

Biodiversity Coordination Unit
Department of Environment and Water
South Australian Department for Environment and Water
81-95 Waymouth Street
Adelaide SA 5000
Via email: biodiversityact@sa.gov.au
Cc: Lisien.Loan@sa.gov.au; OfficeoftheDeputyPremier@sa.gov.au

18 February 2025

Dear Biodiversity Coordination Unit,

RE: Submission on the draft Biodiversity Act for South Australia

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission on the exposure draft of South Australia's *Biodiversity Act* ('the Act').

ALCA represents organisations that work to conserve, manage, and restore nature on privately managed land. Our member conservation efforts influence across over 3 million square kilometres with more than 4,000 landholders; we have over 70,000 supporters and our combined annual turnover exceeds \$370 million.

Summary

ALCA welcomes the South Australian Government's commitment to progress legislation on a Biodiversity Act. The imperative to strengthen Australia and South Australia's environmental laws has never been stronger, as canvassed by ALCA in its submission to the South Australian Government's earlier Discussion Paper on the Act¹.

Whilst we would argue for more ambition, ALCA does note the general improvements that the proposed legislative architecture would deliver for the environment, in particular:

- The ability of the Minister to declare 'critical habitat' which would then be harder to clear or destroy;
- The creation of a general duty to not harm biodiversity (albeit with caveats);
- The provision of third-party standing to pursue most penalties under the Act (although not the general duty);
- The intention to modernise South Australia's legislation regarding the listing of threatened species and threatened ecological communities, and associated regulation including action plans and threat abatement plans;
- The confirmation that the Biodiversity Restoration Fund (that replaces the Native Vegetation Fund) will again be able to be utilised for the acquisition of property for offsets, when it is appropriate to do so; and
- That payment into the fund for *some* clearance of native plants will be a payment of last resort when on-ground offsetting is unavailable.

¹ https://alca.org.au/wp-content/uploads/2024/02/20240220-ALCA-submission-SA-Biodiversity-Act_web.pdf

However, the proposed Act creates two issues of key concern that need to be addressed in the final version of the legislation.

1. Lack of legislative primacy

Former Commonwealth Treasury Secretary Dr Ken Henry's *Independent Review of the Biodiversity Conservation Act*² in NSW found that the predominant issue facing State environmental legislation was the lack of legislative primacy, i.e. that other pieces of legislation consistently and increasingly detract or otherwise derogate from environmental legislation and to make it largely ineffective. Unfortunately, the exposure draft Act not only does not act on this finding, but rather, seeks to undermine what little legislative primacy South Australian environmental legislation currently enjoys. Recommendations 1 and 2 below address this issue.

2. Offsetting not required to deliver a net gain

ALCA notes the general policy failure of offsets markets to deliver on the promise of achieving even a status quo outcome for nature. The NSW Government has committed to legislative reforms to deliver nature positive outcomes, include for offsetting³. This Act is an opportunity for the South Australian Government to also commit to nature positive – or, more specifically, absolute net gain – offsetting arrangements.

At the simplest level, this would mean ensuring that the offsetting formula is not underdone (as it currently is, as evidenced by organisations general unwillingness to pay commercial rates to deliver on-ground offsets rather than pay a cheaper amount into a fund), and also that a biodiversity 'premium' is then required on-top of like-for-like offsetting in order to assure absolute net gain.

Recommendations

The South Australian Government should:

General recommendations

Recommendation 1: Delete section 6(5) so that the Government of the day does not have the power to abrogate the majority of the Act when it chooses to do so.

Recommendation 2: Noting that this provision does not appear in South Australia's development or mining acts, nor in the existing *Native Vegetation Act 1991*, delete section 4(1) which would severely restrict the practical impact and usefulness of the Act.

² See:

<https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf>

³ <https://www.nsw.gov.au/sites/default/files/noindex/2024-07/NSW%20plan%20for%20nature%20NSW%20Government%20response%20to%20the%20review%20of%20the%20Biodiversity%20Conservation%20Act%202016%20and%20the%20native%20vegetation%20provisions%20of%20the%20Local%20Land%20Services%20Act%202013.pdf>

Recommendation 3: Include provisions to legislate enhanced conservation covenants in the Act, as per the reasons outlined in ALCA’s Policy Note on Enhanced Protection Conservation Covenants⁴.

Recommendation 4: Include provisions to legislate an independent statutory conservation trust in the Act, rather than regulate through delegated legislation (as per the construction in section 27).

Recommendation 5: The list of principles under the Act should include the precautionary principle, noting that the Commonwealth’s 2021 State of Environment Report describes the principle as “...where there are threats or potential 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 (AHC and ACIUCN 2002).”⁵

Acquiring land / protected areas

Recommendation 6: Retain the provision that allows for the acquisition of land utilising the Biodiversity Restoration Fund, including land subject to a conservation covenant (section 101(5)(b)).

Recommendation 7: Clarify that the Biodiversity Restoration Fund can acquire any land that becomes subject to permanent protection for conservation (i.e. in addition to land under conservation covenant, land can also be acquired that will be converted into public protected areas and/or Indigenous Protected Areas).

Recommendation 8: Noting that the current definition in the Act for ‘protected area’ does not accord with the national and international definition⁶, a different form of words should be used such as ‘stewarded area’ or similar.

Council and Committees

Recommendation 9: With regards to the list of skills, knowledge and experience collectively required by members of the Biodiversity Council, ‘scientific research’ should be amended read ‘scientific research relevant to biodiversity’ (or similar, see: section 15(2)(b)(v)).

Recommendation 10: Clarify that the Biodiversity Council can provide advice on biodiversity policies to the Minister without first being requested by the Minister to provide that advice (see: section 16(d)).

Recommendation 11: Add the skills and expertise requirements for members of the Native Plants Clearance Assessment Committee into the legislation rather than deferring it to regulation.

⁴ See: https://alca.org.au/wp-content/uploads/2023/12/ALCA-Policy-Note-Enhanced-protection-conservation-covenants_November-2023-2.pdf

⁵ <https://soe.dcceew.gov.au/taxonomy/term/898>

⁶ Noting that conservation agreements can be for less than 99 years, which does not reach the threshold needed for a protected area under the *Strategy for Australia’s National Reserve System 2009-2030*, see: p43, <https://www.dcceew.gov.au/sites/default/files/documents/nrsstrat.pdf>

Native plants offsetting

Recommendation 12: Require environmental offsetting to deliver an ‘absolute net gain’ – and with a strong margin of confidence – rather than retaining zero sum offsetting in theory (as per the draft Act) and net negative offsetting in practice.

Recommendation 13: Assign the power to determine the Significant Environment Benefit policy and the environmental offsetting formula (section 161(4)(c)) to the independent Biodiversity Council – as is currently the case with the Native Vegetation Council under the *Native Vegetation Act 1991* – rather than making it a political decision of the Minister.

Recommendation 14: Consider whether the definition for ‘Significant Environmental Benefit’ should be expanded to reflect the description in the *Native Vegetation (Miscellaneous) Amendment Bill 2024*, noting that the definition in the Act is much less detailed than in that Bill.

Recommendation 15: The definition for ‘native plant’ in the Act should be limited to “a *plant of a species that is indigenous to South Australia*” rather than Australia, and that the Government work through the regulatory approach in detail with experts in native plants and invasive weeds.

Recommendation 16: Clarify how the operation of section 48(2) would operate with leaseholders in South Australia’s pastoral estate, as the current process indicates that the Minister must make the native plants clearance application rather than the leaseholder, which is contrary to the current regulatory approach.

Recommendation 17: The Native Plants Clearance Assessment Committee should be allowed to impose conditions of consent that relate to the ‘Principles of preservation of native plants’ under Schedule 3 (see: section 52(2)(g), and Schedule 3 – Principles of preservation of native plants).

Recommendation 18: Revoke any legacy consents to undertake clearance under the *Native Vegetation Act 1991* within a reasonable time from the commencement of the Biodiversity Act.

Protected animals and permits

Recommendation 19: Prior to finalising the Bill, establish a working group that includes relevant ALCA member organisations, Zoos SA, and the Zoo and Aquarium Association Australasia to ensure that routine operations of these organisations with regards to protected animals (such as wildlife translocations), including for fenced sanctuaries, are effective and do not create any unintended consequences.

Threatened species and critical habitat

Recommendation 20: Adopt the approach used in the *Biodiversity Conservation Act 2016* (NSW), namely, making the independent Scientific Committee responsible for listing and decisions (i.e. adding, amending, or revoking the listing of threatened species, ecological communities, and ecological entities), rather than making it a political decision of the Minister.

Recommendation 21: Include a public nomination process for key threatening processes.

Recommendation 22: Require that the Minister must, within the 6 months allotted, decide whether or not to declare critical habitat rather than to merely ‘consider’ whether or not to make a decision (see: section 82(2)).

Recommendation 23: Require that any decision to amend or revoke declarations of critical habitat be accompanied by a statement of reasons via public notice.

State biodiversity plan

The preparation and review of the State Biodiversity Plan should require public consultation, not merely consultation as determined by the Minister of the day.

Recommendation 24: Require public consultation when developing a State Biodiversity Plan, rather than consultation as determined by the Minister (see: section 160(5)(c)).

Biodiversity Register

Recommendation 25: Explicitly include conserved areas in the Biodiversity Register (section 162(2)).

Biodiverse carbon plantings

Recommendation 26: Avoid legislative complexity and reference the definition of ‘commercial forest’ from the *Landscape South Australia Act 2019* in the Act rather than reproduce the definition without a reference (see: Part 1, Schedule 2), as merely reproducing the definition would make it necessary to later amend the Biodiversity Act if the *Landscape South Australia Act 2019* definition was to change.

ALCA notes that the underlying issue regarding water licence requirements for biodiverse carbon plantings (as identified in the *Report of the Independent Review of the Landscape SA Act⁷*, and in ALCA’s submission to that Review⁸) remains an ongoing issue in need of fulsome resolution.

⁷ As per Appendix C, “*Recommendation 12: Review definition of ‘commercial forestry’ with regard to biodiverse revegetation*”; <https://cdn.environment.sa.gov.au/environment/docs/DEW-Landscape-Act-Review-Report.pdf>

⁸ As per Recommendation 3, https://alca.org.au/wp-content/uploads/2023/10/20231027-ALCA-submission-Landscape-SA-Act-2019_web.pdf

Management of feral cats

Recommendation 27: Noting that (feral) cats can currently be destroyed in sanctuaries by authorised officers, extend the power of authorised officers to destroy (feral) cats onto land under a conservation covenant (i.e. biodiversity agreement), land under a conservation agreement, and to conserved areas (see: consequential amendments to the *Dog and Cat Management Act 1995*).

Thank you again for the opportunity to provide feedback on the exposure draft of the Biodiversity Act. ALCA and its members look forward to continuing to engage with the South Australian Government in the development of the Act.

Australian Land Conservation Alliance

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Our nineteen members are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nari Nari Tribal Council
- Nature Foundation
- North Australian Indigenous Land and Sea Management Alliance
- NRM Regions Australia
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- World Wildlife Fund - Australia

ALCA member land conservation efforts have influenced over 9.3% of Australia with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$370 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spill-over effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.