

BIODIVERSITY ACT

NCS YourSay Submission Guide – Feb 2024

Here is the survey being conducted by the State Government regarding a new Biodiversity Act for South Australia, and suggested responses.

Page 1: Fill in your details, as required

Your details

1. How would you best describe yourself?
 - An individual
 - Responding on behalf of an organisation (please specify organisation name)
2. What sector do you primarily represent? (if applicable)
 - Conservation and biodiversity
 - Agriculture and primary production
 - Mining
 - Development / infrastructure
 - Local or state government agency
 - None of the above / prefer not to say
 - Other (please specify)
3. How old are you?
 - Under 18
 - 18 - 24
 - 25 - 34
 - 35 - 44
 - 45 - 54
 - 55 - 64
 - 65+
 - Prefer not to say
4. Where do you currently live? (enter your suburb)
5. What gender do you identify as?
 - Male
 - Female
 - Non-binary / gender diverse
 - Prefer not to say
6. Are you of Aboriginal and/or Torres Strait Islander descent?
 - Yes
 - No
 - Prefer not to say
7. Do you consent for your response to be publicly shared? *
 - Yes
 - No

Topic 2 - Avoiding impacts

Our modern demands on nature and its capacity to regenerate are unbalanced. Often, decisions are made around land use change that do not prioritise the need to conserve biodiversity.

The new Act could require any action that could harm biodiversity, such as development projects, to first consider ways to avoid or minimise that harm.

This follows the approach of the mitigation hierarchy, which is a tool that seeks to limit negative impacts on biodiversity.

For this to be successful, requirements would need to be strictly applied and documentation made readily available to the public. A new Biodiversity Act could establish a framework with clear guidance on these requirements.

Read more on page 6 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 2 - please indicate your support for the following: Select 'definitely agree to all'

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could seek to prioritise avoidance and minimisation of impacts to biodiversity and make it clear that any negative impacts to biodiversity are the last resort.	SELECT				
The Act could provide for a framework that includes clear guidance on the requirements to avoid and minimise impacts to biodiversity.	SELECT				
The Act could require evidence is provided justifying how avoidance and minimisation have first been addressed as per the mitigation hierarchy.	SELECT				
The Act could make it clear that any action taken having impacts to biodiversity must leave biodiversity in a measurably better state than it was before.	SELECT				

Topic 2 - would you like to add any comments regarding your answers or identify alternative ideas?

The introduction of a comprehensive regime protecting South Australia's biodiversity from development impacts would be welcome, however, this new Act must be more powerful and effective than existing environmental laws.

The concept of avoiding harm to biodiversity, primarily by following the 'mitigation hierarchy', already exists in key pieces of environmental legislation, including South Australia's own *Native Vegetation Act 1999*. However, whilst this approach may have slowed the clearance rate, it has not resulted in the successful protection of our remaining native vegetation. Rather, the best available evidence suggests nearly half a million hectares of native vegetation has been lost since 1990.

So, whilst including the concept of avoiding harm to biodiversity from developments as part of this new Act is supported, it must be constructed in a way which is more powerful and more effectively implemented than current environmental law.

For example, this new Act must spell out what is unacceptable in terms of impacts on biodiversity and introduce a mechanism for an 'early no' to any proposed developments that would have unacceptable impacts.

This new Act must also have power (primacy) over other laws that impact on land-use, including land-use planning laws and laws that regulate mining, so that biodiversity protection is guaranteed in the decision-making process. One of the most critical steps in avoiding harm to biodiversity relates to the location of developments, which are generally regulated under land-use planning law. The Minister responsible for the new Biodiversity Act will therefore need power over such decisions for protection to be effective.

The concept of leaving biodiversity in a measurably better state than it was before is also generally supported, however, there is no evidence that current approaches to this, including "offsetting" arrangements under other environmental laws, achieve that outcome. A comprehensive review of the evidence of the performance of the various "offsetting" systems currently in place, both in SA and elsewhere, must be conducted as a matter of urgency.

Topic 3 – Transparent decision making

Being open and transparent strengthens trust and confidence and enables the public to hold decision-makers to account, leading to better outcomes.

The new Act could establish requirements to demonstrate evidence in decision-making and ensure this information is available to the public. This would provide clarity about how steps were taken to avoid impacts and justification for the decisions made.

Reporting on impacts or actions taken to repair biodiversity once they occur could be improved in the new Act. Reporting is particularly critical where offsetting is permitted so that the details of the offset are disclosed for future review. Mandatory reporting on impacts to biodiversity via adopted policies or standards could be considered as an additional measure to improve disclosure.

Decision-making processes for land-use planning are often made in recognition of a series of principles grouped collectively as ‘ecologically sustainable development’ (ESD). ESD is incorporated in multiple laws across the country, but often there is an absence of guidance provided as to the priority or weight to be afforded to the various principles. The Act could seek to foster a shift towards emphasising the proper application of the principles of ESD relating to biodiversity conservation.

Read more on page 7 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 3 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could require government maintain a public register to ensure decisions made that impact biodiversity are disclosed.	SELECT				
The Act could require mandatory reporting so that impacts to biodiversity and actions taken to repair biodiversity are fully disclosed.	SELECT				
The Act could incorporate a clear definition of Ecologically Sustainable Development and ensure a process is created so that application of the ESD principles are (sic) required in the context of decision making about biodiversity.			SELECT		

Topic 3 - would you like to add any comments regarding your answers or identify alternative ideas?

Transparency in decision making relating to biodiversity is critical, so efforts to better document and report on this are supported.

However, the principle(s) on which decisions relating to biodiversity are made needs deeper consideration.

A recent review of biodiversity legislation in NSW questioned the continued use of 'ecologically sustainable development' as a sound legal principle upon which to construct decision-making that impacts biodiversity. Clearly, continuing to "trade-off" gains in social and economic spheres against biodiversity losses will see nature continue to decline. A thorough review of the effectiveness of common legal principles in environmental law, including 'ecologically sustainable development' and the precautionary principle, should inform the development of this new Act.

Strong, clear principles are needed in this new Act which truly reflect the depth and magnitude of the biodiversity crisis, the irreplaceability of nature and the urgent need to protect and restore our biosphere.

Topic 4 - Threats to biodiversity

Loss of habitat is one of the largest drivers of biodiversity loss in South Australia. Other identified threats come from invasive species, livestock grazing regimes, altered fire regimes and the impacts of climate change.

Existing legislation doesn't require biodiversity threats to be identified. Requiring this within a new Act can improve awareness, enable policy and legislative reform, generate research, and foster cooperation to address them.

More action can also be taken on these threats. A new Act could require the documentation of actions taken to minimise the impact of threats, along with reporting on the success of these measures.

Being responsive to new or potential threats can also be considered in a new Biodiversity Act. Natural disasters such as bushfires can have a significant impact on threatened species and can result in common species becoming threatened.

Read more on page 8 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 4 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could provide for a framework for the identification of threats to biodiversity.	SELECT				
The Act could include statutory obligations for actions to address threats to biodiversity.	SELECT				

Topic 4 - would you like to add any comments regarding your answers or identify alternative ideas?

Identifying threats to biodiversity as part of the new Act is supported, however, this approach has been used at the national level since 1999. It has not resulted in demonstrable change to those threats and their impact on nature in almost all cases, mostly because resources have not been applied to addressing the identified threats.

Introducing statutory obligations for actions to address threats is therefore supported, however, it will only be effective if resources were made available by the State Government to meet those statutory obligations.

Topic 5 - Assessing the risk of extinction

Formally listing threatened species is a way to highlight the extinction risk of plants and animals. It also informs conservation actions.

South Australia is the only state in the country that doesn't have a scientific committee involved in listing threatened species. Creating such a committee can increase community confidence in the listing process and ensure decisions are based on scientific evidence.

The Act could also recognise that all species are part of biodiversity. This could be achieved by including a clear definition of 'species' that covers plants, mammals, birds, reptiles, amphibians, invertebrates, fungi, etc.

The Act could also formalise a process for listing, assessment and review. This could include a clear nomination process where anyone can propose amendments to the lists, and a process for public consultation and feedback on changes. Defining criteria would also ensure consistency and transparency in line with other jurisdictions.

The Act could create a more streamlined and agile process for regular list amendments.

Currently, updates to the listing schedules are not mandated, nor are they prioritised due to limited resources.

Current legislation does not include obligations to monitor, report on or implement actions for listed species. This is an identified gap and a proposed area for improvement as part of a new Act.

Read more on page 9 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 5 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
A scientific committee could be established to guide listing, assessment and review of extinction risk of biodiversity.	SELECT				
The Act could provide greater clarity on the types of native species that can be considered as threatened.	SELECT				
The Act could require the creation of a formal listing, assessment and review process that establishes clear pathways for nomination, consultation and review.	SELECT				
The Act could adopt a streamlined process for list	SELECT				

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
amendments to ensure lists remain current.					
The Act could ensure that programs implemented to address biodiversity decline are evaluated.	SELECT				
Where a new extinction occurs, the Act could establish a requirement to examine and report on the causes and actions that contributed to it.	SELECT				
The Act could establish a framework to document measures to improve the status of biodiversity assessed as threatened.	SELECT				

Topic 5 - would you like to add any comments regarding your answers or identify alternative ideas?

Bringing South Australia into line with the approach taken nationally and in other State and Territory jurisdictions for recognizing plants, animals and other elements of biodiversity threatened with extinction is generally supported. Widening the approach to cover all plants, mammals, birds, reptiles, amphibians, invertebrates and fungi is also supported, noting that fish are also in need of protection so should also be included.

However, listings in this manner have been taking place nationally for many years but little progress has been made in recovering these threatened species from extinction, mainly due to the lack of resources dedicated to this task.

Therefore, whilst having an up-to-date list of South Australia's threatened biodiversity is a key first step, the most critical intervention is in resourcing the implementation of actions to recover threatened biodiversity, and the State Government must commit to providing this.

The new Act should also identify, protect and recover threatened ecological communities.

Topic 6 - Biodiversity planning and reporting

South Australia does not have a state-wide biodiversity plan – it is an identified gap in our legislative framework.

Whilst the need for a state-wide biodiversity plan doesn't need to be written in law, requiring a plan within the new Act would make its preparation non-negotiable and provide a level of authority. The Act could go a step further by detailing the matters a state-wide biodiversity plan must address and what must be reported on.

A state-wide plan would provide greater focus on issues affecting biodiversity and effective reporting to drive necessary action and would support and inform the high-level biodiversity reporting that would continue to be part of the EPA's State of the Environment Report.

Read more on page 10 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 6 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could mandate a state-wide biodiversity plan or strategy where measurable targets are set and regularly reported on.		SELECT			
The Act could require any state-wide plan or strategy to be regularly reviewed and updated.		SELECT			

Topic 6 - would you like to add any comments regarding your answers or identify alternative ideas?

Having a statewide plan for biodiversity is generally supported, however, it must be supported by significant resourcing for implementation.

Many plans get written and then sit on shelves collecting dust – a new State plan for biodiversity should only be prepared if there is a true commitment to resourcing the actions identified within it to reverse biodiversity decline.

Topic 7 - The benefits of information

Collecting and sharing information promotes transparency and collaboration between the community and government and leads to improved knowledge.

A robust information base is essential to underpin the effectiveness of a Biodiversity Act. Quality and easily accessible information will ensure decisions are based on evidence and that biodiversity-related policy is developed using the best available information.

A platform that enables effective sharing, includes agreed standards and is supported by robust governance frameworks for biodiversity information, is central to a modern Act.

Planning processes related to biodiversity could set goals and targets that are measurable, and these targets must be underpinned by effective monitoring programs. A new Act is an also opportunity to establish requirements for better biodiversity reporting.

Read more on page 11 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 7 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The new Act could provide for a framework to enable the sharing of biodiversity information with the community and across all levels of government to assist in decision-making.	SELECT				
The new Act could establish the Department for Environment and Water as the responsible government agency for the management of South Australia's biodiversity information.	SELECT				
The new Act could establish requirements for the submission of biodiversity data collected in South Australia to a central repository.	SELECT				
The new Act could direct the development of a policy that describes requirements for the collection, collation, interpretation and dissemination of biodiversity information.	SELECT				

Topic 7 - would you like to add any comments regarding your answers or identify alternative ideas?

Improving information collation, quality and accessibility is supported – a lack of comprehensive knowledge is a key issue for the protection and recovery of biodiversity.

A particular focus could be put on information collected for environmental impact assessment, since the results of surveys and other information collected for specific developments often remains unpublished in the 'grey literature' and is therefore largely inaccessible. Making this information readily available, in a standardized format, would be an improvement.

Topic 8 - Achieving 30 by 30

Australia is committed to the '30 by 30' target, which calls for protection of 30% of the Earth's lands, oceans, coastal areas, and inland waters – basically, 30% of the planet – by 2030.

Dedicated areas where species and ecosystems are protected from threats has long been used for nature conservation across the world. In South Australia, we have a network of protected areas under the National Reserve System. DEW is also responsible for protected areas on state government land, which can be formally established as National Parks, Marine Parks etc.

Outside of these formally protected areas, South Australia has other mechanisms in place to support conservation. This includes Native Vegetation Heritage Agreements, Indigenous Protected areas and Native Forest Reserves. The new Act could place emphasis on increasing the network of lands managed for conservation purposes. The protection and restoration of under-represented habitats and ecosystems and connectivity between these areas will assist in promoting conservation outcomes.

In South Australia, incentives are currently available to support landowners who have Heritage Agreements. The new Act could seek to improve, broaden and establish incentives to encourage non-government entities and private landowners to conserve and recover biodiversity.

Read more on page 12 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 8 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could consider broadening or creating schemes to further support the establishment and management of conservation areas on private and other land.	SELECT				
The Act could seek to enable additional incentives, including the provision of financial and technical assistance, to landholders who have entered into formal agreements for conservation.	SELECT				

Topic 8 - would you like to add any comments regarding your answers or identify alternative ideas?

Whilst an increase to the network of lands and waters managed for conservation purposes would be welcomed, a key issue for the new Act is making sure that our existing network of

protected areas is actually protected. There have been many examples in recent years of inappropriate developments proposed for, and undertaken in, South Australia's protected area network. Examples include building private, luxury accommodation inside Flinders Chase National Park, a proposal for a suite of soccer ovals within Belar National Park (since abandoned) and a current proposal to build a rocket launching facility within a private conservation area (a Heritage Agreement).

'Protected' must mean protected from all incompatible uses, including inappropriate development. This new Act must therefore address the weaknesses in our current legislative framework that allow for inappropriate developments in our protected areas. Particularly, it must address the issue that much of South Australia's protected area network being open to mining – even the relatively-recently declared Munga-Thirri - Simpson Desert National Park remains subject to numerous mining leases.

The new Act must also provide for adequate resources to manage threats to nature within our existing protected areas – such as invasive species and inappropriate fire regimes – which can cause biodiversity to decline even within areas set aside for nature conservation.

Assuming the system for looking after our existing protected areas is resolved, it is then appropriate for the new Act to support expanding lands and waters managed for conservation purposes, including exploring incentives to encourage non-government entities and private landowners to conserve and recover biodiversity.

In order to achieve 30 x 30, however, the Act must also require and guide large scale ecological restoration, including for habitats for which 30% no longer remains, such as in the wetland areas of South Australia's south-east.

The Act should also recognize the existence of private market mechanisms for biodiversity – including the recently created nature repair market through the *Nature Repair Market Act 2023* – and ensure that it provides a robust framework for regulating market mechanisms, as required.

Topic 9 – Biodiversity – a shared responsibility

The responsibility for looking after biodiversity should rest with all South Australians who interact with it.

A general duty of care is a legal obligation that is imposed on an individual so that a standard of reasonable care is met. In environmental law, the duty is owed to the environment itself instead of other people.

By establishing a general duty of care within the new Act, industry, community, government (both local and state) and individuals must care for biodiversity and do what is reasonable and practicable to prevent or minimise any harm to it.

For a duty of care to be effective it must be linked to some type of enforcement action. This might include the issuing of an order or a notice that requires a person or company to rectify damage or act to prevent further harm.

Voluntary standards and codes of practice would be a practical means of fulfilling the duty.

Read more on page 13 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 9 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could be clear about the respective roles and responsibilities of the community by introducing a 'biodiversity duty of care', which makes the protection of biodiversity a continuous legal and social responsibility.	SELECT				
If the inclusion of a 'biodiversity duty of care' in the Act is supported, it could be tied to relevant administrative powers and to civil penalties.	SELECT				
The Act could include provisions so that guidelines and regulations can be made to ensure South Australians understand and comply with a 'biodiversity duty of care' obligation.	SELECT				

Topic 9 - would you like to add any comments regarding your answers or identify alternative ideas?

The introduction of a 'biodiversity duty of care' is supported, however, further information about how it would operate in practice should be included in future consultation on the development of this Act. Consideration should also be given to not only requiring the prevention of harm to biodiversity (a negative framing) but also requiring the Minister to provide for a safe, livable, biodiverse environment for future generations (a positive framing) in any decision-making.

Topic 10 – Consequences of doing the wrong thing

There are inconsistencies in the enforcement provisions within the current framework of SA legislation. This includes duplication in offences and inconsistency in the types of sanctions and penalty ranges (fines etc).

SA's penalties could also be considered out of step. Other states, such as QLD and NSW, have much greater penalties for similar offences that harm biodiversity.

Instead of solely relying on criminal penalties brought by or on behalf of the state, the new Act could consider incorporating civil options. This can allow for more tailored responses to offences and encourage resolution which may be critical in achieving biodiversity restoration.

Extending the category of parties that may bring legal proceedings in biodiversity cases can also empower the community and environmental groups and can supplement government enforcement efforts.

Read more on page 14 of the [discussion paper](#) or visit our [FAQs](#) for more technical information.

Topic 10 - please indicate your support for the following:

	Definitely agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Definitely disagree
The Act could seek to align sanctions and penalties for similar offences, having consideration where possible of levels imposed through other jurisdictions.		SELECT			
The Act could enable suitable non-government parties to commence proceedings for offences under appropriate circumstances.	SELECT				
The Act could apply a contemporary risk based approach to the types of enforcement actions available such as compliance and remediation orders, civil remedies and other alternative penalties.		SELECT			

Topic 10 - would you like to add any comments regarding your answers or identify alternative ideas?

The role of civil society, including community groups and interested individuals, in enforcing environmental laws is critical, therefore the proposal for non-government parties to be able to

commence proceedings for offences committed under the new Act is strongly supported. Specifically, it is critical that third parties be able to pursue merits review of decisions made under the new Act.

Making the penalty regime more contemporary is supported, however, the penalties of other jurisdictions should only be one factor in considering appropriate consequences for transgressions of the new Act.

Whilst a wider range of penalty options is broadly supported, the importance of deterrence and the risk of misuse of such avenues needs to be carefully considered: a situation where incurring civil liability for any transgressions becomes a more attractive option than following the stringent provisions of the new Act must be avoided.

If you would like to receive updates on the Biodiversity Act from the Department for Environment and Water, including additional opportunities to have your say, please provide your email address: [Provide your email, if you so wish to](#)