

**Submission  
No 11**

**INQUIRY INTO BIODIVERSITY CONSERVATION  
AMENDMENT (BIODIVERSITY OFFSETS SCHEME) BILL  
2024**

**Organisation:** WWF-Australia  
**Date Received:** 5 September 2024

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# SUBMISSION TO THE INQUIRY INTO THE NSW BIODIVERSITY CONSERVATION AMENDMENT (BIODIVERSITY OFFSETS SCHEME) BILL 2024

The World Wide Fund for Nature-Australia (WWF-Australia) welcomes the opportunity to provide a submission to the NSW Portfolio Committee No. 7 – Planning and Environment Inquiry into the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*.

WWF-Australia is part of the WWF International Network, the world's largest independent conservation organisation. WWF's global mission is to 'stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature'. WWF-Australia has approximately two million financial and non-financial supporters.

WWF-Australia supports the proposed transition of the biodiversity offsets scheme to net positive biodiversity outcomes, consistent with recommendations of the *Independent Review of the Biodiversity Conservation Act 2016 – Final Report* (Henry review).

We also support the intention of the amendments to develop standards for demonstrating the avoid and minimise steps of the mitigation hierarchy. These standards must provide objective quantitative thresholds and criteria.

## **WWF-Australia concerns regarding the current amendments**

Despite an attempt to tighten up some of the loopholes and perverse outcomes enabled in the current scheme, these amendments do not set out the reforms needed to address the fundamental problems that have been identified in previous reviews. Such reforms are considered a minimum to establish a legitimate offsets scheme.

The divergence from the specific recommendations outlined in the Henry review, to more general, non-specific and non-binding language in the proposed amendments gives us no confidence that this is a genuine attempt to reform the scheme.

The failure to prohibit offsetting development in no-go zones greatly inhibits the potential for the amended offsets framework to protect high conservation value ecosystems. In lieu of no-go zones, mechanisms that provide strong protections for high conservation value areas should be legislated. For example, the South East Queensland Conservation Strategy prohibited clearing of 330,660 hectares of koala habitat in defined priority areas (with some exceptions), by preventing via regulation destruction of such habitat being offset<sup>1</sup>. If such an approach was applied

<sup>1</sup> Department of Environment and Science, 2020, *South East Queensland Koala Conservation Strategy 2020–2025*, Queensland Government, Brisbane, available at [https://environment.des.qld.gov.au/data/assets/pdf\\_file/0016/211732/seq-koala-conservation-strategy-2020-2025.pdf](https://environment.des.qld.gov.au/data/assets/pdf_file/0016/211732/seq-koala-conservation-strategy-2020-2025.pdf), see page 18: "Deliver these increased protections the Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation commenced on 7 February 2020 and amended the Environmental Offsets Regulation 2014, Planning Regulation 2017, Nature Conservation (Koala) Conservation Plan 2017 and the Vegetation Management Regulation 2012."

to NSW, moderate-to-high value koala habitat (mapped or modelled) could be designated by regulation as core koala habitat and be made ineligible for offsetting, thus preventing deforestation. Extrapolating this approach could prohibit, or greatly restrict, deforestation of habitat for all endangered species by prohibiting/restricting the ability to offset this loss.

There remains a fundamental problem whereby an offset can be secured long after the impact has occurred. This situation must never occur; it should be a fundamental premise of offsetting that the offset must be secured before the clearing occurs otherwise it is very difficult to claim a net positive outcome (or even a no net loss). The amendments have not addressed this key issue.

#### **WWF-Australia recommendations to the Committee.**

1. These amendments need to be fundamentally reworked to address the core problems of the current scheme.
2. Further to Recommendation 1, the best practice principles that the Henry Review (pp. 26-27) recommended be used to guide legislative reform of the offsets scheme should be adhered to in developing the amendments to this scheme. These principles are summarised below:
  - Some impacts are unacceptable and cannot be offset. Such impacts should be identified as 'no-go' areas, where development cannot occur. As stated above, mechanisms that provide strong protections (and preclude development) for high conservation value areas should be legislated.
  - The scheme should be nature positive<sup>2</sup>. It should be leveraged to achieve an overall enhancement of biodiversity. We note the Henry Review recommendation to require a net gain from offsets and support this approach.
  - Biodiversity values should be considered early in the planning process and offset strategically where possible. This provides for better avoidance of impacts, conservation of high biodiversity value areas and certainty about where development cannot occur.
  - Avoidance is the first and most important step in the hierarchy. Only after the avoid and minimise steps of the hierarchy have been rigorously applied should offsetting be considered. The avoid and minimise requirements must be set in the legislation, rigorously applied and publicly available.
  - The use of offset options other than like-for-like should be limited and transparency provided, including for payments into the Biodiversity Conservation Fund. WWF-Australia believes this should be very strictly limited, and any payments should not undermine the principle that an offset (on the ground) must be secured prior to the clearing taking place.
  - There should be an expectation that the scheme will apply equally to all types of development. The scheme should apply based on the level of biodiversity risk, not the type of development or who the proponent is undertaking the development.
  - There may be exceptional circumstances where discretion is appropriate. This should be the decision of the Minister for the Environment, with full transparency and accountability. Too much discretion runs the risk of undermining biodiversity outcomes and reducing confidence.
  - The credit market is a tool that can be used to deliver strategic outcomes in an effective and efficient manner. The government should support the functioning of the market to ensure it delivers outcomes in line with government priorities.

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<sup>2</sup> "Nature positive means our environment is being repaired and regenerated. This contrasts with traditional sustainability approaches, which have sought to minimise negative impacts by slowing or stabilising the rate of biodiversity loss." (Henry Review p. 15)

- Complexity in the scheme should be reduced without undermining the scheme’s scientific integrity or biodiversity outcomes. Rules for scheme entry and offsetting could be simplified, and more upfront certainty provided about where development cannot occur.
  - To ensure transparency, information on the scheme and the operation of the market should be readily available and the scheme should be regularly evaluated.
3. Mapping data is key to a credible, rigorous offset regime. The State Vegetation Type Map (SVTM) in general does not provide the highly accurate, ground-truthed map of plant community types required to underpin biodiversity offsets with the accuracy and reliability required. WWF-Australia recommends independent expert review of the SVTM against established criteria to identify additional mapping required, such as through digital aerial photographic interpretation, to support the state offsets scheme.

