

Submission  
No 28

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

**Organisation:** NSW Wildlife Information, Rescue and Education Service Inc.  
(WIRES)

**Date Received:** 6 September 2024

---



WILDLIFE  
INFORMATION  
RESCUE AND  
EDUCATION  
SERVICE

**Submission:**  
**Biodiversity Conservation Amendment**  
**(Biodiversity Offsets Scheme) Bill**  
**2024**

6 September 2024

**Submitted to:**

The Hon Sue Higginson MLC, Chair  
via Tina Mrozowska, Council Officer  
Portfolio Committee No. 7 – Planning and Environment

## Contents

About WIRES .....	3
Introduction .....	4
Misplaced primacy & market-based mechanisms.....	6
Avoid and minimise must be defined .....	6
Protection must mean protection .....	8
Publicly available mapping and spatial tool .....	8
Biodiversity offsets must be a genuine last resort.....	9
Avoid and minimise as the baseline .....	9
Like for like .....	9
The Biodiversity Conservation Trust is an indirect offset .....	10
Climate change.....	11
Conclusion: ensuring nature positive outcomes .....	12



## About WIRES

WIRES is Australia's largest wildlife rescue organisation, and operates a dedicated Wildlife Rescue Office assisting wildlife and the community across Australia 24-hours a day, 365 days a year, providing rescue advice and assistance for approximately 150,000 animals annually. We have around 4,000 dedicated volunteers as well as a fleet of Wildlife Ambulances operated by full-time, professional Emergency Responders across NSW, South-East Queensland and Tasmania. These ambulances travel, on average, 43,000 kms per year and have responded to more than 17,000 rescues since October 2020.

In addition, WIRES trains hundreds of rescuers and carers annually, are dedicated to the ongoing recruitment of new volunteers and the continued training of existing volunteers. This growing network is critical for the rescue and rehabilitation of our unique native wildlife. WIRES has responded to more than 60% of all animals needing rescuing in NSW over the last 8 years. Across NSW the volunteer contribution is estimated to save the government more than \$27 million per annum and is growing<sup>1</sup>

WIRES has developed partnerships and programs and provides forward-thinking national support to hundreds of projects which aim to see listed species' populations increase through protection efforts. Since the 2019-2020 summer bushfires, we have had an increasing focus on supporting projects that protect and restore threatened habitats and provide for the long-term recovery of wildlife habitat and the preservation of native species in the wild.

---

<sup>1</sup> Department of Planning, Industry and Environment (2020). *NSW Volunteer Wildlife Rehabilitation Sector Strategy 2020-2023*, NSW Government.



## Introduction

NSW Wildlife Information and Rescue Service Inc (WIRES) welcomes the opportunity to provide a submission on the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*. The Bill is part of proposed reforms and the NSW plan for nature. The members of *Portfolio Committee No. 7 – Planning and Environment* have an opportunity to ensure that wildlife and biodiversity protections are the foundations of the proposed amendment, biodiversity protections are enshrined in the legislation, and the actions of the government reflect community expectations.

The aim on this submission is to address the NSW Government's Statement of Public Interest, and primarily engages with Points *1. Improving biodiversity outcomes* and *4. Better balancing the application of the Scheme with biodiversity risks*. As the Statement of Public Interest notes, the 'the Act is not meeting its primary purpose to maintain a healthy and resilient environment, now and into the future,' and the 'proposed reforms are being introduced in the context of a well-documented decline in NSW's biodiversity.'

*At their core, biodiversity laws must prioritise the protection of wildlife, their habitat and ecosystems.*

WIRES submission highlights shortcomings of the proposed reforms in the Bill. The amendment does not address the current operational and locked-in nature negative impacts of the Biodiversity Offsets Scheme, and will lead to a continuation of serious and irreversible impacts on wildlife and biodiversity. The proposed amendment will further impact the integrity of habitat connectivity between protected areas and areas subject to conservation agreements, critical habitat more broadly, and directly contribute to local, regional and outright extinction of species.

The short history of the Biodiversity Offsets Scheme presents a mosaic of nature negative outcomes, and the Committee has an opportunity to ensure government will act to prevent further decline.

The overarching key finding of the Auditor-General's 2022 report on the *Effectiveness of the Biodiversity Offsets Scheme* noted

There are no biodiversity-specific outcome measures for the Scheme, such as measures of its expected contribution to maintaining biodiversity at a State and regional level (p. 3).

The Independent Review of the Biodiversity Conservation Act 2016 (2023) included similar findings, recommending that a net positive outcome be included in the Act.



Changes to the vision and operation of the Biodiversity Offset scheme are essential to ensure that the proposed 'broader suite of measures... leave nature better off than we have found it.' Without outcomes focussed reforms, and a suite of protections for wildlife and biodiversity, net positive outcomes will not be possible.

Any use of offsets must be a genuine last resort for essential and critically important proposals. The potential use of offsets in existing protected areas, Areas of Outstanding Biological Value (AOBVs), lands subject to stewardship agreements and existing offset areas must be included in the legislation. In addition, extra protections for specific species (i.e. koalas, other threatened wildlife, and their habitat) must be included in SEPPs.



## Misplaced primacy & market-based mechanisms

The 2022 NSW Auditor-General's report noted that published research on similar schemes internationally highlight their complexity and challenges. The current approach, and that underpinning what it proposed in the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*, must not be situated behind unnecessary complexity, including providing primacy to market-based mechanisms and seeking to ensure both a market is viable and maintained at the expense of a healthy and resilient environment, now and into the future.

*The Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 overemphasises the creation and protection of a market at the expense of the critical need for improved biodiversity outcomes.*

A focus on market-based mechanisms, evidenced in the outcomes of the current Biodiversity Offsets Scheme, and the proposed Bill, is being undertaken at the expense of effective outcomes for wildlife and biodiversity in NSW. Market-based mechanisms, including the operation of the Biodiversity Conservation Trust (BCT), have shown little to no effective outcomes — beyond nature negative impacts.

Whereas the Biodiversity Offsets Scheme is based on a pay-to-destroy model, with the payment intended to ensure like for like biodiversity and habitat protection, the BCT enables project proponents to make payments into the trust with limited transparency or clear biodiversity outcomes. The BCT provides certainty for project proponents — enabling them to proceed with nature negative proposals — at the expense of community expectations and effective outcomes for wildlife and biodiversity.

The Auditor-General's report refers to a fundamental feature of offset schemes — as identified by the Organisation for Economic Cooperation and Development (OECD), as the 'final step of a mitigation hierarchy'. This is not how offsets and the BCT are currently used in NSW. They are not being used as a genuine last resort, rather a means to approve nature negative proposals with minimal impact on, or cost for, proponents of proposals.

To ensure the legislated approach of the NSW Government reflects international standards, and more importantly meets community expectations to avoid and minimise any potential impacts on wildlife and biodiversity in the State, significant changes to the proposed Bill are required.

## Avoid and minimise must be defined

The Committee has a clear opportunity to ensure that both *avoid* and *minimise* are clearly defined, including for smaller scale proposals. Effectively defining and providing guidance on these terms, including clear criteria, supporting thresholds, and an objective test for



determinations of where avoid and minimise are both addressed and achievable in application documentation – across planning and impact assessment reports – for proposals will provide clarity, transparency. Doing so will increase community confidence that wildlife and biodiversity are being protected, with an underlying principle of nature positive outcomes.

Alongside providing certainty for communities, which must be the baseline, clear guidelines on acceptable and unacceptable actions and approaches will signpost legal requirements for wildlife and biodiversity protections. Landholders and project proponents will also have certainty.

Requiring Nature Positive outcomes for all proposals, with offsets as a genuine last resort and only permissible for essential and critically important proposals, will enshrine avoid and minimise as a clear baseline and the foundation of the mitigation hierarchy – reflecting international standards and approaches.

Strong legislative compliance and enforcement mechanisms, enshrined in legislation rather than policy, with adequate resourcing must be foundational to the amendment. In addition to proposed public registers to record what has been permitted, there must be clear and transparent monitoring and reporting of outcomes beyond the approval process.

There must be mechanisms in place to ensure that a failure to deliver net positive outcomes for a proposal would constitute a breach of approval. The amendment must also contribute to an ongoing assessment of cumulative impacts locally and across bioregions.





## Protection must mean protection

A *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* with offsets as a genuine last resort in the mitigation hierarchy would significantly reduce habitat destruction and fragmentation and the direct impacts on wildlife and biodiversity.

Ensuring an emphasis on avoid and minimise will put the onus back on proponents to design their proposals with wildlife and biodiversity protections in mind.

It is the Minister, the Minister's office, the Government and the respective Department's responsibilities to legislate and ensure that protection means protection. Wildlife and biodiversity protections must not be something that proponents can buy their way out of or can be deferred to market-based mechanisms.

An effective Act and will legislate no-go zones, and the protection of habitat and connectivity, endangered ecological communities and AOBV. Such protections are cornerstones for, and fundamental to, nature positive outcomes.

## Publicly available mapping and spatial tool

The ensure community expectations are being met, that wildlife and biodiversity protections are in place for habitat and connectivity, endangered ecological communities and AOBV, and – as a subset – there is certainty for landholders, it is essential that a mapping and spatial tool be made publicly available.

The mapping and special tool must clearly identify AOBV, endangered ecological communities, habitat and connectivity as no-go zones for proposals.



## **Biodiversity offsets must be a genuine last resort.**

To effectively address and reverse the documented decline in NSW's biodiversity, offsets must only be a possible option as a genuine last resort. As a genuine last resort, biodiversity offsets must only be available for essential and critically important proposals – and only after all possible alternatives to avoid, minimise and mitigate have been deemed improbable.

*Biodiversity offsets are nature negative by nature.*

Biodiversity offsets legislated as only permissible as a genuine last resort for essential and critically important proposals is critical to ensure minimise nature negative impacts and a nature positive NSW Nature Strategy designed to leave nature better off than we have found it.

It must be a fundamental requirement that the onus is on proponents to deliver designs which emphasises avoid and minimise as a first step in any planning process.

The emphasis must be on proponents to illustrate a nature positive outcome, rather than a planning process which disenfranchises communities, requires them to give over their valuable time to read through volumes of obscure reports, and advocate for wildlife and biodiversity – which must be the role of government. Protections which should be legislated, with certainty provided at the outset.

### **Avoid and minimise as the baseline**

Biodiversity offsets must not be included in the same class as avoid and minimise. To do otherwise sends the wrong message to the community, landholders and project proponents.

*Offsets must only be available as a genuine last report, limited to essential and critically important proposals.*

An avoid and mitigate focus, with offsets only available for consideration for essential and critically important proposals, is essential to ensure the protection of wildlife and biodiversity, and nature positive outcomes.

### **Like for like**

Alongside biodiversity offsets being a genuine last resort, like for like must be enshrined in the legislation and supporting regulations. Alongside clear and effective definitions of avoid and minimise, providing clear guidelines on like for like will provide certainty for communities and



ensure essential and critically important proposals are undertaken with a nature positive outcome as core component.

Where like for like is not possible, it must be deemed that a project cannot meet the baseline threshold and therefore not be approved. To do otherwise will ensure nature negative outcomes, and the Act will continue to not meet its primary purpose to maintain a healthy and resilient environment – further contributing to the well-documented decline in NSW's biodiversity.

Like for like, as a final step on the mitigation hierarchy – and only available for essential and critically important proposals – will ensure that the Biodiversity Offset Scheme includes a mechanism to say no. There must be clear limits.

*If there is no clear wildlife and biodiversity mechanism for government to say no to a project, the Biodiversity Offset Scheme cannot be oriented to ensure the protection of wildlife and biodiversity. Rather, the scheme will continue to be a rubber stamp for nature negative outcomes.*

The possibility for offsets, for essential and critically important proposals, must come with specific and stringent constraints. As a separate class of the mitigation hierarchy, there must be additional requirements for offsets.

Additionality must be based on clear and transparent criteria, including a nature positive outcome. An outcome above what would otherwise occur, with clear and specific wildlife and biodiversity gains.

### **The Biodiversity Conservation Trust is an indirect offset**

The Biodiversity Conservation Trust (BCT) is effectively being used as a means of indirect offsetting, a means to pay to destroy with limited transparency and no guarantee of any wildlife and biodiversity protections.

The Auditor-General's report details how broken, as currently designed and operated, the BCT model and the nature negative impact of pay to destroy. A continued emphasis on marked-based mechanisms will not address these ongoing impacts.



## Climate change

Climate change is leading to increased threats and pressures on wildlife and biodiversity. Legislation must proactively respond through both factoring in current and future impacts, and ensure that wildlife and biodiversity protections are fundamental elements of planning and assessment processes.

*The government (and legislative) response to climate change must be outcomes-based and nature positive.*

The impacts of climate change on species and ecosystems have been well established. For example, climate change was a contributing factor to the functional extinction of the Gunnedah and Pillaga koala colonies, and is leading to the loss of western populations:

The koala's climate envelope is predicted to contract eastwards and southwards, with future distributions particularly concentrated in rapidly urbanising regions of coastal QLD and NSW.<sup>2</sup>

This one example highlights the need for clear and transparent criteria for no go areas, including in and around the rapidly urbanising areas of the Sydney Basin and beyond. Areas such as the Macarthur Growth Corridor require immediate and increased protections for connectivity of habitat and restoration works to ensure koalas and other wildlife can survive and thrive. To do otherwise would be to further facilitate the 'dramatic contraction' of habitat and ongoing population declines.<sup>3</sup>

---

<sup>2</sup> Adams-Hosking, C, Grantham H. S., Rhodes J. R., McAlpine C., & Moss P. T. (2011). Modelling climate-change-induced shifts in the distribution of the koala. *Wildlife Research* 38, p. 123. <https://doi.org/10.1071/WR10156>

<sup>3</sup> Adams-Hosking, C, Grantham H. S., Rhodes J. R., McAlpine C., & Moss P. T. (2011). Modelling climate-change-induced shifts in the distribution of the koala. *Wildlife Research* 38, p. 125. <https://doi.org/10.1071/WR10156>



## Conclusion: ensuring nature positive outcomes

The *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* must reflect community expectations to protect and enhance the environment. The Bill must live up to the statements made by the Minister and government on protecting biodiversity to ensure ‘a healthy and resilient environment, now and into the future,’ and the ‘well-documented decline in NSW's biodiversity’ is arrested and runed around.

The Bill must legislate for nature positive outcomes, including improving outcomes over time. The government must develop a clear and transparent definition of nature positive. Nature positive benefits – in perpetuity – must be a condition of consent for proposals. Nature positive outcomes must be tracked to ensure they are delivered, with specific and significant consequences for proponents for failing to meet these requirements.

### Recommendation 1

The protection of wildlife and biodiversity must be given primacy over market-based mechanisms and processes which are focussed on ensuing a market is viable and maintained. Paying to destroy is an approach that directly locks-in nature negative outcomes with devastating consequences for wildlife and biodiversity.

### Recommendation 2

A Publicly available mapping and spatial tool are core components of a transparent planning process, and will enable the identification of no go areas to ensure wildlife and biodiversity are protected – to enable the Act to meet its primary purpose of maintaining a healthy and resilient environment, now and into the future. To do otherwise would lock in a continuation of the well-documented decline in NSW's biodiversity.

### Recommendation 3

Biodiversity offsets must not be included in the same class as avoid and minimise. They must be covered by separate clauses, as a heavily restricted option, in the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* and associated planning assessment processes.

### Recommendation 4

Offsets must only be available after all possible alternatives to avoid and minimise have been deemed improbable. A consideration of offsets must be a genuine last report, and only permissible for essential and critically important proposals.



**Recommendation 5**

Like for like must be enshrined in the legislation and supporting regulations – and only an option as genuine last resort for essential and critically important proposals. If like for like is not achievable, a proposal must be refused. The Act must include a mechanism to say no with a clear and transparent process.

Yours sincerely,

Leanne Taylor CEO

**Contact**

Dr Colin Salter

Research & Policy Officer

NSW Wildlife Information Rescue and Education Service Inc. (WIRES)

