

Draft Biodiversity Bill

Community consultation report

March 2025



Acknowledgement of Country

The South Australian Government respects the First Peoples of South Australia and recognises the cultural authority of all Traditional Owners.

We acknowledge that caring for Country is a cultural obligation and that First Nations peoples have been stewards of the environment for many generations.

We acknowledge the enduring impact of colonisation on First Nations peoples, families, communities, cultures, knowledges and languages, and the impact on the environment.

We recognise the need for more respectful engagement with First Nations peoples, the need to empower First Nations peoples to continue to work with the government in caring for Country, and the need to work together for better outcomes for Country and people.



A close-up photograph of a lioness resting on the ground in a dry, brushy environment. The lioness is partially obscured by dry grass and branches, with its head and front legs visible. The ground is reddish-brown soil.

A close-up photograph of a lioness resting on the ground in a dry, brushy environment. The lioness is partially obscured by dry grass and branches, with its head and front legs visible. The ground is reddish-brown soil.



Executive Summary

The South Australian Government has committed to introducing a new Biodiversity Act to better protect, conserve and restore our state’s unique biodiversity.

Biodiversity is the incredible variety of life on our planet, encompassing different species of plants, animals, microorganisms, and the ecosystems they form.

The Biodiversity Bill proposes new laws that will govern biodiversity in the state and will apply to all South Australians. The consultation process has contributed to providing a Bill that modernises the legal framework for biodiversity and ensures that South Australia is consistent with other leading states and jurisdictions.

A draft Biodiversity Bill was subsequently made available for consultation from 21 January to 18 February 2025.

This consultation focussed on a YourSAy survey to measure the extent to which people supported the different provisions of the Bill, with options available for stakeholders to provide detailed written submissions separately.

A total of 1249 submissions were received. This included 700 completed surveys through YourSAy, 395 campaign emails and 154 written submissions from individuals, peak bodies, groups and other organisations. Of the 154 written submissions received by the Department, 13 were submitted after the 18 February closing date. The written submissions that we have been granted permission to share are linked in Appendix 1.

Key themes from the consultation

You strongly supported:

- inclusion of provisions to protect Critical Habitat
- protecting fungi and algae
- the Objects and Principles of the Act
- inclusion of the Mitigation Hierarchy
- protecting threatened ecological communities
- renaming Heritage Agreements to “Biodiversity Agreements”
- expanding the range of penalties
- including No Development orders
- protecting planted native plants
- including third party standings in the Bill

You expressed concerns about:

- native plant definition being broad and encompassing all Australian natives.
- appointment and nomination processes relating to committees
- offsetting provisions
- time-limited Conservation Agreements
- exclusions to regulated activities allowing the clearance of native plants
- interaction with the *Planning, Development and Infrastructure Act 2016*
- the primacy of the Act



© Martin Stokes

The consultation feedback also encouraged further consideration be given to areas including:

- definition of fungi as 'plants' in the Bill.
- exemptions in relation to planted vegetation.
- providing clarity around the General Duty
- including the Precautionary Principle
- composition and role of committees
- penalty limits
- offences for damaging threatened ecological communities
- decision-making powers in relation to Critical Habitat
- consolidating Biodiversity and Conservation Agreements
- broadening third party standings
- power of the State Biodiversity Plan
- appeals for decisions made under the Act

Some of the feedback received was out of scope for the Act itself but has been captured for future consideration as appropriate. This includes ideas and opportunities that will be considered during the development of regulations and policy, or when designing programs to support effective implementation of the Act (for example, education and awareness raising programs).

In addition to public consultation on the draft Bill, the Department for Environment and Water undertook 2 workshops with interested First Nations people and allies in February 2025. A separate engagement report has been prepared and provided to participants summarising the key discussion points from the workshops.

All feedback received will be used to guide the final development of the Bill, prior to its consideration by Government for introduction to the South Australian Parliament.

This report provides a summary of what we heard as part of this consultation. Select quotes have been included to reflect the range of sentiment expressed. It does not include any commentary on the government's response to the feedback and/or how it will be incorporated or reflected in the Bill.

Introduction

Background

The initial stages of the Biodiversity Act's development commenced early in 2023 and included consultation with key stakeholders and experts to develop the legislation's underlying principles. This was followed by public consultation from December 2023 to February 2024 via the South Australian Government's YourSAY website to test a range of opportunities and determine the key priorities that the Act could address. In addition, the Department for Environment and Water undertook

direct engagement with First Nations peak bodies and groups, with representatives from across government and with other key stakeholders and interest groups throughout 2023 to 2025, which formed a critical component of the community engagement process. A draft Bill was then prepared based on these priorities and in January 2025 the community, interested organisations and stakeholders were invited to share their views on each Part of the Bill.

How we engaged

A detailed Explanatory Guide and Frequently Asked Questions document was prepared to support people's understanding of the draft Bill, which was also made available on the YourSAY website to download.

A survey on the YourSAY website, was the primary mechanism to gather feedback on the draft Bill. The survey included 39 questions related to specific provisions that have been proposed in the Bill. Where there was strong support for provisions provided via the first YourSAY consultation in 2024, these were identified in the Explanatory Guide.

Participants were asked to rate each proposal using a Likert scale, ranging from 'strongly disagree' to 'strongly agree' and were also able to add comments or further feedback about each Part of the Bill. They were able to complete the survey in full or skip ratings or questions they did not wish to comment on. Participants were also able to submit written feedback separately via e-mail or post.

The Department for Environment and Water promoted the consultation through multiple channels, including social media, traditional media via a media release and targeted e-mails. The consultation was further promoted by Tim Jarvis AM, who partnered with the department to increase awareness.

The YourSAY consultation was open from Tuesday 21 January to Tuesday 18 February 2025. There were 24 extensions granted where final submissions could be submitted by 28 February 2025, on the condition that draft submissions were received by the

department on the advertised closing date of 18 February. This was to enable organisations and groups needing additional time to facilitate their internal review and formal approval processes. However, an additional 13 submissions were sent via email after the closing date and were accepted on a discretionary basis.

A total of 1249 submissions were received. This included 700 surveys completed through YourSAY, 395 campaign emails, 52 written submissions from individuals and 102 written submissions from peak bodies, groups and other organisations. To review written submissions sent to the Department for Environment and Water during the YourSAY consultation period, please refer to Appendix 1.

The department met with a range of stakeholders during the development of the Bill and the YourSAY consultation period. Meetings were sought directly with representatives from key sectors and other government agencies to discuss the proposed provisions. Meetings were also held with a range of interested parties who were identified during the engagement planning process or who requested direct engagement with the department. A list of these stakeholders is provided at Appendix 2.





"The truth is: the natural world is changing. And we are totally dependent on that world. It provides our food, water and air. It is the most precious thing we have and we need to defend it."

We have to do everything we can to protect and save planet Earth, our home.

It's now or never!
It's time to take action!
The world is in our hands!

"This is the story of our changing planet, and what can we do to help it thrive....."

PLEASE SAVE OUR HOME!

By Emmy Morgan
Age: 11



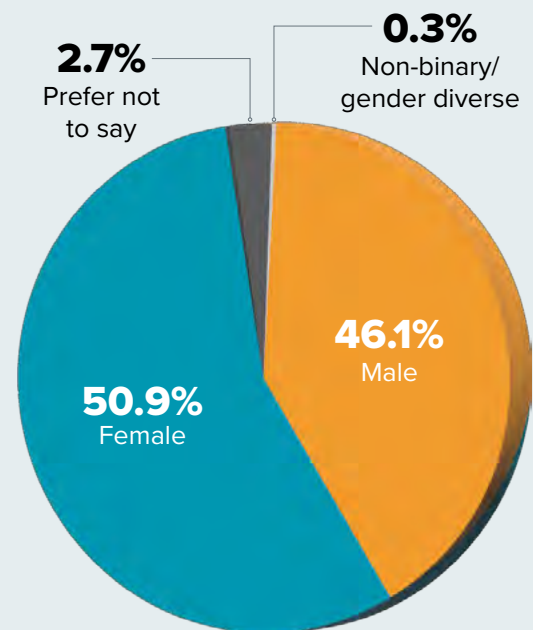


Who we heard from

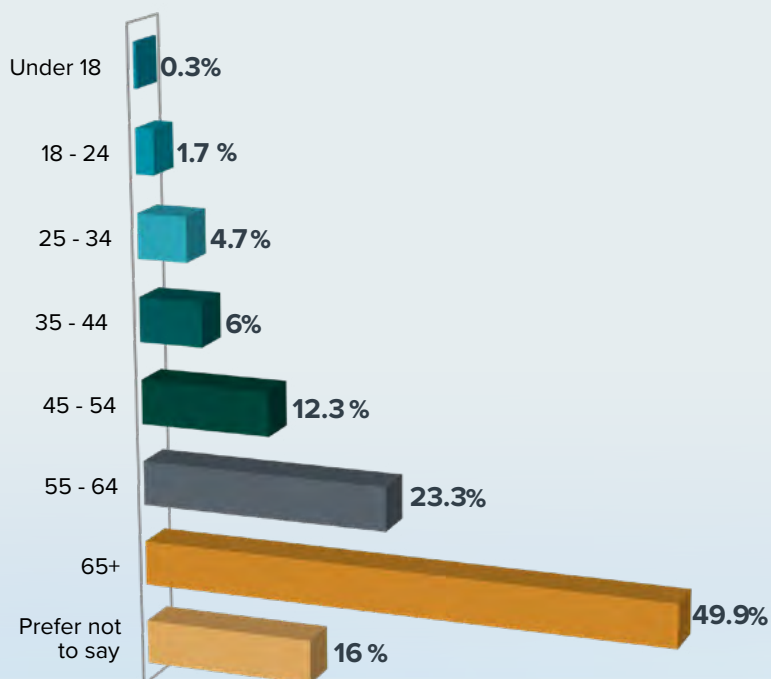
Submissions were made from a wide spectrum of the community.

Please note: this data is representative of those who submitted a response through the YourSAY platform and does not include those who sent feedback via direct email or post.

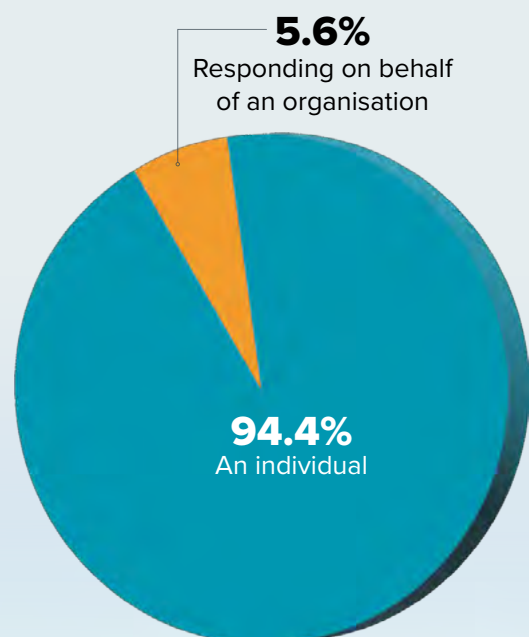
Respondents gender



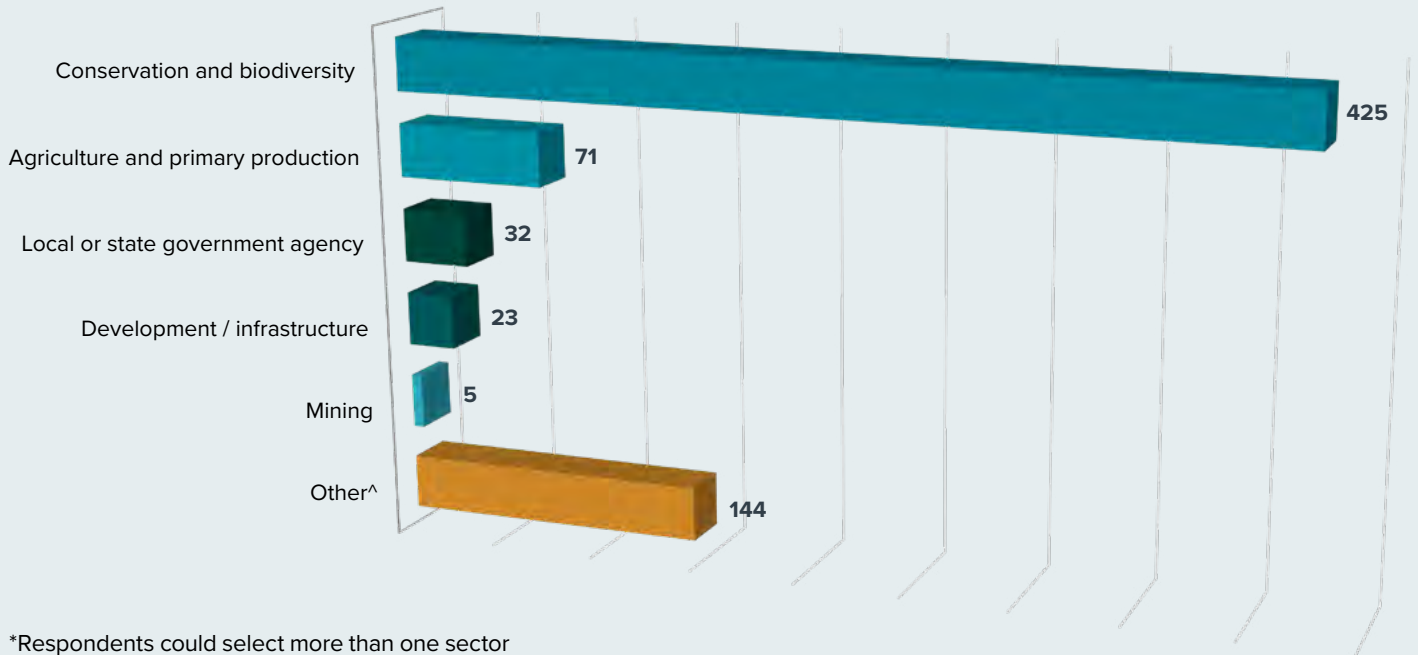
Respondents age



Responses from individuals vs organisations



Respondents' sector*



*Respondents could select more than one sector

^Other sectors identified by survey participants included: academia/universities, human health, animal care/welfare, veterinary medicine, horticulture, education, tourism, environmental professionals, scientists, emergency services, private land owners/managers and interested community members.

Survey submissions identified as being made on behalf of an organisation:

Please note some of these organisations also submitted detailed written responses via email.

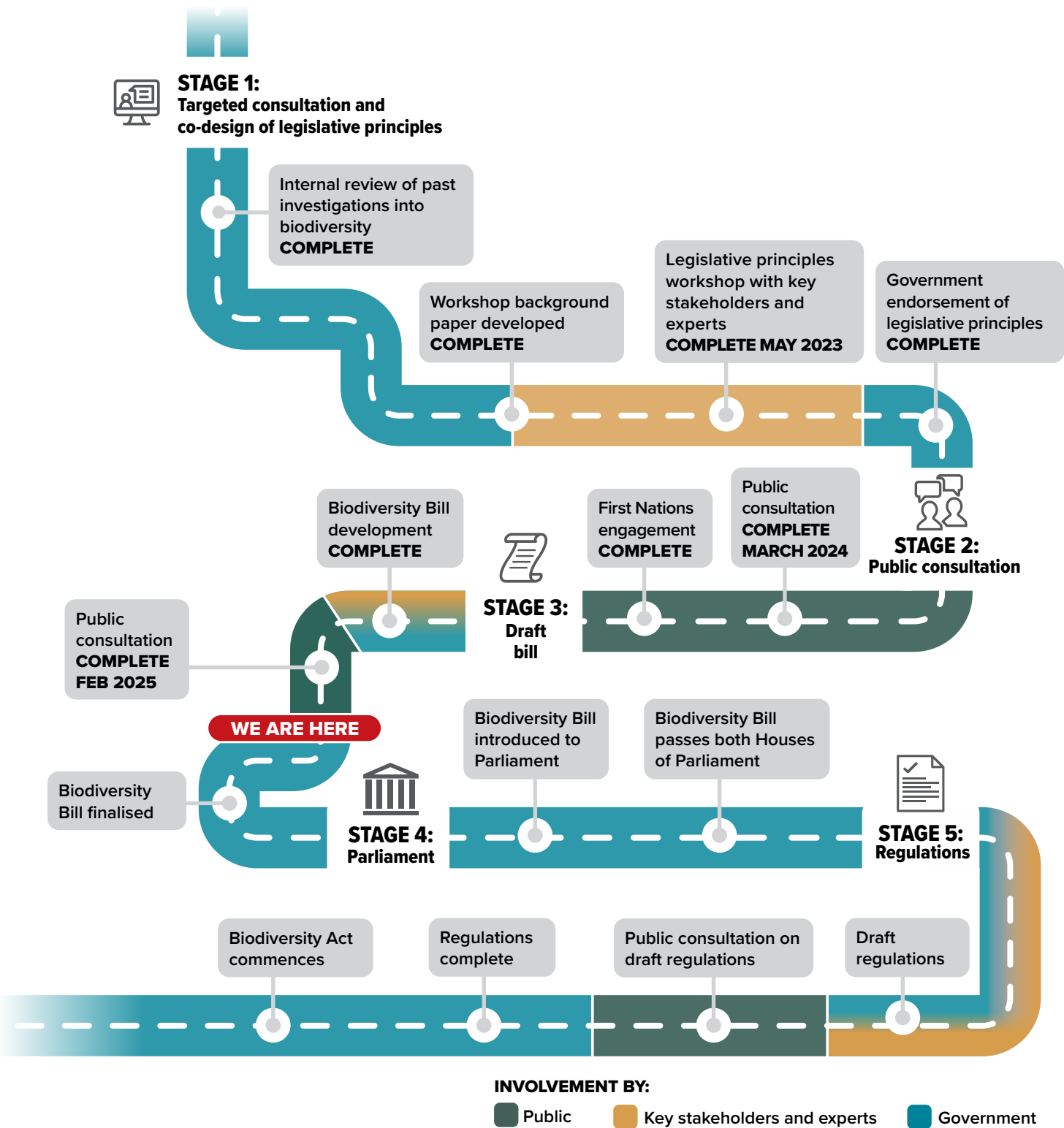
- A Rocha Australia
- Biodiversity Victor Harbor
- Birds SA
- Cardiness Pty Ltd
- City of Victor Harbor
- Friends of Aldinga Scrub
- Healthy Rivers Lower Murray
- Heritage SA
- Lower Eyre Coastcare Association
- Marion Living Smarties
- Port Adelaide Residents Environment Protection Group
- Premier's Climate Change Council
- Rewild Creek
- River, Lakes and Coorong Action Group Inc
- Scientific Expedition Group Inc
- South-east Red-tailed Black-Cockatoo Recovery Team
- Timberlands Pacific Pty Ltd
- Wombats SA/Natural History Society of SA Inc
- Worlds End Conservation Pty Ltd

Next steps

The feedback provided through the consultation has identified modifications that would improve the Bill. The Department for Environment and Water will coordinate the Bill amendments process. Parliamentary debate may result in further amendments. If passed by both Houses of Parliament, the Bill will be assented to by the Governor and become part of South Australian law.

Should the Bill be supported, future consultation is expected to take place on the Regulations for the Act.

The roadmap diagram below details the broad stages of development of the Biodiversity Act and highlights the opportunities for input by different parties.





Engagement outcomes

Part 1 – Preliminary

This part of the Bill contains elements common to most legislation, including a short title, commencement provision, an interpretation section, and details on interaction with other Acts. It also addresses the application and operation of the Bill, including where it applies.

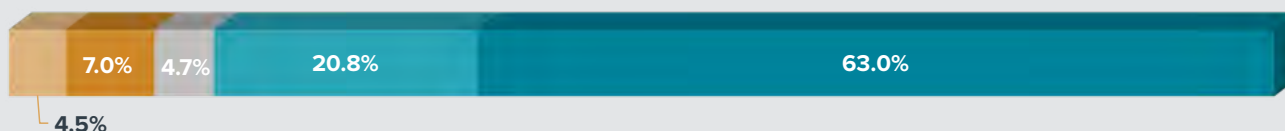
We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

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



2. 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?



Key areas of feedback:

- Definition of fungi as 'plants' in the Bill
- Native plant definition being broad and encompassing all Australian natives
- Exemption for commercial forestry and domestic gardens does not cover all potential situations in relation to planted vegetation

Comments from survey participants

“Although in the strictest sense, fungi and algae are not ‘plants’, they are still vital parts of an ecosystem and should be awarded the same protection as true plants are. This will help to ensure that a whole ecosystem can be protected, not just the most noticeable parts of it - given how previously fungi and algae were ignored.”

“Fungi are not plants and should be referred to separately in the Act.”

“Climate change is here and we need to be adaptable and innovative in how we can best respond to what our natural systems need to protect and enhance biodiversity.”

“While I agree that native plant representing all Australian natives is fine, I believe there should be a way to reflect priority for SA endemics, whether this be by listing or an additional definition. This would encourage further protections and prioritisations in law for SA endemics.”

“I have a serious issue with what constitutes a native plant, I don’t approve the use of the NPW definition that all Australian native plants should be given the same status. There are plants that have been introduced that are becoming ‘weed’ like.”

“State borders have little relation to the distribution of flora and fauna. It is therefore reasonable to consider all species native to Australia as ‘native’.”

“I am not sure that the described exception for commercial forestry and gardens is enough to cover all potential complications.”



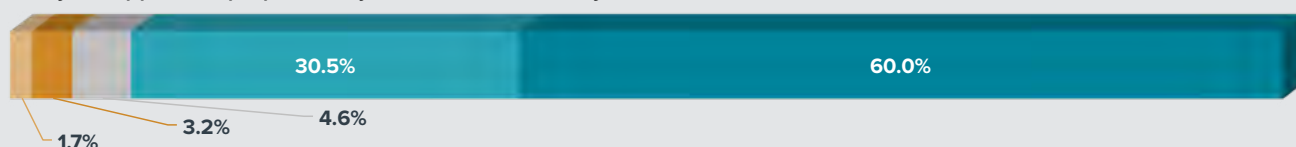
Part 2 - Objects, principles and general duty

This part of the Bill includes the objects and principles of the Act, the general biodiversity duty and guidance for how the Act should be administered.

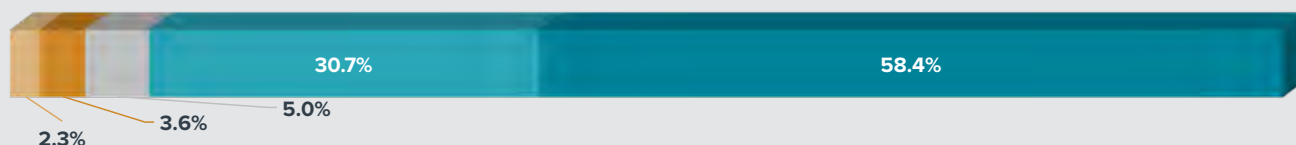
We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

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



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



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



Key areas of feedback:

- The Precautionary Principle should be considered as a 5th principle
- More clarity required regarding reasonable measures in relation to the general duty

Comments from survey participants

“Would like to see among objects the establishment and reporting of biodiversity targets.”

“The distinction between ‘significant harm’ and ‘trivial harm’ and focus on significant harm only, is not founded in principles of environmental management. Environmental damage is often the result of lots of ‘trivial’ losses (i.e. death by 1000 cuts). This approach is not conducive to preserving, enhancing biodiversity. Smaller acts of environmental harm need to be captured and dealt with in order to prevent loss of biodiversity.”

“Reasonable measures gives a way out. Should be stricter than this.”

“Reasonable measures is very broad and I feel it may cause confusion and make it harder to enforce/prosecute”

“The mitigation hierarchy is critical. Off-setting is currently used far too frequently. Off-setting is a desperate, last-resort measure which almost never works, so it should only be used in the most extreme cases where no other option is available. The current system is broken, and the mitigation hierarchy needs to be much more strictly adhered to by all parties.”

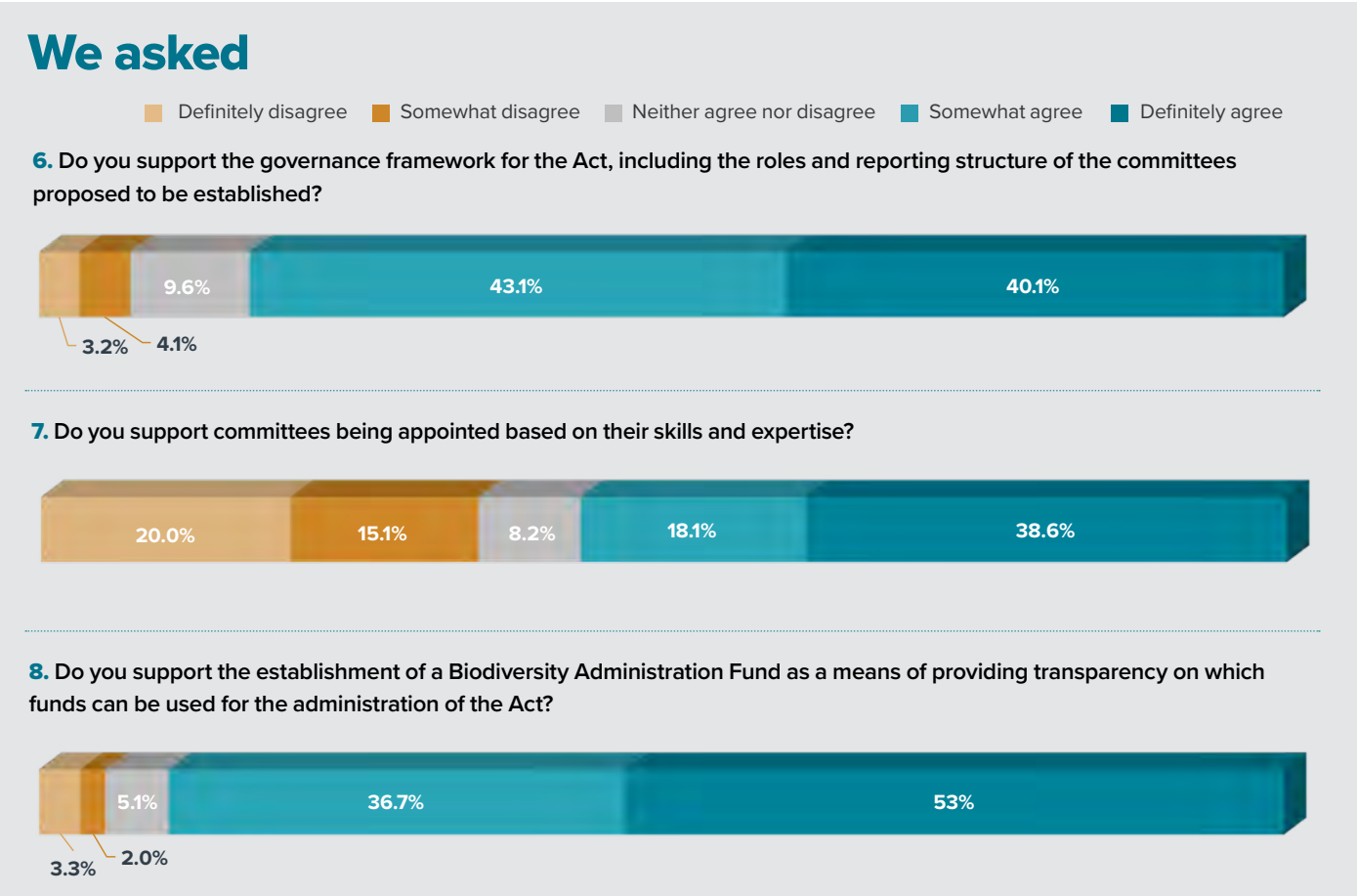
“The Bill requires more pro-active mechanisms to mainstream consideration of biodiversity and more nature positive decisions, including a biodiversity duty for public authorities.”

“Cumulative effects are only mentioned once in the explanatory notes, yet this should be a key consideration and explicitly stipulated.”



Part 3 – Administration

This part of the Bill includes information on how the responsible minister can delegate the powers provided by the Act. It also sets out governance arrangements for the successful administration of the Act, including by establishing statutory bodies.



Key areas of feedback

- The selection and appointment process of members to committees, including requirements for consultation with peak bodies and other sectors
- The role of the Minister in committees and Funds
- The inclusion of specific subject matter experts in committees
- Minimum and maximum numbers of members in committees
- Role of the committees in wildlife trafficking
- Role of the committees in Funds

Comments from survey participants

“ I think that the composition of the Biodiversity Council as Set out in sections 15 to 26 gives too much leeway to a government of the day to appoint to the Council persons in a majority on the Council who have special interests which a contrary to the Objects of the Act.”

“ There should be provision for nominees to come from relevant representative bodies such as Conservation SA to enable links to a broader range of expertise.”

“ The Voice must be a part of this with their unique knowledge and skills - there must be Aboriginal representation and proper consultation, specific to each area.”

“ The committee should also involve people who are actually doing the field work and actually see what is happening.”

“ Any participant selection should ensure that there is balanced view-points.”

“ The transparency afforded by the Bio Admin Fund will help to encourage public faith and trust in the Act.”

“ A greater inclusion of scientists in the committee (three rather than one) allow for better scientific advice while still providing an egalitarian platform for industry & commercial interests to discuss their concerns.”



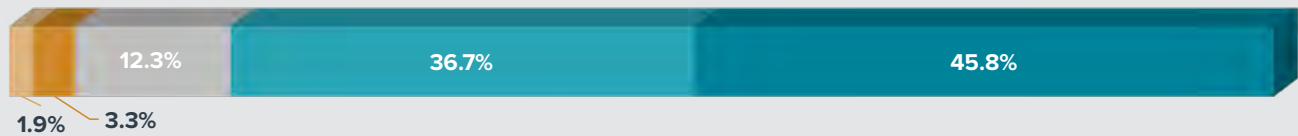
Part 4 – Native plants

The Biodiversity Bill proposes some changes to the management of native plants from the current Native Vegetation Act 1991 and National Parks and Wildlife Act 1972. The Bill also incorporates several of the changes proposed in the Native Vegetation (Miscellaneous) Amendment Bill 2024. The Bill seeks to streamline and modernise the regulatory settings for plants by introducing the concept of ‘regulated activities’, which require consent to undertake, and ‘unregulated activities’, which do not require consent.

We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

9. Do you support the ‘regulated activities’ and ‘unregulated activities’ approach to native plants?



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



11. 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?



12. 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?



Key areas of feedback:

- The value of large hollow bearing dead trees
- Approach to the regulation of clearance on grazing land
- Protection of planted native plants that are 20 years old and over and exclusions
- Alignment with other legislation
- Application of the mitigation hierarchy and the development of related guidelines
- Compliance and resourcing relating to native vegetation clearance
- Offsetting provisions

Comments from survey participants

“ I think that protecting established planted natives is a very good idea, as they still form part of the ecosystems that develop - even if artificial in their inception. Any measure which aims to slow short-sighted clearances of native plants, even planted ones, is of benefit to the environment more generally.”

“ I think 10 year old native planted trees, shrubs (re-vegetation) should be protected. Commercial plantations should be allowed to be harvested and trees, shrubs within 20m of a house / building, but beyond that given the same protection as self recruited native veg. Also dead standing native trees should be protected and fallen native trees with hollows recognized as habitat and given an off-set score, if going to be cleared. They are important for biodiversity.”

“ The policy of not protecting native plantings on private land less than 20 years old incentivizes the deliberate removal of biodiversity before it reaches protected status, noting that a significant proportion of plant biodiversity is on private land (or in ‘gardens’).”

“ It is disappointing that the value of large dead trees has still not been recognised. Current legislation only protects dead hollow-bearing trees in locations known to support specific EPBC-listed species.”

“ I am disappointed that all the current exemptions from native vegetation clearance controls have been transferred across from the existing Native Vegetation Act, since the evidence suggests we are still losing native vegetation (i.e. biodiverse habitat) at an alarming rate in SA.”



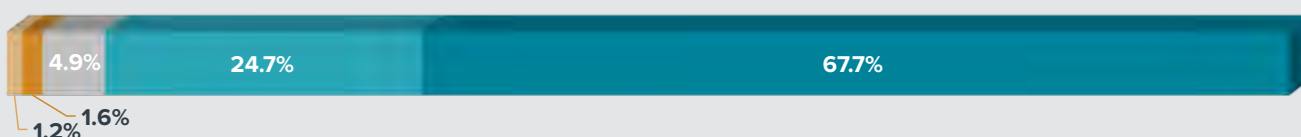
Part 5 – Protected animals

The Biodiversity Bill seeks to streamline and modernise the regulatory settings for native animals by introducing the concept of ‘regulated activities’, which require a permit, and ‘unregulated activities’, which would not require a permit.

We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

13. Do you support the ‘regulated activities’ and ‘unregulated activities’ approach to protecting and managing native wildlife?



14. Do you support introducing targeted controls for managing impact causing species in favour of an ‘unprotected’ list of species?



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



Key areas of feedback:

- Control and management of impact-causing native species
- Determination of trafficable quantities
- Penalty limits
- Requirements for permits
- Approach to wildlife trafficking
- Process to declare the taking of protected animals

Comments from survey participants

“I’d like to see any declaration to kill native animals to be made only under independent advice from the relevant committee to avoid politicisation. The reasons for such a declaration must also be made clear - whether they are ecological or economic.”

“Too often people are allowed to get away with actions that still cause harm in the long term. A short term fine does not resolve long term damage”

“I believe though that the new punishments for wildlife crime and ecological tampering are a good next step in inciting more hesitance to commit such crimes and to act as strong deterrent. We’ve really needed this for a long time.”

“The term “Impact causing species” is too general and could lead to moves towards controlling/ killing of various wildlife species that clash with the interest of a property owner, developer etc”

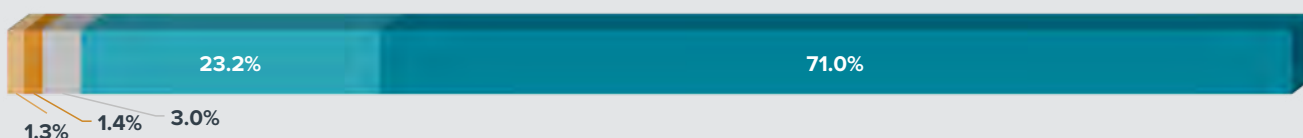
Part 6 – Threatened species, threatened ecological communities and listed ecological entities

Part 6 of the Bill establishes an assessment and listing process – reflecting the nationally adopted Common Assessment Method, provides new mechanisms for protecting and recovering threatened species, threatened ecological communities and other ecological entities, and enables the Minister to declare key threatening processes.

We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

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



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



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



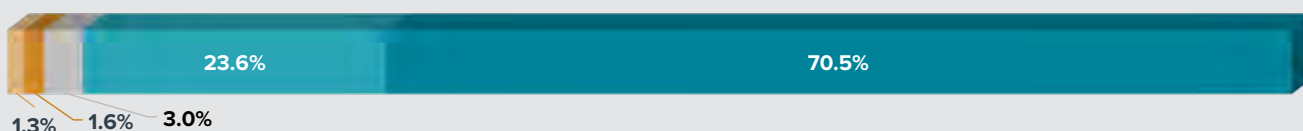
19. Do you support the ability to apply a 'provisional listing' of species and ecological communities where appropriate?



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



21. 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?



Key areas of feedback:

- Offences for damaging threatened ecological communities
- Eligibility for provisional listing
- Requirements for Action Plans
- Process requirements for listing threatened species and communities
- Decision-making powers in relation to Critical Habitat

Comments from survey participants

“Invertebrates never used to be protected by law - this is a very good change if they now are.”

“Probably should be stronger wording an action plan must be prepared for species/ entities/ ecological communities that are under a certain level of threat.”

“Strong support for critical habitat declaration. Should be a requirement to have an action plan and biodiversity policy.”

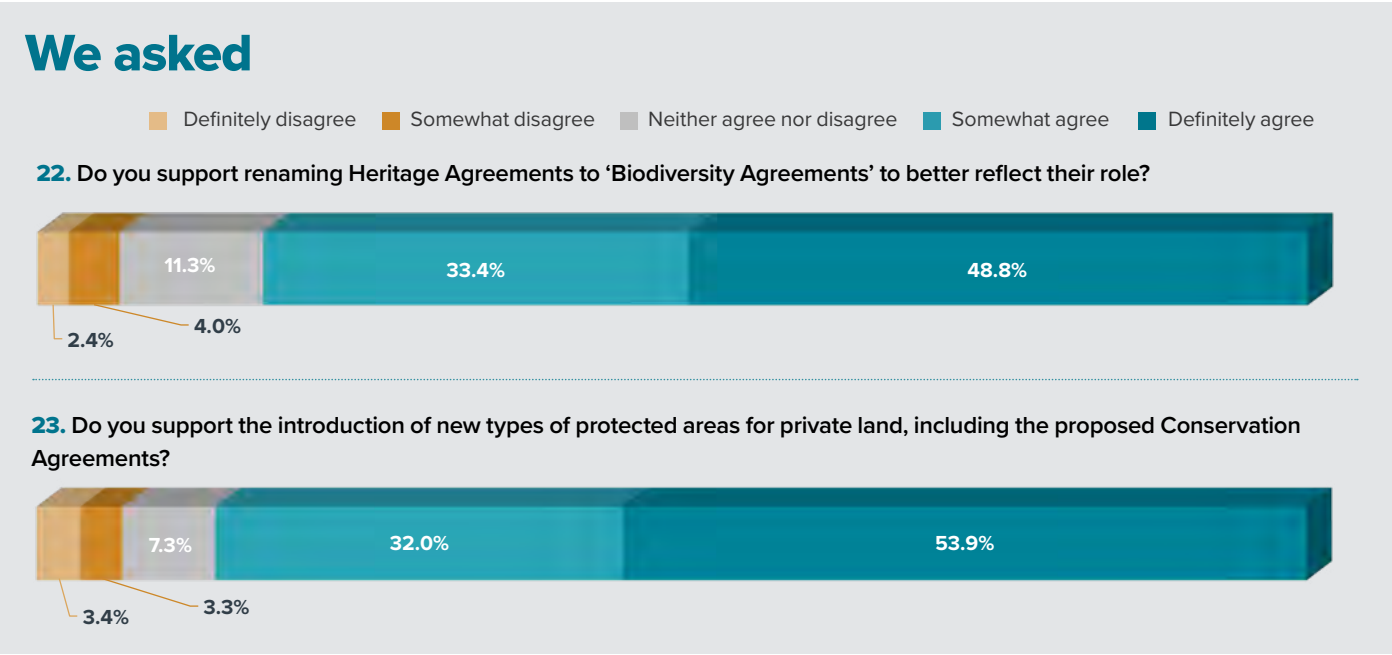
“Agree with preserving ecological communities as well as individual species and identifying biodiversity hotspots. This requires maintaining an easily accessible dataset for landholders to be more aware of which species are likely to occur on their land. A Biodiversity Register will be very helpful.”

“I believe there should be strong separate penalties for threatening ecological communities with the penalties being greater than those specified for individual species.”



Part 7 – Conserved areas

Current mechanisms for private land conservation have been carried over into the Biodiversity Bill from existing legislation. The Bill proposes a name change from Heritage Agreements to Biodiversity Agreements to better reflect what they are protecting. Additionally, Conservation Agreements have been proposed as a way to introduce flexibility.



Key areas of feedback:

- Renaming Heritage Agreements “Biodiversity Agreements”
- The implications of time-limited agreements

- Value of multiple agreement types
- Agreement terms

Comments from survey participants

- “ There appears to be significant overlap in the role of conservation and biodiversity agreements. The government should consider merging these into one agreement type, potentially just with different clauses applied for different types of land/projects.”

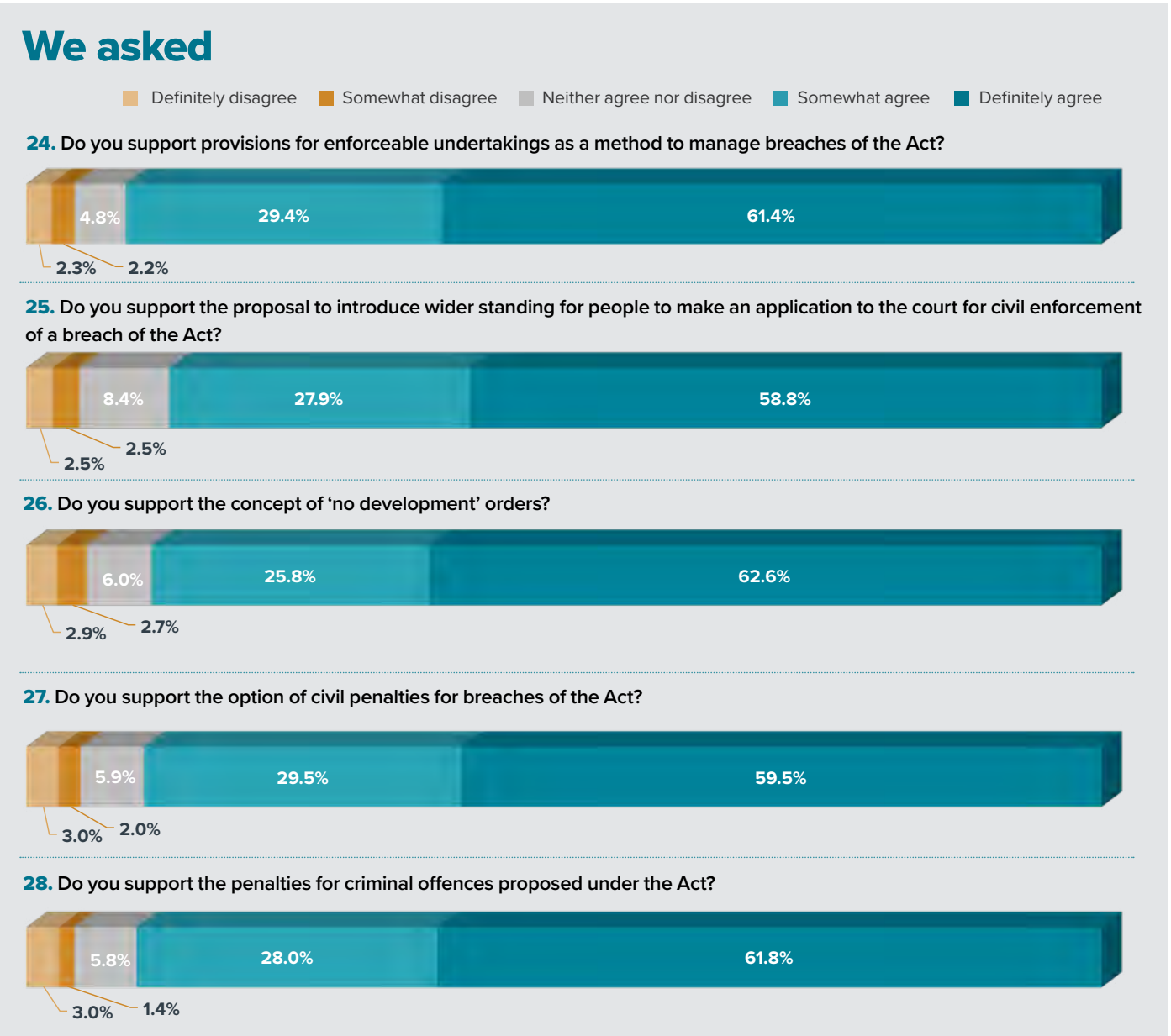
“ I like the idea because heritage agreements are confused with the heritage act which is the protection of built environment and historic buildings.”

“ Providing private landholders with new opportunities under emerging markets (e.g. Nature Repair Market, Carbon Offsets etc.) is a great proposal. At the moment, the value of privately owned native bushland (e.g. carbon sequestration, clean air and water, biodiversity, health benefits etc.) is not recognised or easily accessible, compared to what is made available to primary producers. Support for landholders to maximise these opportunities would be much welcomed.”
- “ Our property has a Heritage Agreement and we agree with this changing to ‘Biodiversity Agreement’ as a more appropriate name. We understand that locking up land in perpetuity is a huge commitment for landholders, including financial losses. The proposed Conservation Agreements will encourage more landholders to take stewardship in protecting vegetation.”

“ I support increased protection for private land as long as it protects the land from being cleared in a meaningful way. I don’t know if putting a time limit on it will work. A lot of older people own land with significant vegetation and by putting a 20 year or more limit on when they pass away their children could then clear and subdivide the land so its not really protecting it for future generations, just for now.”

Part 8 – Enforcement

The Biodiversity Bill includes updated penalties, powers of authorised officers and introduces new ways to manage breaches of the Act, including compliance and reparation orders. The Bill introduces civil penalties, ‘no development orders’ and wider standing for people to bring an application to the court. It also contains provisions relating to court enforcement, appeals and court orders.



Key areas of feedback:

- Scope of third-party standings
- Compliance
- Penalties
- Application of enforceable undertakings
- Scope of 'no development orders'
- Role of the Environment, Resources and Development Court

Comments from survey participants

“ Strongly in favour of No Development orders in conjunction with an enforceable undertaking, as a much greater disincentive for illegal land clearing, than simply paying a fine as the cost of doing business. Great to see this proposal!”

“ The right of motivated third parties to enforce the Act when the government fails to do so is an important element of any public interest environmental legislation.”

“ I believe there should also be third party standing for review of decisions made under the Act.”

“ For breaches of the Act people should be penalised heavily so as to be a strong deterrent for destroying the native environment keeping it safe for the future.”

“ The penalties are not strong enough. The maximum penalties of \$500,000 for individuals or \$1,000,000 for business are not sufficient to create a deterrence.”

“ The option for civil penalties for breaches should make sure the penalty is sufficient to be a disincentive for the breach to recur.”

“ Legal proceedings for breaches should be handled by the ERD Court. Past experience shows that ordinary courts and judges/magistrates often know nothing and/or care little about the environment.”



Part 9 – Permits

The provisions relating to permits are carried over from the National Parks and Wildlife Act 1972 and have been consolidated into a single section of the Bill to improve readability.

We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

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



Key areas of feedback:

- Penalties
- Permit application processes
- Control and management of permits
- Permit exemptions

Comments from survey participants

“An appeals process for a refused permit application should be implemented.”

“Permit provisions need stronger, warranted evidence. Permissions for destruction are given far too readily.”

“Contravening the conditions of a permit should incur a MUCH higher penalty fee than \$250.”

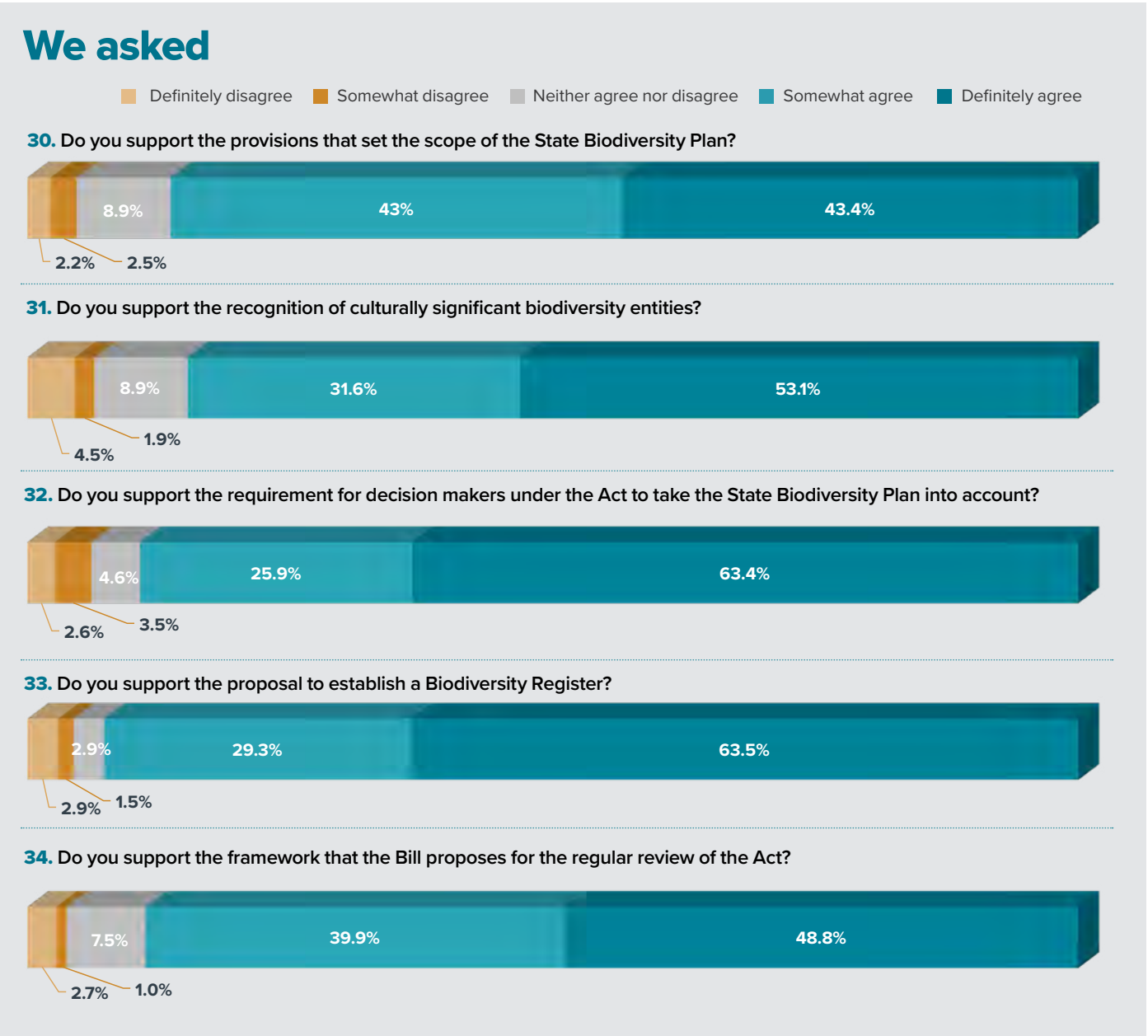
“The permit requirements are excessive and unnecessary for many plants and reptiles, some birds and a few mammals. There is every reason to have exempt lists to reduce the administrative and bureaucratic burden on citizen scientists/naturalists.”

“The permit application process should not have requirements that are very difficult to meet. For example, a permit to collect native seed requires referee statements from persons with high level botanical expertise. Persons new to the state or not knowledgeable of such experts would find this difficult, when all they may seek to do is collect some gumnuts from remnant eucalypts on their roadside. The permit application system should facilitate ways in which people can gain the required expertise (e.g. online training) to be able to do simple, non-commercial seed collection. It shouldn't disincentivise people to be proactive in biodiversity restoration.”



Part 10 – Miscellaneous

The Biodiversity Bill includes new provisions relating to responsibilities for state biodiversity data, the creation of a biodiversity register, the creation of biodiversity policies, the preparation of a State Biodiversity Plan and the recognition of Culturally Significant Biodiversity Entities. It also includes requirements for regular review of the Act.



Key areas of feedback:

- Act and State Biodiversity Plan review timeframes
- Power of the State Biodiversity Plan
- Data sensitivity and intellectual property considerations
- Key topics for Biodiversity Policies
- Role of committees in Biodiversity Policies

Comments from survey participants

“ Biodiversity Register - ensuring we take into account Indigenous Cultural and Intellectual Property (ICIP) and protecting traditional knowledges.”

“ Transparency of biodiversity statistics and applications would help hold agency and private companies accountable. This data will support planning of infrastructure developments.”

“ Biodiversity Plan needs to have more power - targets, recommended resourcing and reporting.”

“ We support the development of a Biodiversity Plan and strongly recommend the Act includes the requirement for recommended funding to deliver the plan. This is a major shortcoming in all biodiversity plans and strategies – failure to implement due to lack of funding and accountability. The Act should also require decisions to be made consistently with the Plan, rather than simply taking it into account.”

“ The Minister should review and report on the State Biodiversity Plan more frequently than every 5 years, e.g. every 3 years.”

Schedules and amendments

The Schedules contain a number of provisions that have been carried over from the Native Vegetation Act 1991, including the 'regulated clearance area' and the clearance exemptions that sit in the Native Vegetation Regulations 2017. It also includes the 'principles of preservation of native plants' which have been renamed from the 'principles of native vegetation clearance' to better reflect their purpose. To ensure that other South Australian accurately reflects the new Biodiversity legislation, a number of related amendments have been proposed.

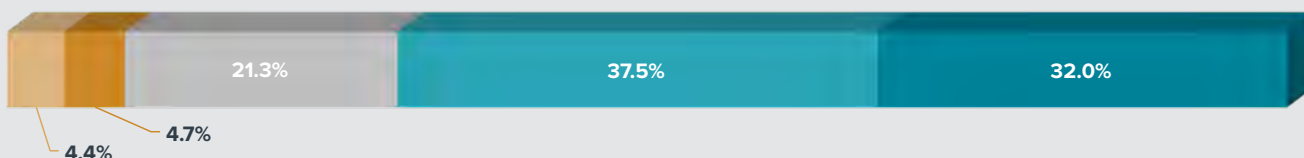
We asked

Definitely disagree Somewhat disagree Neither agree nor disagree Somewhat agree Definitely agree

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



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



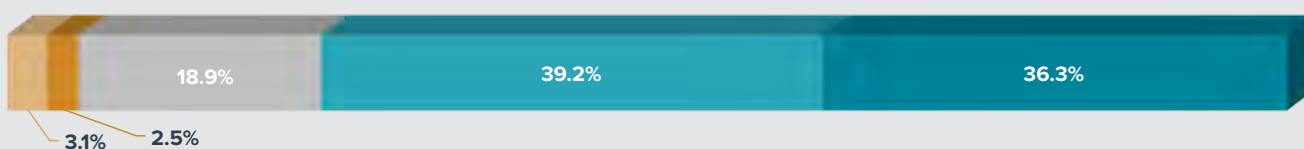
37. Do you support updating the existing 'principles of native vegetation clearance' to 'principles of preservation of native plants' to align with provisions in the Biodiversity Act related to threatened species, threatened ecological communities and listed ecological entities?



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



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



Key areas of feedback:

- Regulated activity exemptions
- Principles of preservation of native plants
- Interaction with the Planning, Development and Infrastructure (PDI) Act
- Scope of the regulated clearance area

Comments from survey participants

“I am disappointed that all the current exemptions from native vegetation clearance controls have been transferred across from the existing Native Vegetation Act, since the evidence suggests we are still losing native vegetation (i.e. biodiverse habitat) at an alarming rate in SA.”

“I object to the proposal that ‘farming and grazing does not require clearance consent if it does not result in permanent degradation’.”

“The change to exemptions relating to ‘ongoing grazing practices’ does not align with the biodiversity protections proposed elsewhere. It is not clear how one would determine whether grazing results in permanent degradation until after the degradation has occurred (i.e. killing or destruction of the groundlayer shrubs, herbs, orchids, fungi, mosses etc. as well as ring-barking trees).”

“The principles of preservation of native plants should also consider the cultural importance of native plant species.”

“Strongly support the Biodiversity Act being declared a Special Legislative Scheme for the purposes of the PDI Act. State Planning Policy should take more than critical habitat into account, also fragmentation, plants and wildlife need to be able to move across the landscape in order to facilitate adaptation to climate change, they can’t if there are large tracts of developed land preventing this without onerous and resource heavy translocation/intervention plans.”

“These changes do not go far enough. The introduction of a new Biodiversity Act for SA misses the opportunity to extend native vegetation protection to metropolitan Adelaide and neglects the important role that urban ecosystems play in conservation.”



Detailed submissions

Detailed written submissions were received from various individuals, organisations, groups and representative bodies. In addition to the matters collated in this document, additional matters identified through these submissions have been summarised and included below, divided by Part of the Bill. Full submissions can be viewed in Appendix 1, except where submissions were made in confidence.

Key areas of concern:

Part 1 – Preliminary

- Defining fungi as ‘plants’ in the Bill
- Concern that the definition of native plants may lead to protections for interstate plants considered weeds
- Concern that primacy of the Act would be undermined where there is interaction with other Acts
- Concern regarding the Governor’s power to vary the operation of the Act

Part 2 – General duty, principles and objectives

- Consider broadening the general duty to public authorities
- The Act should include the Precautionary Principle as 5th principle
- Objects broadened to support a balance / multiple land use

Part 3 – Administration

- Nomination of members to committees
- Too much detail being deferred to regulation
- Use of Funds

Part 4 – Native plants

- Missed opportunity to reform the native plant offsetting scheme
- Inclusion of mitigation hierarchy
- Approach to planted native plants that are 20 years old and over
- Confusion around clearance consent pathways
- Definition of unacceptable impacts

Part 5 – Native animals

- Removal of the *National Parks and Wildlife Act 1972* ‘unprotected list’
- The management of impact causing native species
- Consultation requirements relating to the taking of protected animals
- Penalty limits

Part 6 – Listing of threatened species, ecological communities and entities

- Stronger requirements around Critical Habitat
- Decision-making relating to the listing of Threatened Ecological Communities
- Requirement for Action Plans
- Interaction with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*

Part 7 – Conserved areas

- New types of agreements and how this will support multiple land uses
- Value of multiple agreement types
- Value of Sanctuaries

Part 8 – Enforcement and penalties

- Scope of third party standings
- Funding for compliance
- Powers of Authorised Officers
- Scope of ‘no development orders’

Part 9 – Permits

- Responsible issuing of permits
- Control and management of permits

Part 10 – Miscellaneous

- Support for data provisions
- Power of the State Biodiversity Plan
- Importance of consultation with regard to Biodiversity Policies and the State Biodiversity Plan
- Role of the Minister in Biodiversity Policies
- Statutory power of Biodiversity Policies
- Support for transparency of government

Schedules and amendments

- Regulated activity exemptions for native plants and animals
- Principles of preservation of native plants
- Interaction with the *Planning, Development and Infrastructure Act 2016*
- Scope of the regulated clearance area

Other feedback received

Two organisations initiated their own campaigns, encouraging their members to submit email responses on the Bill to the biodiversityact@sa.gov.au inbox by using or modifying pre-prepared text. These organisations did not directly refer their members to complete the survey, but it is possible that individuals also submitted a survey response. A total of 395 campaign emails were received.

Email 1

"I support a strong Biodiversity Act. While this draft Bill could strengthened in places, an Act is long overdue and critically important to ensure South Australia's birds, and biodiversity are conserved, and restored into the future.

South Australia's biodiversity is in crisis. Threatened birds in South Australia have decreased by more than 90% since 1985 on average (Threatened Bird Index 2020). This shocking decline is more than any other Australian State or Territory.

It is vital that we protect and recover South Australia's biodiversity, and by passing the strongest SA Biodiversity Act, we take a critical first step."



Email 2

"Dear Deputy Premier,

I appreciate this opportunity to make a submission on your proposed Biodiversity Bill. I also support the submission of the peak body for the environment in South Australia, the Conservation Council of SA.

I agree with you that our relationship with nature is in jeopardy and requires immediate action, including by protecting and recovering South Australia's biodiversity.

I believe the Biodiversity Bill contains some incremental improvements, such as tougher penalties for breaches of protections for biodiversity.

However, the Bill is not strong enough as currently drafted to adequately achieve its intended Object of improving the state of South Australia's biodiversity. Under its provisions, decisions that lead to the decline of nature will continue to be made and support for the large-scale restoration of South Australia's biodiversity, that we know is required, is not guaranteed.

Therefore, before being introduced to Parliament, it must be strengthened.

An example of this includes adding appropriate safeguard mechanisms to prevent inappropriate development that would have an egregious negative impact on biodiversity, such as through an early "no" to clearly unacceptable proposals. This will necessitate primacy over other legislation, such as the Planning, Development and Infrastructure Act 2016. It must also set a limit on the use of the flawed mechanism of "offsets" to compensate for biodiversity loss from development by identifying a threshold of biodiversity loss beyond which no "offset" will be contemplated.

The Bill should also compel the responsible Minister to make key decisions, such as regarding the listing of species as threatened with extinction and identifying their critical habitat. Current drafting of the Bill allows for too much discretion in this regard, meaning these key decisions could be avoided or delayed.

Further, the Bill as currently drafted concentrates too much power into the hands of the Minister of the day. It should be amended to re-instate the role of the Conservation Council of SA and other peak bodies as nominating organisations for the Biodiversity Council, rather than members of the Biodiversity Council being direct Ministerial appointments. Further, the Biodiversity Council should be responsible for developing the policy for "offsets" for subsequent Ministerial approval, rather than the Minister having sole responsibility for the policy, particularly given the high risk of political influence on the 'formula' for calculating payments in lieu of on ground "offsets".

I am disappointed the Bill does not address the "joint proclamation" of National Parks in South Australia, which allows for mining leases to persist in areas that have been set aside for biodiversity conservation.

This Bill must also be accompanied by a commitment to fund both its implementation, including in relation to its administration as well as funds for the large-scale ecological restoration that will be required to build the resilience of our biodiversity into the future, particularly given the impacts of climate change. This includes the specific establishment of an independent statutory conservation trust, provisions for which need to be set out in the Bill itself.

Thank you for taking the time to consider my submission"

Other organisations circulated emails requesting that members complete the YourSAy survey, with suggested responses.



Appendix 1

Detailed submissions from individuals, organisations, groups and representative bodies. Click the links below to read the full submissions.

| |
|---|
| <u>Aboriginal Legal Rights Movement</u> |
| <u>Adelaide Hills Council</u> |
| <u>AILA and AILA SA</u> |
| <u>Aldgate Valley Landcare Group</u> |
| <u>AMEC</u> |
| <u>Australian Citizen Science Association</u> |
| <u>Australian Energy Producers</u> |
| <u>Australian Land Conservation Alliance</u> |
| <u>Australian Pork Limited and Pork SA</u> |
| <u>Biodiversity Council</u> |
| <u>Biodiversity Victor Harbor</u> |
| <u>BirdLife Australia</u> |
| <u>Birds SA</u> |
| <u>Butterfly Conservation SA</u> |
| <u>Campbelltown Landcare Group</u> |

| |
|--|
| <u>Cape Jervis Coastal Community Group</u> |
| <u>Cement, Concrete and Aggregates Australia</u> |
| <u>City of Adelaide</u> |
| <u>City of Burnside</u> |
| <u>City of Charles Sturt</u> |
| <u>City of Holdfast Bay</u> |
| <u>City of Marion</u> |
| <u>City of Onkaparinga</u> |
| <u>City of Playford</u> |
| <u>City of Port Adelaide Enfield</u> |
| <u>City of Port Lincoln</u> |
| <u>Coast Protection Board</u> |
| <u>Community Alliance SA</u> |
| <u>Conservation Council SA</u> |
| <u>Coorong District Council</u> |



| |
|---|
| <u>District Council of Streaky Bay</u> |
| <u>Doctors for the Environment Australia</u> |
| <u>Ecological Society of Australia</u> |
| <u>ElectraNet</u> |
| <u>ENREL</u> |
| <u>Environment Institute of Australia and New Zealand</u> |
| <u>Environmental Defenders Office</u> |
| <u>Friends of Port River</u> |
| <u>Friends of Shorebirds SE Inc</u> |
| <u>Friends of Willunga Basin</u> |
| <u>Friends of Scott Creek CP</u> |
| <u>Grain Producers SA</u> |
| <u>Green Adelaide</u> |
| <u>Green Building Council</u> |
| <u>GreenCollar</u> |

| |
|--|
| <u>Grey Box Community Group</u> |
| <u>Hills and Fleurieu Landscape Board</u> |
| <u>Humane World for Animals, Australia</u> |
| <u>International Society for Fungal Conservation</u> |
| <u>Invasive Species Council</u> |
| <u>Kangaroo Island Landscape Board</u> |
| <u>Kangaroo Island Research Station</u> |
| <u>Kangaroo Island Wildlife Network</u> |
| <u>Kangaroo Island Land for Wildlife</u> |
| <u>Landscape Boards of South Australia</u> |
| <u>Law Society of SA</u> |
| <u>LGA</u> |
| <u>Limestone Coast Landscape Board</u> |
| <u>Livestock SA</u> |
| <u>Local Flora Society</u> |

| |
|---|
| <u>Mid Torrens Catchment Group</u> |
| <u>Mt Barker & District Residents' Association</u> |
| <u>Murraylands and Riverland Landscape Board</u> |
| <u>National Environmental Law Association</u> |
| <u>Native Vegetation Council</u> |
| <u>Nature Foundation</u> |
| <u>Nature Glenelg Trust</u> |
| <u>Neoxena Research</u> |
| <u>Northern and Yorke Landscape Board</u> |
| <u>Oz Fish Unlimited</u> |
| <u>Pastoral Board</u> |
| <u>Planning Institute Australia</u> |
| <u>Port Adelaide Residents Environment Protection Group</u> |
| <u>Premier's Climate Change Council</u> |
| <u>Primary Producers SA</u> |
| <u>Property Council of Australia</u> |
| <u>Resilient Hills & Coasts</u> |
| <u>Royal Society of SA Inc</u> |
| <u>RSPCA</u> |
| <u>SA Power Networks</u> |
| <u>SA Water</u> |
| <u>SA Arid Lands Landscape Board</u> |
| <u>SACOME</u> |
| <u>Second Nature Conservancy Inc</u> |

| |
|---|
| <u>South Australia Nature Alliance</u> |
| <u>South Australian Apiarists' Association</u> |
| <u>South Australian Museum</u> |
| <u>South Australian Wine Industry Association</u> |
| <u>State Aboriginal Heritage Committee</u> |
| <u>Succession Ecology Pty Ltd</u> |
| <u>Sustainable Population Australia</u> |
| <u>Sellicks Woodlands and Wetlands Action Network</u> |
| <u>Tatiara District Council</u> |
| <u>The Scientific Expedition Group Inc</u> |
| <u>Threatened Plant Action Group</u> |
| <u>Trees for Life</u> |
| <u>Weed Management Society of South Australia</u> |
| <u>Wentworth Group</u> |
| <u>Wildlife Crime Research Hub</u> |
| <u>WWF</u> |
| <u>Yundi Nature Conservancy</u> |
| <u>Zoo and Aquarium Association Australasia</u> |
| <u>individual submission 01</u> |
| <u>individual submission 02</u> |
| <u>individual submission 03</u> |
| <u>individual submission 04</u> |
| <u>individual submission 05</u> |
| <u>individual submission 06</u> |

| |
|---|
| <u>individual submission 07</u> |
| <u>individual submission 08</u> |
| <u>individual submission 09</u> |
| <u>individual submission 10</u> |
| <u>individual submission 11</u> |
| <u>individual submission 12</u> |
| <u>individual submission 13</u> |
| <u>individual submission 14</u> |
| <u>individual submission 15</u> |
| <u>individual submission 16</u> |
| <u>individual submission 17</u> |
| <u>individual submission 18</u> |
| <u>individual submission 19</u> |
| <u>individual submission 20</u> |
| <u>individual submission 21</u> |
| <u>individual submission 22</u> |
| <u>individual submission 23</u> |
| <u>individual submission 24</u> |
| <u>individual submission 25</u> |
| <u>individual submission 26</u> |
| <u>individual submission 27</u> |
| <u>individual submission 28</u> |
| <u>individual submission 29</u> |
| <u>individual submission 30</u> |

| |
|---|
| <u>individual submission 31</u> |
| <u>individual submission 32</u> |
| <u>individual submission 33</u> |
| <u>individual submission 34</u> |
| <u>individual submission 35</u> |
| <u>individual submission 36</u> |
| <u>individual submission 37</u> |
| <u>individual submission 38</u> |
| <u>individual submission 39</u> |
| <u>individual submission 40</u> |
| <u>individual submission 41</u> |
| <u>individual submission 42</u> |
| <u>individual submission 43</u> |
| <u>individual submission 44</u> |
| <u>individual submission 45</u> |
| <u>individual submission 46</u> |
| <u>individual submission 47</u> |
| <u>individual submission 48</u> |
| <u>individual submission 49</u> |
| <u>individual submission 50</u> |
| <u>individual submission 51</u> |
| <u>individual submission 52</u> |

Appendix 2

In developing the Bill and during the YourSAy consultation period the department met with a range of stakeholders, including the following:

Key stakeholder and interest groups:

- Association of Mining and Exploration Companies
- Cement, Concrete and Aggregates Australia
- City of Adelaide
- Coast Protection Board
- Conservation Council of South Australia
- Electranet
- Environmental Defenders Office
- Environment Institute of Australia and New Zealand (EIANZ)
- Environment Institute (The University of Adelaide)
- Environment Protection Authority Board
- Environmental and Natural Resources Law Research Unit, University of Adelaide
- Green Adelaide
- Green Building Council of Australia
- Kangaroo Island Council
- Landscape Board and Council Chairs Forum
- Landscape Board General Managers
- Limestone Coast Landscape Board
- Local Government Association
- Native Vegetation Council
- Nature Conservation Society of SA
- Northern and Yorke Landscape Board
- Minister's Liaison Group (State Planning Commission)
- Parks and Wilderness Council
- Pastoral Board
- Premier's Climate Change Council
- Primary Producers South Australia
- SA Power Networks
- Seafood Advisory Forum
- South Australia Chamber of Mining and Energy
- South Australia Nature Alliance
- Town of Gawler
- Trees for Life

First Nations groups and organisations:

Registered Native Title Prescribed Bodies Corporate:

- Adnyamathanha Traditional Lands Association Aboriginal Corporation (ATLA)
- Barngarla Determination Aboriginal Corporation
- De Rose Hill - Ilpalka Aboriginal Corporation RNTBC
- De Rose Hill Aboriginal Corporation
- Far West Coast Aboriginal Corporation
- Gawler Ranges Aboriginal Corporation
- Kaurna Yerta Aboriginal Corporation
- Kaurna Yerta Aboriginal Corporation
- Narungga Nation Aboriginal Corporation
- Nauo Aboriginal Corporation PBC
- Ngadjuri Adnyamathanha Wilyakali Native Title Aboriginal Corporation
- Ngarrindjeri Aboriginal Corporation
- Nukunu Wapma Thura Aboriginal Corporation
- River Murray and Mallee Aboriginal Corporation (RMMAC)
- The Dieri Aboriginal Corporation
- Walka Wani Aboriginal Corporation
- Wilyakali Native Title Aboriginal Corporation
- Yandruwandha Yawarrawarrka Traditional Land Owners Aboriginal Corporation
- Yankunytjatjara Native Title Aboriginal Corporation

Aboriginal Corporations

- Burrandies Aboriginal Organisation
- Culture, Heritage and Native Title Committee (CHANT) of ATLA
- First Nations of SA Aboriginal Corporation (FNSAAC)
- Mannum Aboriginal Community Association Inc.
- Maralinga Tjarutja Incorporated
- Wirangu 2



Non-Government Organisations

- Aboriginal Legal Rights Movement
- Firesticks alliance
- Indigenous Desert Alliance
- South Australian Native Title Services (SANTS)

Parks Co-Management Boards and Advisory Committees

- Arabana Parks Advisory Committee
- Dhillba Guuranda-Innes National Park Co-management board
- Gawler Ranges Parks Co-management board
- Ikara-Flinders Ranges National Park Co-management board
- Kurna Parks Advisory Committee
- Ngaut Ngaut Conservation Park Co-management Board
- Nullarbor Parks Advisory Committee
- Vulkathunha-Gammon Ranges National Park Co-management board
- Witjira National Park Co-management board
- Yandruwandha Yawarrawarrka Parks Advisory Committee
- Yumbarra Conservation Park Co-management Board

Other First Nations stakeholders and government entities:

- Aboriginal Lands Trust of South Australia
- Alinytjara Wilurara Landscape Board
- Indigenous Land and Sea Corporation
- SA Aboriginal Ministerial Advisory Committee
- South Australian First Nations Voice to Parliament
- State Aboriginal Heritage Committee

Government agencies:

- Attorney-General's Department (including Aboriginal Affairs and Reconciliation)
- Environment Protection Authority
- Department for Energy and Mining
- Department for Housing and Urban Development
- Department for Infrastructure and Transport
- Department for Treasury and Finance
- Office of the Director of Public Prosecutions
- Primary Industries and Regions South Australia (PIRSA)
- SA Country Fire Service
- SA Financing Authority
- SA Water







With the exception of the Piping Shrike emblem, other material or devices protected by Aboriginal rights or a trademark, and subject to review by the Government of South Australia at all times, the content of this document is licensed under the Creative Commons Attribution 4.0 Licence. All other rights are reserved.

Disclaimer: DEW and its employees do not warrant or make any representation regarding the use, or results of the use, of the information contained herein as regards to its correctness, accuracy, reliability and currency or otherwise. DEW and its employees expressly disclaim all liability or responsibility to any person using the information or advice.