

Submission
No 47

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

Organisation: Lock the Gate Alliance

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Lock the Gate Submission to Planning and Environment Committee

Please accept this submission to the Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 from Lock the Gate Alliance.

Our primary concern is that the Bill falls far short of the recommendations made by Dr Ken Henry AC in his independent review of the *Biodiversity Conservation Act 2016* (the *Henry Review*).

In summarising the situation, Dr Henry stated that:

Biodiversity is not being conserved at bioregional or State scale. The diversity and quality of ecosystems is not being maintained, nor is their capacity to adapt to change and provide for the needs of future generations being enhanced. Yet these are the principal purposes of the legislation.

It is clear to the Review Panel that the operative provisions of the Act are incapable of supporting its objectives. Too much rests upon the operation of other pieces of legislation that have their own, competing, objectives. This has to be addressed.

However, this Bill does not deliver on the most important recommendations which he made, because it very clearly does not give primacy to the *Biodiversity Conservation Act 2016* (the *BC Act*) over competing pieces of legislation.

As a result, it is not adequate to address the rapid deterioration in biodiversity in NSW and does not ensure that developments like major coal and gas projects will not destroy irreplaceable biodiversity values directly through habitat destruction and associated impacts or indirectly through climate change impacts.

In accordance with two crucial findings of the Henry Review, we believe the Bill should:

1. Give primacy to the *BC Act* by creating a concurrence power for the NSW Environment Minister for all major developments. At the very least, such a power should be provided for projects that also cause harm to biodiversity by contributing to climate change, as coal and gas projects do.

2. Establish a set of statutory ‘no-go zones’ that identify the highest biodiversity areas and prevent proposals for major development to occur within them.

Unless these major changes, as recommended by the Henry review, are implemented, then we contend there is no way that the Bill as proposed can achieve a ‘net positive’ outcome for biodiversity.

Suggesting the Bill and associated scheme will do so without these required protections, will create a legal fiction that entrenches greenwashing, which is something we can ill afford given the parlous state of biodiversity in the state.

Fundamentally, it is clear that reliance on biodiversity offsets result in a net loss of habitat and the Bill serves only to ‘tinker at the edges’ of a broken system. In the case of coal and gas development, offsetting involves the clearing of established, often mature, vegetation communities known to support threatened species and ‘offsetting’ these with plantings or degraded/marginal habitats that may or may not deliver good environmental outcomes sometime in the future. Even ‘good quality’ offsets do not represent a conservation gain as they already exist.

A series of recent reports have demonstrated that the offsets scheme suffers from a lack of integrity, transparency and sustainability (NSW Auditor General 2020)¹ and fails to demonstrate ‘no net loss’ (Upper House Inquiry 2022)². Moreover, on-ground monitoring studies showed that offset sites declined from their original condition, showed major inconsistencies with management plans or were not permanently protected (DCCEEW 2024, ACF2024)³⁴.

We do welcome the NSW Government’s statement in response to the Review indicating that using mine rehabilitation as offsets will no longer be allowed under the Biodiversity Offsets Scheme. However, we are concerned that this is left to future regulations and until we see and are consulted on such regulations, it is difficult to identify the effectiveness of these regulations to protect biodiversity.

We are also concerned that there are a number of coal mines that have been approved on the basis of these deeply flawed ‘rehabilitation offsets’. We would like to see an audit of projects where this has been used and an approach taken to vary conditions so that they cannot be relied on going forward.

¹ <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>

² <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2822/Report%20No.%2016%20-%20PC%207%20-%20Integrity%20of%20the%20NSW%20Biodiversity%20Offsets%20Scheme.pdf>

³ <https://www.dcceew.gov.au/sites/default/files/documents/ground-truthing-offsets-summary-report.pdf>

⁴ https://assets.nationbuilder.com/auscon/pages/23151/attachments/original/1708313266/Offsets_report_single_pages.pdf?1708313266

In conclusion, we encourage far-reaching amendments to this Bill to which are absolutely needed to address escalating biodiversity decline and which were recommended by the Henry review.