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To the Biodiversity Coordination Unit,

The Threatened Plant Action Group has carefully considered the discussion paper for the new Biodiversity Act and has compiled a number of comments.

As a leader in threatened flora conservation in SA, we take very seriously the opportunity to comment on such an important piece of legislation.

Our comments are detailed below and are also attached in a PDF.

The Threatened Plant Action Group is concerned about the loss of natural plant diversity across the State and therefore welcomes the SA Government's initiative to introduce long-overdue policy reform to arrest the ongoing decline. Our comments on specific parts of the Discussion Paper are given below.

Message from the Minister

We acknowledge and support DEW & the Minister's recognition that society's approach to nature needs to change, that we are part of nature and not separate from it. However, we do not agree that the threats of climate change and biodiversity decline are 'independent challenges to our collective future'. It is important to recognise the Biosphere/Climate connection - that all life on earth including human societies is dependent on a healthy, functioning biosphere; and that life on Earth depends on, is shaped by, and affects climate. The essence of this principle is that life affects climate and, in turn, the climate dictates where and how species can survive. It therefore follows that protection of the biosphere (nature/ biodiversity) is the over-arching purpose for climate action. The importance and relevance of a new Biodiversity Act for SA to the State's social, economic and environmental well-being would be better understood if explained and promoted in this context.

Goals

We support the 4 Goals of the Act - Conserve, Adapt, Protect and Recover.

Topic 1- Biodiversity and SA's First Nation Peoples

We support the recognition of First Nations' connection to Country, and their inclusion in the management of biodiversity.

Topic 2 – Avoiding Impacts

- We agree with the overall concept of the Mitigation Hierarchy, with its first preference for Avoidance of harm over Minimising, Restoring & Off-sets. However, there must be circumstances where 'Avoidance' is the only option, not just a case of "If we can't avoid, we'll minimise or restore etc"; Despite, on page 6, stating "Avoidance is the most important step in the mitigation hierarchy", the first of the "Matters for consideration" implies that minimising impacts is an acceptable next alternative to avoiding impact. The belief – frequently and commonly put into practice - that minimising impacts is an acceptable next alternative to avoiding impact underlies South Australia's ongoing failure to maintain its natural biodiversity. A history of impact minimisation in policies, strategies and practices and a failure to recognise that natural biodiversity cannot be recovered *in situ* have contributed to a legacy of biodiversity loss in South Australia. On p3 it is noted that "While South Australia has … been a leader in

preventing large scale clearance of native vegetation and in building terrestrial and marine protected areas, our biodiversity has continued to decline…". The decline of terrestrial flora is not a mystery. Since broad-scale clearance protection, the perpetuation of impact minimisation policies and practices has contributed to the ongoing decline of biodiversity.

- The statement on page 6 "Avoidance is ...the only way to guarantee no harm is done to biodiversity" is contradicted under Part 1 of Topic 2's Matters for Consideration where it is stated "...prioritise avoidance and minimise .. impacts…" and "...negative impacts to biodiversity are the last resort…". There are many circumstances where any negative impacts should be avoided at all costs, and without further compromise. Again, TPAG argues that there needs to be a fundamental shift away from the current approach and policy position if SA is to arrest biodiversity decline.
- The statement in Part 4: "…any action .. having impacts to biodiversity must leave biodiversity in a measurably better state than it was before" is somewhat confusing and contradictory, and does not align with the central tenet of *in situ* biodiversity conservation.

<u>Topic 3 – Transparent Decision Making</u>
Supported.

<u>Topic 4 – Threats to Biodiversity</u>
Supported. Such a change would bring SA in line with the EPBC Act, with its recognition of Key Threatening Processes. And not only will general threats be recognised, such as vegetation clearance etc, but this is the opportunity for species-specific or site-specific threats to be covered by legislation. Thus, any threats mentioned in a Species Recovery Plan, Conservation Advice or State-adopted Site Action Plan would be recognised under the new Act and must be taken into consideration when a development is proposed.

<u>Topic 5 – Assessing the Risk of Extinction</u>
The majority of Topic supported, particularly:

- mandating regular updates to threatened species lists
- aligning SA's threatened species categories and criteria definitions with the EPBC Act (and the IUCN criteria), and with other jurisdictions, as in the Common Assessment Method, which has been a Commonwealth priority for a number of years
- legislating recovery obligations for listed species, i.e. monitoring, reporting and implementing actions. This is essential for both private developers and public sector agencies

- SA should continue to have its own State lists of threatened species, and not be limited to national lists. As conservation of species must be planned at the population level, State and regional lists have a very important role

- The current NPW Act simply lists SA's rare and threatened species but offers no protection for listed flora. Species must be "declared" under the Act to be protected; however, not one SA plant species is Declared. The new legislation must do away with this arcane system and provide legal protection for listed species
- The discussion paper for the proposed new Act does not mention listing ecological communities. If there is to be a change in listings for SA, this piece of legislation would be the perfect opportunity to include listings for ecological communities that are threatened at a regional or State level, but not nationally

<u>Topic 6 – Biodiversity Planning and Reporting</u>
TPAG supports:

- the recommendation to link State of Environment reporting to planning. Regular, well-researched and detailed reporting can recommend and inform high-level biodiversity management planning. Conversely, a rigorous planning framework can outline the type of monitoring and evaluation required to provide useful reports and guide future planning;
- improved data collection and databasing processes, as once this is written into legislation, it is more likely (but not guaranteed) to engender a commitment to ongoing Government investment;

Topic 10 – Consequences of doing the wrong thing

TPAG supports:

- the recommendations for stronger penalties, updated to be in line with other jurisdictions, and also better policing and stronger enforcement of penalties;
- the suggestion to link penalties, as much as possible, directly to positive rehabilitation or restoration of damage incurred.

Concluding remarks

Whilst TPAG is generally in support of the ideas in this discussion paper and welcomes a new Biodiversity Act we recognise that a poor history of enforcement of environmental legislation and a declining investment in environmental protection in SA must be substantially reversed if the proposed new laws are to be effective and deliver the stated goals.

The ongoing decline of biodiversity in South Australia since broad-scale clearance protection represents a long period of public policy failure. There is a clear need to define and legislate limits to biodiversity loss in South Australia as an integral part of policy reform. Further, there needs to be a fundamental shift away from the policy stance of impact minimisation as a readily available option to avoidance if SA is to arrest biodiversity decline. Such policy reform may first require a significant shift in awareness within the highest levels of government of the value of natural biodiversity to the State's social, economic and environmental well-being.

The TPAG Committee

TPAG
Threatened Plant Action Group

Comments on Biodiversity Act Discussion Paper

Threatened Plant Action Group Inc.

11 February 2024

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