

Submission
No 33

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

Organisation: Australian Land Conservation Alliance

Date Received: 6 September 2024

c/o Committee Secretariat
Portfolio Committee No. 7 – Planning and Environment
Parliament of New South Wales
Via online submission
Cc: portfoliocommittee7@parliament.nsw.gov.au

6 September 2024

Dear Committee Secretariat,

RE: Submission to the Inquiry into *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 (NSW)*

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Inquiry into the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*.

The Australian Land Conservation Alliance (ALCA) is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

The land conservation efforts of ALCA's seventeen member organisations have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$325 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding, and using nature-based solutions to tackle climate change.

Please note that ALCA is happy for this submission to be published in full.

Overview: the nature crisis and the opportunity of nature positive development

New South Wales, Australia, and the world face twin interrelated nature and climate change crises. Both crises have deep, substantial, and increasing costs for the social and economic wellbeing of all Australians. These crises create an acute intergenerational burden that unfairly backloads our generation's own costs and failings upon future generations – upon our children, our grandchildren, and beyond.

We face the harsh but unbending reality that nature is not an infinite asset that can be continually drawn upon without profound social, economic and environment cost. We must avoid as much further destruction as possible and invest heavily in its renewal.

Our unique nature is not only core to our social and cultural values as a nation; it is also a cornerstone of our prosperity – **with half of Australia’s GDP being moderately to highly dependent on nature**¹ – and it is in accelerating decline. As per the Federal Government’s 2021 State of the Environment Report:

*“Overall, **the state and trend of the environment of Australia are poor and deteriorating** as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction... Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years...*

*Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which **are reducing the environmental capital on which current and future economies depend. Social, environmental and economic impacts are already apparent.**”¹*

Australian governments must adopt genuinely nature positive approaches to its social, environmental and economic development. As with other states, New South Wales needs to build and develop our natural capital rather than forever drawing it down. It is a false complacency that nature will somehow take care of itself and not need investment like other types of economic and social infrastructure.

ALCA has been long critical of environmental offsetting schemes across Australia for not delivering in practice on their promise of compensating – and ideally over-compensating – for the destruction of Australia’s nature.

It is on this basis that ALCA strongly welcomes the NSW Government’s support for a ‘net positive transition’ for its biodiversity offsetting scheme – rather than the current theoretical zero sum gain – and well as a range of other improvements to the offsets scheme contained within the Bill.

However, we also identify several key issues of concern, including:

- the adoption of a non-standard approach to the mitigation hierarchy (only ‘avoid, minimise, offset’ rather than the international and interstate standard of ‘avoid, minimise, rehabilitate / restore, offset’);
- the scheme’s failure to require confirmation that a biodiversity offset is available in the real world prior to approving development activities that would degrade and/or destroy that biodiversity; and
- the lack of any timeframe for the Minister to publish the strategy to transition the scheme to net positive outcomes for biodiversity (i.e. absolute gain).

¹ Australian Conservation Foundation, *The nature-based economy: How Australia’s prosperity depends on nature*, Sep 2022; <https://www.acf.org.au/the-nature-based-economy-how-australias-prosperity-depends-on-nature>

Recommendations

ALCA recommends that the Parliament:

Recommendation 1: Support the inclusion of the mitigation hierarchy in the Bill (new subsection 6.2(h1)).

Recommendation 2: Amends the Bill to include **all four steps** of the international and interstate consensus approach to mitigation hierarchies², rather than only three as currently contemplated by the Bill (i.e., by including the missing step of ‘rehabilitate or restore’).

A suggested amendment would thus be as follows (**amendments in bold**):

Section 6.2(h1)

Insert after paragraph (h)—

(h1) The recognition of the avoid, minimise, **rehabilitate or restore**, and offset hierarchy as the key principle for avoiding, minimising, **rehabilitating or restoring**, and offsetting impacts on biodiversity values when carrying out biodiversity assessments and preparing reports under the scheme.

By way of exemplar, the South Australian Government’s recently proposed amendments³ to its *Native Vegetation Act 1991* detail the standard four-step mitigation hierarchy in full:

3B—Mitigation hierarchy

For the purposes of this Act, a reference to the *mitigation hierarchy* is a reference to an order of priority to be applied in relation to the clearance of native vegetation as follows:

- (a) **avoidance**—measures must be taken to avoid clearance of native vegetation;
- (b) **minimisation**—if clearance of native vegetation cannot be avoided, measures must be taken to minimise the duration, intensity and extent of the impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative);
- (c) **rehabilitation or restoration**—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by the impacts of clearance of native vegetation that cannot be avoided or further minimised;
- (d) **offset**—where required under this Act, any adverse impact on native vegetation or ecosystems that cannot be avoided or minimised must be offset by the achievement of a significant environmental benefit that outweighs that impact.

² See: the International Union for Conservation of Nature: https://iucn.org/sites/default/files/2022-06/iucn_biodiversity_offsets_policy_jan_29_2016_0.pdf; also: Forest Trends <https://www.forest-trends.org/bbop/bbop-key-concepts/mitigation-hierarchy/>, etc.

³ See: https://ehq-production-australia.s3.ap-southeast-2.amazonaws.com/af649293f199d34b1542e41279b3502aa04f24e9/original/1712637071/01b98d900527570e724cd78c272ef2b2_Native_Vegetation_%28Miscellaneous%29_Amendment_Bill_2024.un.pdf; consultation webpage: <https://yoursay.sa.gov.au/native-vegetation-act-amendments>

Recommendation 3: Support the transition of the offsets scheme to net positive biodiversity outcomes (new section 6.2A).

Recommendation 4: Amend the Bill to require that the strategy for transitioning the biodiversity offsets scheme to deliver net positive biodiversity outcomes must be delivered within a set timeframe from royal assent of the Bill; ideally within 12 months. A suggested amendment would thus be as follows (**amendments in bold**):

6.2A Transition of the biodiversity offsets scheme to net positive

- (4) The Minister must publish the strategy on an appropriate government website **within 12 months of the date of this provision receiving royal assent.**

Recommendation 5: Amend the Bill from 'net positive biodiversity outcomes' to 'net absolute outcomes for biodiversity', thus requiring a net increase in biodiversity from a set baseline, rather than merely settling on offsets that can deliver a *slower trajectory* of environmental decline – but not an absolute improvement – than otherwise would occur⁴.

Recommendation 6: Support the adoption of a 3-year time frame for the BCT to apply an offset credit, but amend the Bill to require that payments into the offset fund can only occur in the first place where like-for-like (or better) outcomes for biodiversity can be confirmed as achievable.

Recommendation 7: Amend the Bill to make it explicit that New South Wales offsets cannot be sold in the Commonwealth Nature Repair Market.

Recommendation 8: Support the removal of the option for mining proponents to meet a credit obligation through a commitment to ecological mine site rehabilitation.

Thank you again for the opportunity to provide a submission on the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*. If you have questions regarding the submission, please do not hesitate to contact ALCA via (Mr Michael Cornish, Policy Lead).

Yours sincerely,

Dr Jody Gunn
Chief Executive Officer
Australian Land Conservation Alliance

⁴ I.e. we need: “| nature |”, not just “+ nature”.

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Our nineteen members are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nari Nari Tribal Council
- Nature Foundation
- North Australian Indigenous Land and Sea Management Alliance
- NRM Regions Australia
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- World Wildlife Fund - Australia

ALCA member land conservation efforts have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$325 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spill-over effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.