clearances in ‘perpetuity’. The clearance at [Mt Lofty that gained considerable media attention](#) is a prime example.

Recommendation: These clearance approvals should be grandfathered given the new bill.

2. Lodgement of DAs via the Plan SA Portal

The Plan SA is meant to be the one-stop-shop for all development related applications. Despite this, applications to clear native vegetation typically do not appear on the portal. Consultations for clearance are also located on a dedicated webpage.

For example, the following development makes no mention of either tree or native vegetation clearance:

Application ID [REDACTED]

[REDACTED] BLACKWOOD SA 5051

DECISION MADE

Description

Place of worship comprising the construction of a single storey building and associated car parking, earthworks, retaining walls, fencing and landscaping and the change of use of existing hall to an ancillary storage building

Public Notification Required

Completed on 18 March 2024 at 11:59pm

The development itself triggered public notification due to the earthworks required and change of land usage. [A second consultation from the Department for Environment and Water also happened for this development](#) due to the clearance being a “Level 4”. Yet there is no mention at all of this on the Plan SA portal – where most people view and monitor local developments. Unsurprisingly, very little public comment was made on this development proposal as a result.

Recommendation: Applications for Native Vegetation Clearance + Public Consultation should be done via the Plan SA portal for improved transparency and process.

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