

Submission
No 57

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

Organisation: Business NSW
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13 September 2024

Ms Sue Higginson
Committee Chair
Portfolio Committee 7
Parliament of NSW
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Dear Ms Higginson

**Business NSW submission- Biodiversity Conservation Amendment
(Biodiversity Offsets Scheme) Bill 2024**

Business NSW thanks the committee for the opportunity to submit a submission on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

Business NSW is NSW's peak business organisation with close to 50,000 member businesses. Business NSW works with businesses spanning all industry sectors, the majority of which are small or medium enterprises. Operating throughout a network in metropolitan and regional NSW, Business NSW represents the needs of business at a local, state and federal level.

Business NSW supports the protection and sustainability of environmental values in NSW. All businesses are either directly or indirectly dependent on nature, or vulnerable to the disruptions to communities and society that biodiversity loss can cause. These impacts can be to business operations, business continuity, supply acquisition, the cost of raw materials, the value of real estate assets, and/or the physical security of the business, all of which can lead to decreased profitability

Businesses can also be vulnerable to environmental and biodiversity related risks by their own activities that can trigger negative consequences. These include legal and regulatory risks, reputational risks, vulnerability due to shifts in the market, and stakeholder pressure. The visitor economy is, of course, highly dependent on the curation and protection of our natural environment.

Our members understand the importance and value of demonstrating responsible business behaviour. By managing biodiversity as part of responsible risk management, minimising their ecological footprint, and ensuring the preservation of our natural capital. Furthermore, the welfare of communities in their areas of

operation, can have a competitive advantage, develop company value, and achieve better long-term sustainability of their operations.

Consultation on Review and Government Response

Business NSW and our members are supportive of good legislation to protect the environment; however, we consider that this Bill needs more detailed engagement and informed thought, given that there is very little detail contained with the Bill and the Regulations, principles and supporting documents are either not available for public viewing or have not been prepared.

We are particularly concerned that the key definitions and terminologies, methodologies of assessment and essential skilled resources to implement, are missing in part, or in full. This leaves the Bill subject to considerable risk, and essential development in housing and energy transition under additional planning uncertainty.

Additionally, we do not believe there has been adequate consultation with stakeholders. Table 1. shows the extent of the consultation, or lack thereof to date.

Table 1. Consultation on BC Amendment (Biodiversity Offsets Scheme) Bill 2024

Date	Consultation	Format
November 2022	Meetings with Independent Reviewer and Panel	Listening only.
28 February 2023	Discussion paper released	Issues only. No proposals for change shared.
21 April 2023	Submissions close	
24 August 2023	Independent Review of the BC Act tabled in Parliament	
8 March 2024	Industry and NGO round tables hosted by Department of Housing, Planning and Infrastructure (DHPI) and Local Land Services (LLS)	Listening only. No proposals for change shared.
17 July 2014	NSW Government response released	High level, does not identify which changes will be included in 2024 amendment legislation.

17 July 2014	Briefings on Government's response (7-hour notice)	Slide pack presented to large group on Microsoft teams.
29 July 2024	Biodiversity Offsets Scheme (BOS) Stakeholder reference group slide pack presented on Bill, advised Bill would be tabled in August 2024	Slide pack presented to large group on Microsoft teams. No other materials provided.
13 August 2024	Bill provided at 5pm to some stakeholders	
15 August 2024	Bill tabled	
27 August 2024	Briefing for industry associations by NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW)	Listening only.

Both the lack of details of the regulation, or changes to other instruments necessary to operationalise the amendments and consultation make it impossible to assess the full regulatory proposal.

Concerns about the Bill

Transition of the Biodiversity Offset Scheme (BOS) to net positive biodiversity outcomes

Proposed amendment

Provide that the biodiversity offsets scheme will transition to net positive biodiversity outcomes and, for the purposes of giving effect to that objective, the Minister must make a strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes.

As a matter of good practice, concepts or terminology appearing in a Bill should be defined, such as the term "net positive biodiversity outcomes", Clause 6.2A. It is difficult for Business NSW to support or comment a concept that is not well defined.

The inclusion of this concept in the BC Act is premature and unnecessary, albeit it says a strategy will be drafted around this in the future. It is inappropriate to incorporate the preparation of this type of strategy into legislation as it requires a future action rather than a current requirement of the BC Act. It would be more appropriate for the Minister to prepare a draft strategy and consult on this strategy. Should this strategy require the amendment of the Biodiversity Conservation Act or any other Act of Parliament, then an amendment Bill can be put forward at that time.

Business NSW also holds concerns that incorporating the transition to 'net positive biodiversity outcomes' concept in legislation will be interpreted by decision makers and the public in a multitude of ways. This would slow decision making, investment and development required to be assessed under the BOS, particularly until strategies and policies are developed. This would have adverse implications for projects that produce economic growth and that businesses in NSW are relying on such as housing, renewable energy and infrastructure.

The housing crisis in NSW presents a policy challenge of extraordinary urgency and doesn't need more barriers imposed by unnecessary changes to the BC Act. Business NSW advocates for new and affordable housing both in the metro and regional areas. Business NSW founded the Housing Now! initiative to support the NSW Government in its partnership with the Commonwealth to deliver essential housing.. This Alliance helps magnify the voice of the community and the NSW Government to tackle the housing affordability crisis.

Recommendations:

- Proposed section 6.2A is deleted.
- The NSW Government should assess the standard currently met by the BOS before determining what further action needs to be taken.

Avoid, minimise, and offset hierarchy**Proposed amendments**

Establish the avoid, minimise and offset hierarchy as the key principle underpinning the framework for avoiding, minimising and offsetting the impact of proposed development, activity or clearing on biodiversity values.

Provide for principles and assessment standards against which developers must demonstrate measures taken to avoid and minimise the impact of proposed development, activity or clearing or land use on biodiversity values.

Business NSW believes that the term "avoid, minimise and offset hierarchy" also needs further definition. Other Australian states define this terminology in policies

rather than in legislation, and we contend that this provides clarity and certainty for investment.

The changes proposed in the Bill cannot be assessed without Supporting Information, which has not been provided, nor has the intention of these documents been explained by the NSW Government.

Proposed section 6.16(1A) provides that the regulations may make provisions for Supporting Information in the form of 'principles' that apply to the taking of/proposed taking of genuine measures to avoid and minimise impacts on biodiversity values and potential assessment standards against which measures must be assessed.

It is not clear what role the principles will play compared to the assessment standards. It is not clear how the principles and standards will differ/have a different impact from requirements in the Biodiversity Assessment Method (BAM) regarding avoidance.

These amendments have the potential to narrow the consent authority's decision-making discretion for development, which is contrary to the intention of the Plan for Nature not to retain Ecologically Sustainable Development (ESD) as the key principle for planning decisions.

Recommendations:

- Further definitional guidance is required in relation to the terminology forming part of the avoid, minimise and offset hierarchy.
- The relevant provisions should be deferred until the Supporting Information has been released and the relevant stakeholders have had an opportunity to make submissions on the revised framework.

Biodiversity Conservation Measures

Proposed Amendment

Proposed section 6.29A refers to the taking of biodiversity conservation measures in lieu of retiring biodiversity credits. The measures are to be determined in accordance with the regulations.

Further detail is required around the definition of "Biodiversity Conservation Measures" and the nature of the proposed regulations. Further, it is not clear how this provision will work with existing section 6.4(2) of the BC Act which refers to the biodiversity conservation measures and regulations regarding these measures.

It is important that the measures proposed are understood by industry and that such measures do not preclude paying into the Biodiversity Conservation Fund (BCF). This could have a negative outcome of making biodiversity credits more difficult for landholders should there be a corresponding reduction in the types of biodiversity credits that the BCF seeks to purchase.

Recommendation:

- Further information is required on the changes to the concept of Biodiversity Conservation Measures.

Biodiversity Conservation Fund (BCF)**Proposed amendments**

Requiring that each obligation to retire biodiversity credits for which a payment is made into the Fund be acquitted within 3 years and, if appropriate offsets are not secured within the 3 years, requiring the Biodiversity Conservation Trust to reach agreement with the Minister about how the obligation will be met.

Enable the regulations to limit the ability of proponents to satisfy offset obligations by paying money into the Fund in particular circumstances.

Business NSW is concerned that the legislation will limit access to paying into the BCF and notes that no details on that circumstances would limit paying into the BCF have been provided as proposed in section 6.30(2).

The BCF is already a last option in most cases and is also usually the most expensive way to offset a given development. Should a business wish to pay into the BCF for something that can be easily purchased by the Biodiversity Conservation Trust (BCT), this should have the effect of helping to make the BCF more workable, not less.

Additionally intent of the Government to require monies paid into the fund to be acquitted within 3 years may not be practical for some projects and their required offsets.

Recommendation:

- There should be no restrictions imposed on the use of the BCF through the Bill as it is not certain whether such restrictions will on balance be positive.

- Government should develop a measure which creates a government process to account through the setting of a timeframe to acquit funds paid in to the BCF.

Direction to Assessors

Proposed amendment

Enable the Environment Agency Head to issue directions to accredited persons relating to the preparation and modification of biodiversity assessment reports.

Business NSW is concerned that the proposed provision of directions to assessors, who must already comply with the Act and must obtain and retain certification, will in fact further discourage assessors from entering the profession.

Workforce shortages exist in many occupations, across most industry sectors and in every region of NSW. The Business NSW 2022 Workforce Skills Survey found that 77% of businesses were having trouble in recruiting the workers they needed. It also found that these shortages extended across both skilled and unskilled positions. Accredited assessors are already facing arguably unsustainable pressures, leading to delays in the assessment process.

There are clearly issues with the process of undertaking biodiversity assessment in the development assessment process. There are frustrations from all sides with the process, including industry, assessors, regional assessing officers of DCCEEW and the Department of Housing, Planning and Infrastructure (DHPI).

Recommendations:

- The proposed provisions should be deleted given that they will result in further red-tape, delays, and uncertainty to the assessments of applications and do not resolve the key issues with biodiversity assessment.
- The Government should consult with accredited assessors (both private and government employed), industry and the Department of Housing, Planning and Industry (DHPI) to gain a shared understanding of the issues in relation to biodiversity assessment and work together on appropriate solutions.

Additional Registers

Proposed amendment

Establish public registers of the following:

- Decisions to approve development, activity or clearing that is likely to have serious and irreversible impacts on biodiversity values.
- Exemptions from the scheme granted by the Minister in connection with natural disasters or other exceptional circumstances.
- Measures for avoiding and minimising impacts on biodiversity values set out in biodiversity development assessment reports and conditions of development consents and approvals.

There is no reason provided for the establishment of the registers. It is not clear what purpose they will have. The establishment of registers (for decisions approving or refusing development with impacts on SAI, and for avoid and minimise measures and biodiversity conservation measures) under the BC Act are unnecessary, overly administratively burdensome on proponents and the NSW Government.

The proposed registers have the potential to create confusion particularly where the recordings in the register may not provide the full context for the relevant matter. They also may lead to assumptions around a particular site, ultimately inappropriately impacting on opportunities for development which may be appropriate in circumstances that are quite different in nature or scope compared with the development that was previously refused.

Recommendation:

- Delete the requirement for the additional registers.

The proposed amendments to the BC Act 2017 have potential implications for the delivery of largescale government led housing, renewable energy and infrastructure projects and many businesses across NSW. Business NSW advocates at state and federal levels to maintain and enhance the housing, renewable energy and infrastructure that keeps businesses running today and in the future. Business NSW thanks you gain for the opportunity to comment on the BC Amendment (Biodiversity Offsets Scheme) Bill 2024, and we encourage the NSW Government to consider our thoughts and suggestions.

If you have any questions about our submission or would like to discuss in more detail, please feel free to contact Leah Tucker, Senior Policy Manager, Energy and Infrastructure at

Yours Sincerely,

David Harding

Executive Director
Business NSW