

Submission
No 17

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

Organisation: NSW Aboriginal Land Council

Date Received: 6 September 2024



Via Parliament Submissions Website

Dear Committee,

NSWALC Submission to the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Introduction

The NSW Aboriginal Land Council (NSWALC) welcomes the opportunity to contribute to the inquiry into the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*.

NSWALC is the peak body representing Aboriginal peoples in NSW and has functions to protect and promote the rights of Aboriginal peoples. NSWALC provides support to a network of 121 Local Aboriginal Land Councils (LALCs) in NSW, with a combined membership of over 30,000 Aboriginal people. LALCs are autonomous, elected bodies representing the interests of their members and wider Aboriginal community in their area. The core business of each LALC includes acquiring and managing lands for cultural and economic purposes and protecting and promoting Aboriginal culture and heritage. Additionally, NSWALC and LALCs are important employers of Aboriginal people in NSW.

The NSW Aboriginal Land Rights network is the key vehicle to delivering social, cultural and economic outcomes to Aboriginal communities, and is the framework for achieving self-determination in NSW. The Aboriginal land rights network has unique, first-hand knowledge of the challenges and opportunities facing Aboriginal peoples and has developed and continues to develop a range of innovative opportunities to support the economic prosperity and social and cultural aspirations of Aboriginal people in NSW.

Biodiversity Conservation offers multiple opportunities for Aboriginal Land Councils to activate their land, and can help meet government targets. NSWALC seeks to drive opportunities for economic development for Aboriginal people in NSW, with our Strategic Goals¹ outlining our commitment to pursuing economic independence and prosperity for our people and supporting our people and LALCs. This involves:

- The delivery of land activation programs that investigate and manage development programs in collaboration with LALCs.
- The development and activation of a state-wide property development model for NSWALC properties.
- Identifying strategic business growth opportunities with our LALCs.
- Supporting Aboriginal business owners, entrepreneurs, and job seekers to connect with business and employment opportunities across the state.

¹ NSW Aboriginal Land Council, 2022. NSWALC Strategic Plan 2022-2026. NSW Aboriginal Land Council

- Increasing access to education, training, and employment for Aboriginal peoples.

Statutory five-year review of the *Biodiversity Conservation Act 2016*

In April 2023, NSWALC provided a comprehensive submission as part of the statutory review of the BCA. In our submission, we noted the following broad concerns:

- The need to align to Closing the Gap Priorities and Partnership Principles under the National Agreement on Closing the Gap.
- Lack of consultation with Aboriginal peoples and communities and the need for a targeted Aboriginal Engagement Strategy.
- The need for explicit provisions in the BCA to ensure the BCA does not contradict the *Aboriginal Land Rights Act 1983* (the ALRA) under which NSWALC and LALCs are established and operate.
- The need to include safeguards to protect against harm and destruction to Aboriginal culture and heritage.
- The need for better recognition and promotion of the role of Aboriginal people in biodiversity conservation, including supporting the use of Traditional Ecological Knowledge in biodiversity conservation programs.
- Overall concern around government decision making, transparency and accountability and whether the BCA is ensuring biodiversity gains and land management outcomes in NSW.

NSWALC Recommendations on the Biodiversity Offsets Scheme

With particular regard to the Biodiversity Offsets Scheme (BOS), we previously recommended the development of an Aboriginal Engagement Strategy and dedicated engagement team to inform and support Aboriginal landholders to maximise opportunities under the BOS.

The primary objective of the ALRA is the return of land to Aboriginal people as compensation for dispossession. It is NSWALC's stance that any other relevant legislative regimes recognise this intent and contain provisions that seek to preserve it. As such, we have also recommended exemptions from or tailored thresholds for offset obligations in certain circumstances as well as greater flexibility to the application of the BOS where development outcomes on returned land can deliver any number of economic, social and cultural benefits to both Aboriginal communities and broader communities.

We recognise that some steps have already been taken to improve Aboriginal landholder engagement in the offsets market such as through the Aboriginal Biodiversity Regional Assistance program as well as the Cultural Biodiversity Conservation pilot and recommend that similar assistance and funding be extended to the BOS.

For instance, a bespoke model which recognises that LALC lands have been returned as compensation for dispossession, as well as the numerous economic, social and cultural benefits that activation of LALC land can bring to the broader community as well as Aboriginal peoples.

The Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

NSWALC notes that the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* (the Bill) has been introduced to 'protect biodiversity, increase transparency of the Scheme, provide clearer guidance for industry, and reduce regulatory burden for low-risk local development' per the Statement of Public Interest. We further note the Henry review identified the need to transition to net positive outcomes by legislating the 'Avoid, minimise and offset hierarchy' principle. and to clarify certain aspects of the scheme to increase certainty and transparency for developers, landowners and the community.

We note amendments to reduce regulatory burdens on smaller-scale, low impact development or in other exceptional circumstances. We support such reforms as they relate to Aboriginal Land Councils to ensure that LALCs' unique position as both landowners and community-controlled organisations is supported and facilitates LALCs delivering economic and community outcomes. While we understand that the broader review of the BCA is ongoing, it is imperative that the accompanying offsets scheme take into account the objectives of the ALRA and make the necessary adaptations to ensure that any offset obligations do not unnecessarily burden LALCs when undertaking projects that can deliver measurable and immense community benefits.

We recommend that the Amendment Bill and resulting regulations:

- explicitly acknowledge Aboriginal landowners under the ALRA, and the intent of the ALRA
- further consider ways in which the BOS can be used both for improved biodiversity conservation as well as delivering economic, social and cultural benefits to Aboriginal people and communities
- provide a dedicated pathway to support Aboriginal land councils engage in biodiversity conservation as well as a mechanism to exempt Aboriginal land councils from offset requirements in recognition of the purposes of the ALRA

Comment on specific provisions

- **Section 6.2A Transition of the biodiversity offsets scheme to net positive**
Targeted engagement with Aboriginal stakeholders and landowners should be undertaken in the preparation of the strategy to transition the BOS to net positive biodiversity outcomes. LALCs in particular are disproportionately affected by legislation given the nature of returned lands and both the strategy and consequent amendments to legislation must consider this.
- **Section 6.16 Miscellaneous provisions applying to biodiversity assessment reports**
When preparing regulations that outline principles and standards for development activities and measures to avoid and minimise impacts, certain development outcomes on Aboriginal land such as cultural and social outcomes should have specific considerations.
- **Division 5A Prescribed biodiversity conservation measures as alternative to retirement of biodiversity credits**
When preparing regulations that determine prescribed biodiversity conservation measures, certain activities on Aboriginal land should be supported particularly for Aboriginal cultural practices involving biodiversity conservation.
- **Section 7.2 Development or activity “likely to significantly affect threatened species”**
Clarification is sought on what will be considered as not being development or an activity that is likely to significantly affect threatened species within the meaning of the Act and removal of the requirement for a BAR – we understand this amendment is geared towards low-impact developments and would appreciate clarity as to what thresholds are used to meet the definition.
- **Part 7 Biodiversity assessment and approvals under Planning Act**

Clarification is sought on what may be considered exceptional circumstances that would lead to an exemption to offset requirements. As noted above, Aboriginal landowners and LALCs particularly have the potential to deliver priority social, cultural and economic benefits on their landholdings including housing, cultural activities, and community services. These opportunities should be considered exceptional circumstances under which exemptions are considered.

Further Engagement

As the Committee progresses its inquiry into the Bill, we wish to make ourselves available for further engagement to ensure that as the broader review of the BCA progress, the objectives and desires of Aboriginal stakeholders are embedded in all aspects of reform.

NSWALC also welcomes the Minister's commitment in the Second Reading Speech "*to working in partnership with Aboriginal communities to ensure their issues are genuinely heard, their role on country is promoted and their aspirations are met.*"

We hope that the recommendations made in this submission will be carefully considered.

Should you require further information, please contact the NSWALC Strategy and Policy Unit via e-mail:

Sincerely,

Yuseph Deen
CEO, NSW Aboriginal Land Council

Date: 06 September 2024