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Environment Institute
of Australia and
New Zealand Inc.

18 February 2025

EIANZ-SA Division submission to South Australia's Draft Biodiversity Bill

Dear Brett,

Thank you for the opportunity to provide feedback on the *Draft Biodiversity Bill*.

The SA Division of the Environment Institute of Australia and New Zealand Inc. (EIANZ) has completed the Your Say survey. A copy of the response is also provided here.

The Environment Institute Australia and New Zealand (EIANZ) South Australian (SA) Division is pleased to provide feedback on the discussion paper on the draft Biodiversity Bill. The Institute is the leading professional body in Australia and New Zealand for environmental practitioners and promotes independent and interdisciplinary discourse on environmental issues. On all issues and all projects, the Institute advocates good practice environmental management delivered by competent and ethical environmental practitioners.

EIANZ-SA recognises the significant work needed to draft, consult, and review the bill and the various frameworks and policies that will follow. Biodiversity loss is a critical issue facing South Australia and it must be urgently addressed. Evidence suggests that pressures on biodiversity are increasing despite the investments in management. The 2020 Samuel Review of the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) found that significant reform of national environment legislation is required to arrest the damage being done. This report indicates that SA if anything, is lagging in biodiversity performance, hence it is important that this new state legislation clearly specifies the biodiversity priority and objectives going forward. The proposed Act and its subsequent implementation resourcing clearly needs to have standing with regard to all other development legislation. We need to shift focus from minimum impact development to nature-positive development. The proposed Act can set a new standard, and then a great deal of ingenuity will be needed to deliver. The EIANZ has a clear interest in environment protection and sustainable development and to applying objective professional standards for the conservation and sustainable use of biodiversity.

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Survey Response (submitted via YourSay 18th February 2025)

Q8. Do you support the definition of 'plant' to include fungi and algae to allow for their protection under the Act?

Disagree

The Biodiversity Act will become the primary piece of legislation for the protection of ecological values in South Australia, and will be used by environmental agencies, regulators and technical experts for listing of species, and the assessment of potential impacts from proposed development. There is a strong feeling that the Act should remain taxonomically correct, and that whilst we support the protection of fungi and algae as important components of the ecosystem, that if fungi and algae are to be protected by the Act, the Act should specifically state their protection as fungi and algae, rather than incorrectly group them in as 'plants'.

Q9. Do you support adopting the definition for 'native plant' from the *National Parks and Wildlife Act 1972*, meaning any plant indigenous to Australia can be protected?

Neither agree or disagree

The definition of 'native plant' in relation to protection, needs further work. We agree that non-indigenous plants in many cases should be protected in SA. However, in some cases, 'native plants' non-indigenous to SA become alien plants, negatively impacting our environment. Will the regulations list such species, i.e. 'a plant of a class excluded from the ambit of this definition by the regulations, or will it be relying on the Landscape Act? Would rather see the definition improved.

Q11. Do you support the proposed objects of the Biodiversity Act?

Agree

Whilst agreeing with the objects of the Act, significant investment is clearly needed to achieve progress towards any of these objects. Cumulative effects are only mentioned once in the explanatory notes, yet this should be a key consideration and explicitly stipulated.

Q12. Do you support the proposed guiding principles of the Biodiversity Act?

Neither agree or disagree

Q13. Do you support what constitutes 'harm' and what is considered 'reasonable measures' for the purposes of the general biodiversity duty?

Agree

Q15. Do you support the governance framework for the Act, including the roles and reporting structure of the committees proposed to be established?

Agree

Agree with the functions of the Biodiversity Council, but would recommend an alternative name to avoid confusion with the advocacy/political NGO Biodiversity Council.

Q16. Do you support committees being appointed based on their skills and expertise?

Strongly agree

Q17. Do you support the establishment of a Biodiversity Administration Fund as a means of providing transparency on which funds can be used for the administration of the Act?

Strongly agree

Q19. Do you support the 'regulated activities' and 'unregulated activities' approach to native plants?

Agree

Appropriate middle ground (but not perfect).

Q20. Do you support the development of a guideline which provides proponents with advice on how to apply the mitigation hierarchy?

Strongly agree

We would like to see more information on how this would work. Presumably, the guideline becomes what you have to adhere to, and we would like to see worked examples included. Such guidelines are typically subjective and are hard to know when you hit the mark. The guidelines would have to be very informative.

Regarding the mitigation hierarchy guidance:

- The mitigation hierarchy is a very important process and represents a simple tool for ensuring proposed developments have the smallest practicable impacts, whilst still allowing developments to proceed.
- Guidelines that provide advice on how to apply the mitigation hierarchy are therefore considered important, whilst acknowledging that guidelines have a tendency to become considered as 'firm requirements', so wording would need to be carefully considered to distinguish between guidance and firm requirements.
- Currently, state listed threatened flora and fauna are provided very little in terms of real protection under the NPW Act. When developments are proposed, State-listed species currently only impact the SEB offset requirement (marginally), and this impact of threatened species 'caps out' with only 2 threatened species (EPBC) in a proposed development study area, so often the presence of State Listed species has no influence at all on even the SEB requirements.
- A guideline for how developers should apply the mitigation hierarchy, which includes direction on how to address State listed species (through desktop or field assessment), would provide consultants and developers with an agreed-upon approach to assessment requirements, which is not currently available.
- Guidelines need to be scalable – i.e. full, in field, fauna trapping surveys (e.g. vertebrate baseline surveys) should not be required for smaller potential impacts. The existing native vegetation clearance risk categories (1-4) may be a good way to approach this.

Q21. Do you support the new measure aimed at protecting planted native plants more than 20 years old, excluding those in people's gardens or commercial forests?

Agree

Q22. Do you support the ability for the NPCAC to request further information and allow clearance applications to be resubmitted in favour of a more formal review process?

Agree

Q24. Do you support the 'regulated activities' and 'unregulated activities' approach to protecting and managing native wildlife?

Agree

Q25. Do you support introducing targeted controls for managing 'impact causing' species in favour of an 'unprotected' list of species?

Agree

Q26. Do you support the approach of determining trafficable quantities of species with higher penalties?

Agree

Q28. Do you support the concept of listing threatened ecological communities (similar to the process used for threatened species)?

Strongly agree

Q29. Do you support enabling a head power to list other ecological entities in the future, based on criteria to be prescribed in regulation?

Agree

Q30. Do you support relying on the existing offences for plants and animals, instead of creating a new offence for damaging threatened ecological communities or other listed ecological entities?

Strongly disagree

The value of ecological communities is the combined diversity they support, so retaining existing offences for damage to individual plant/animal species within a TEC may not result in any penalty or an adequate penalty (i.e. if those individual species, as components of the TEC, are not listed. TEC's should be recognised, and an appropriate penalty applied for any unapproved damage. What data is being included – process for being declared over time? What processes are in place for declaration after work has already been approved?

Q31. Do you support the ability to apply a 'provisional listing' of species and ecological communities where appropriate?

Agree

Q32. Do you support the ability to declare 'critical habitat' to provide increased protections for threatened species, threatened ecological communities, and other listed ecological entities?

Strongly agree

Q33. Do you support the ability to develop action plans for the protection and recovery of a threatened species, threatened ecological community, or listed ecological entity?

Strongly agree

Action plans are supported but will need to be kept relevant over time, and funding available for the implementation of actions within the plan. Will there be guidelines for when they should be developed, defined review periods, etc? Action Plans/Recovery Plans for threatened species and TECs would be a good location for stated areas of critical habitat – in a similar way that the more recent “Conservation Advice” documents for EPBC-listed species often include descriptions of critical habitat. This aids greatly with avoiding and minimising impacts to threatened species.

Q35. Do you support renaming Heritage Agreements to 'Biodiversity Agreements' to better reflect their role?

Agree

Renaming some Heritage Agreement Areas “Biodiversity Agreements” is very much supported to better identify the objective of such areas as they are listed and into the future.

Q36. Do you support the introduction of new types of protected areas for private land, including the proposed Conservation Agreements?

Agree

Other considerations include providing clarity on the time limits of such agreements, would time limits on agreements be aligned with the timeframe of the impact? Would relinquishment of an Agreement only occur once the restoration of the impact has been demonstrated to have been achieved? Or once listed, can the future land use be changed at a later date? Will the Biodiversity Agreements be listed on the Certificates of Title?

Q38. Do you support provisions for enforceable undertakings as a method to manage breaches of the Act?

Strongly agree

Q39. Do you support the proposal to introduce wider standing for people to make an application to the court for civil enforcement of a breach of the Act?

Strongly agree

Q40. Do you support the concept of 'no development' orders?

Strongly agree

Q41. Do you support the option of civil penalties for breaches of the Act?

Strongly agree

Q42. Do you support the penalties for criminal offences proposed under the Act?

Strongly agree

Penalties are not much use without enforcement options available. This will require resourcing to be effective. Current penalties are not considered enough of a deterrent, so a review of penalties as part of the Act is supported. Having an enforcement unit that is self-funded through permits and fines, etc (similar to the EPA) should be considered to reduce the possibility of budgetary constraints.

Q44. Do you support the permit provisions proposed in the Biodiversity Act?

Agree

Proposed amendments to wildlife permitting under the Act appear to be beneficial in terms of simplifying the interpretation for all. There should be a statutory requirement to use money from permits to facilitate the workings of the Act.

Q46. Do you support the provisions that set the scope of the State Biodiversity Plan?

Agree

Q47. Do you support the recognition of culturally significant biodiversity entities?

Strongly agree

Q48. Do you support the requirement for decision makers under the Act to take the State Biodiversity Plan into account?

Strongly agree

Q49. Do you support the proposal to establish a Biodiversity Register?

Strongly agree

Q50. Do you support the framework that the Bill proposes for the regular review of the Act?

Agree

Q52. Do you support moving the clearance exclusions into a Schedule to the Act so they are in one place?

Agree

Q53. Do you agree with the changes to the unregulated activities in Schedule 2?

Agree

Q54. Do you support updating the existing 'principles of native vegetation clearance' to 'principles of preservation of native plants' to align with provisions in the Biodiversity Act related to threatened species, threatened ecological communities and listed ecological entities?

Agree

We support changing the principles of native vegetation clearance language to better align with the objectives of the Act – to preserve biodiversity. We support the overall intent to focus on positive outcomes – biodiversity protection, enhancement and restoration.

Additional comments and areas where further information is required:

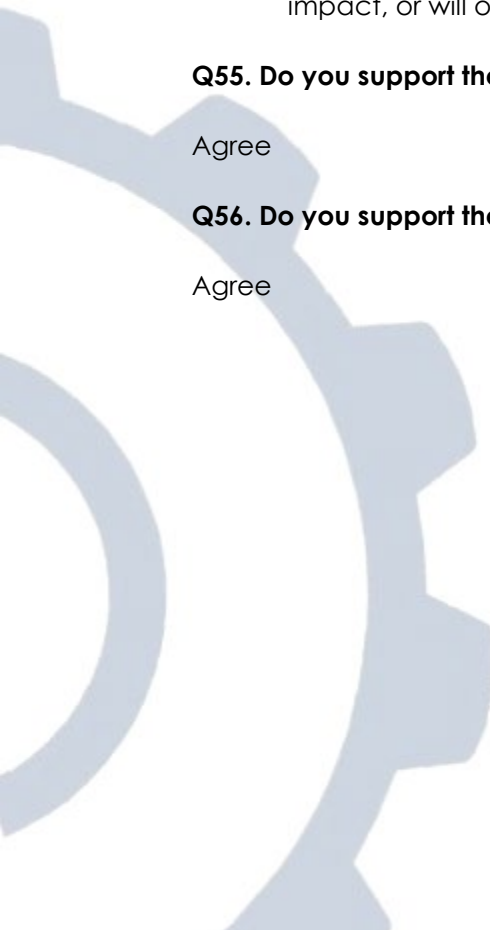
- Common assessment method – EPBC status/implications for state species assessment requirements
- Seemingly no increased protection for State-listed species in the Bill
- Max limit thresholds for SEB's (i.e. multiplication for EPBC listed v's State listed)
- Spending of the Fund – including timeliness and availability of offset land Proportion to the Admin fund versus actual fund?
- Admin cost to the Admin Fund
- Would like to see information on how this legislation interacts with other legislation – i.e. will the Minister for Environment have agency to refuse applications with unacceptable impact, or will other legislation override such decisions?

Q55. Do you support the amendments proposed to the *National Parks and Wildlife Act 1972*?

Agree

Q56. Do you support the amendments proposed to other legislation?

Agree



The following EIANZ documents are of relevance:

- [EIANZ Position Statement - Biodiversity Policy and Action](#)
- [EIANZ Position Statement - Biodiversity Offsets](#)
- [EIANZ Guideline for Impact Assessment \(IA\)](#)
- [EIANZ Position Statement on Indigenous Peoples' Knowledge and Engagement 2022](#)

In addition, EIANZ endorses the [IAIA International Best Practice Principles: Biodiversity and Ecosystem Services in Impact Assessment](#)

We thank the Department of Water for the opportunity to provide comment on the draft Bill, and look forward to hearing about the next steps and further opportunities for consultation.



Sally O'Neill
President, on behalf of the EIANZ SA Division

