

Biodiversity Conservation Act Review  
Department of Planning and Environment  
Parramatta NSW 2124  
Online submission; cc: [biodiversity.review@environment.nsw.gov.au](mailto:biodiversity.review@environment.nsw.gov.au)

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21 April 2023

Dear Biodiversity Conservation Act Review team,

**RE: Submission to the statutory review of the Biodiversity Conservation Act 2016**

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the NSW Government's statutory review of the *Biodiversity Conservation Act 2016* (the Act).

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

## 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 fifteen members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nature Foundation
- 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 \$280 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.

## Summary

### The challenge

Whilst the nature crisis is less well-known than the parallel, albeit interconnected, climate crisis, it is just as serious for our society and economy. A recent report has confirmed Australia's trajectory towards the collapse of ecosystems<sup>1</sup> and we have seen the largest documented decline of biodiversity than any other continent in the world<sup>2</sup>.

More broadly, according to the World Economic Forum:

*"Humanity has already wiped out 83% of wild mammals and half of all plants and severely altered three-quarters of ice-free land and two-thirds of marine environments. One million species are at risk of extinction in the coming decades – a rate tens to hundreds of times higher than the average over the past 10 million years..."*

*Human societies and economies rely on biodiversity in fundamental ways. ...over half the world's total GDP – is moderately or highly dependent on nature and its services."*<sup>3</sup>

Using the same methodology, **approximately half of Australia's GDP has also been demonstrated as having a moderate to very high dependence on nature**<sup>4</sup>.

The scale and devastation that the unfolding nature crisis will have upon our collective wellbeing will dwarf all but the very biggest issues facing our nation and will rival them in importance. As per the British Government's Dasgupta Review:

*"We are facing a global crisis. We are totally dependent upon the natural world. It supplies us with every oxygen-laden breath we take and every mouthful of food we eat. But we are currently damaging it so profoundly that many of its natural systems are now on the verge of breakdown."*<sup>5</sup>

The key findings of the Federal Government's 2021 State of Environment Report highlight the seriousness of the nature crisis as specific to Australia:

*"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. Changing environmental conditions mean that many species and ecosystems are increasingly threatened. 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.**"*<sup>6</sup>

Indeed in 2021, Australian scientists confirmed evidence that already 19 of Australia's ecosystems have either collapsed or are collapsing<sup>7</sup>.

It is thus of critical importance to our environment, our society, and our economy that protections for biodiversity are strengthened rather than weakened.

<sup>1</sup> See: Bergstrom et. al, 'Combating ecosystem collapse from the tropics to the Antarctic', *Global Change Biology*, 2021; <https://onlinelibrary.wiley.com/doi/10.1111/gcb.15539>

<sup>2</sup> See: DCCEEW; <https://www.dcceew.gov.au/environment/biodiversity/conservation>

<sup>3</sup> See: World Economic Forum, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, January 2020; <https://www.weforum.org/reports/the-global-risks-report-2020>

<sup>4</sup> See: Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, September 2022; <https://www.acf.org.au/how-australias-prosperity-depends-on-nature>

<sup>5</sup> See: p1, Dasgupta, P. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, Government of the United Kingdom; <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

<sup>6</sup> See: Government of Australia, 2021 State of Environment Report; <https://soe.dcceew.gov.au/overview/key-findings>

<sup>7</sup> As above, n2

## Land clearance

The conclusions of the Audit Office of NSW's June 2019 report, *Managing Native Vegetation*, are deeply concerning, and point to the 2014 change to the legislative regime for managing native vegetation and biodiversity as a significant step backwards for nature and biodiversity in New South Wales.

As noted in the Commonwealth's 2021 State of the Environment Report, "***In New South Wales, there has been a steady increase in clearing, presumably for agricultural purposes, but substantial areas of clearing were not authorised.***"<sup>8</sup>

ALCA has outlined its recommendations regarding the native vegetation provisions in the *Local Land Services Act* in its submission to that review<sup>9</sup>, but restates its central recommendation that "*Except in exceptional circumstances, land clearance of native vegetation should immediately cease*<sup>10</sup>, noting that *the clearance of remnant vegetation is a major driver of biodiversity loss.*"

## Offsets

The failures in NSW offset policy have been well-documented in the *Effectiveness of the Biodiversity Offsets Scheme* report by the Audit Office of NSW<sup>11</sup>.

Environmental offsets are compensatory mechanisms and are used to facilitate land clearance and destruction of native vegetation and habitat. There has been a general policy failure of offsets markets – including as reported in the NSW offset market above – to deliver on the promise of achieving even a status quo outcome for nature.

If there is to be continued use of offsets in NSW, there needs to be a serious premium requirement to ensure they genuinely facilitate a net positive outcome for nature, with this premium accounting for, at minimum:

- any delay between land clearance and restoration outcomes (i.e. the net loss or 'bathtub effect' upon biodiversity); and
- a contingency to act as a buffer against the *risk* of no or delayed on-ground delivery.

Further, the price mechanism of offsets needs to reflect – at minimum – their relative scarcity. This is not achieved efficiently through fixed (or semi-fixed) pricing, especially where there is limited volume of particular offsets available to market.

## Conclusion

Regrettably, the regression in the state's protection of biodiversity has occurred within the context of the accelerating nature crisis facing our nation.

The New South Wales Government has an opportunity to put its state and community onto a path that recognises the increasingly important value of protecting its remaining biodiversity and to reorient itself towards a path of biodiversity restoration.

**An enlivened and refreshed Biodiversity Conservation Act is needed to deliver a nature positive future for NSW.**

<sup>8</sup> See: Government of Australia, 2021 State of Environment Report; <https://soe.dccceew.gov.au/overview/pressures/people#land-clearing>

<sup>9</sup> Available on ALCA's website at: <https://alca.org.au/alca-submission-to-the-nsw-government-review-of-native-vegetation-provisions-in-the-local-land-services-act/>

<sup>10</sup> ALCA acknowledges that some clearing may be required for critical services, and where this is the case, it should always be offset with high integrity offsets.

<sup>11</sup> See: <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>

## Recommendations

### Purpose / objects of the Act

1. The overarching objective of the Act is not fit for purpose; in particular, biodiversity conservation should not be subset of 'ecologically sustainable development', but rather this relationship should be inverted, such that development should only occur where an overarching principle dedicated to the protection, enhancement and restoration of biodiversity can be achieved.
2. The objects need to be updated to reflect the urgent and increasing need for large-scale restoration of biodiversity and nature as reflected in Target 2 of the recently signed Global Biodiversity Framework (GBF)<sup>12</sup> and as noted in the discussion paper (*"Messages we've heard to date... The Act should explicitly support restoration of ecosystems and connectivity of the landscape."*)<sup>13</sup>. As noted by the Lead Independent Reviewer Dr Ken Henry AC in his foreword to the discussion paper, **"Conserving what is left is no longer good enough."**

Often this is as simple as adding "and restore" into the Act where it is relevant, or to adopt the language of "conserve, enhance and restore" rather than simply "conserve".

It should be noted that the importance of connectivity follows logically from the use of "conserve, enhance and restore" language.

3. On the basis of the conclusion in Recommendation 1, it is recommended that the overarching objects of the Act instead be based upon sections 1.3(a) but with slight amendments to incorporate Recommendation 2, **in bold**:

***The purpose of this Act is to conserve, enhance and restore biodiversity at bioregional and State scales.***

4. Part of the overarching objective "to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future" should instead be added to the list of object under 1.3.
5. An object should be added to the Act which provides for the recognition, protection and promotion of the cultural values of biodiversity for both Indigenous Australians and non-Indigenous Australians.
6. It would be helpful to add an object to the Act that aligns NSW efforts to Australian and international efforts at conserving and restoring biodiversity (for example, through the implementation of the GBF). One approach to constructing such a provision can be borrowed from the Objects of the Act from the *Nature Repair Market Bill 2023* which was recently introduced to Federal Parliament, namely:

Section 3(b): *to contribute to meeting Australia's international obligations in relation to biodiversity;*<sup>14</sup>

<sup>12</sup> "Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity."; Australia is a signatory of the GBF; see: <https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>

<sup>13</sup> See p8: <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/statutory-review-biodiversity-conservation-act-2016-consultation-paper.pdf>

<sup>14</sup> See: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7014\\_first-reps/toc\\_pdf/23045b01.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7014_first-reps/toc_pdf/23045b01.pdf;fileType=application%2Fpdf)

## Land clearance

7. ALCA stands by the recommendations it made in its submission to the review on native vegetation provisions in the *Local Land Services Act*<sup>15</sup>, and restates its central recommendation, namely: *Except in exceptional circumstances, land clearance of native vegetation should immediately cease*<sup>16</sup>, noting that the clearance of remnant vegetation is a major driver of biodiversity loss.
8. Noting that the review of *Local Land Services Act* provisions and the *Biodiversity Conservation Act* review have been undertaken separately, there is a risk that needs to be mitigated that the Acts and rules regulating land use have the potential to undermine any positive outcomes being delivered through the *Biodiversity Conservation Act*.

## Mosaic covenants

9. In reframing the objects/purposes of the Act to contain restoration, there is an opportunity to provide the Biodiversity Conservation Trust NSW the power to enter into conservation covenants that combine elements of high integrity protection of biodiversity with high integrity enhancement or restoration of biodiversity.

## Third party breaches of covenants

10. The *Biosecurity Act 2015* (NSW) provides for offences that apply to parties that enter areas where a Biosecurity Management Plan applies<sup>17</sup> (i.e. third parties). However, similar provisions do not apply to third parties (i.e. neither Government nor the holder of the conservation covenant) who breach the legal arrangements of a covenant.

Examples include third parties who deliberately and persistently graze stock, hunt native wildlife, construct tracks, clear vegetation – and so on – upon covenanted land.

Whilst some of these acts may be offences in their own right, in practical terms it can be difficult to secure local police enforcement, especially repeated enforcement against breaches. The public nature of the monetary investment in covenants – i.e. in pursuit of conserving biodiversity in the public environmental good – provides an equivalent basis. This is not merely a private landholder matter on par with a neighbourhood dispute – especially with repeat offenders – but a matter in which the Government and public policy has a significant stake to defend.

The New Zealand Government has adopted exactly this approach to protecting covenanted land; in the *Queen Elizabeth the Second National Trust Act 1977* (NZ)<sup>18</sup> there are offences for third party actions upon covenanted land (including wilful damage, removal of property or things, setting fires, etc.).

On this basis, it is recommended that appropriate penalties are included within the Act for third party breaches of covenants, and that this consideration should include the possibility of strict liability penalties for actions such as trespass<sup>19</sup>.

11. Importantly, there also needs to be powers of referral to the relevant enforcement authority for both the covenant landholder and the Biodiversity Conservation Trust NSW for third party breaches of covenants.

<sup>15</sup> As above n2

<sup>16</sup> ALCA acknowledges that some clearing may be required for critical services, and where this is the case, it should always be offset with high integrity offsets.

<sup>17</sup> See: <https://legislation.nsw.gov.au/view/html/inforce/current/act-2015-024>; and <https://www.dpi.nsw.gov.au/biosecurity/your-role-in-biosecurity/primary-producers/biosecurity-management-plan>

<sup>18</sup> See: s34 – Offences; <https://www.legislation.govt.nz/act/public/1977/0102/latest/DLM9041.html>

<sup>19</sup> It may be that matters ultimately for prosecution could, for example, utilise the NSW's Land and Environment Court.

## Special wildlife reserves

12. Queensland is currently the only jurisdiction which has created a type of conservation covenant that prohibits mining and logging activity, called “Special Wildlife Reserves” (SWRs)<sup>20</sup> – a conservation covenant ‘plus’, as it were.

SWRs are valuable to Government and the conservation sector because they greatly assist in leveraging international investment and philanthropy who are, generally speaking, seeking the highest level of in-perpetuity protection for their investment.

ALCA strongly recommends that the Government add and adopt SWRs (or their equivalent) in any legislative amendments that flow from the review.

More information on SWRs can be found online at: <https://www.qld.gov.au/environment/parks/protected-areas/private/special-wildlife-reserves>, and by contacting the Queensland Government at [swr@des.qld.gov.au](mailto:swr@des.qld.gov.au).

## Offsets

13. ALCA recommends that the review take note of the general policy failure of offsets markets – including the NSW offset market in particular – to deliver on the promise of achieving even a status quo outcome for nature.
14. The issues facing the NSW biodiversity offset scheme have been well-documented, including in the Audit Office of NSW report “*Effectiveness of the Biodiversity Offsets Scheme*”<sup>21</sup>, and ALCA does not seek to replicate those findings in its recommendations.

However, ALCA does seek to underline the inherent flaws and contradictions to any regulated offset scheme that runs largely independently of market forces; namely, that adopting a fixed price (or semi-fixed price) approach to offsets – even where that fixed price is regularly reviewed – does not fully allow relative scarcity to create the necessary upwards pressure upon price.

**If the NSW Government seeks to continue to utilise biodiversity offsets, then the price of those offsets needs to reflect – at minimum – their relatively scarcity.** This means ensuring that a properly constructed market mechanism can work efficiently and effectively to set prices.

15. Further, ALCA urges the review to ensure that the ‘bathtub effect’ is accounted in future offsets, namely, where a compensatory payment is received to offset negative impacts upon biodiversity, it not only needs to account for the negative impacts that flow from the time of the land clearance (or other negative impact), but also to **include and account for the net projected loss in biodiversity caused until there is on-ground delivery of the compensating biodiversity offset.**
16. Separately to above and noting the ongoing uncertainty and variability in securing on-ground delivery of biodiversity offsets, where relevant, **there should be – at minimum – an additional contingency paid for any offset to act as a buffer against the risk of no or delayed on-ground delivery.**
17. Certain threatened ecosystems and habitats for threatened species cannot ever be offset in practice, and this should be reflected in the Act which either prevents their clearance or prevents clearance *until* an effective on-ground offset has been delivered.

<sup>20</sup> As enacted under: *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019* (Qld); see: <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-008>

<sup>21</sup> As above, n11

## Markets

18. It should be noted that market mechanisms are not always appropriate for biodiversity conservation. However, any amendments to the Act should reflect the emerging uptake of markets as one mechanism for assisting to deliver outcomes for biodiversity, including, where relevant and risk-appropriate, the ability of the Biodiversity Conservation Trust NSW to engage as a participant or aggregator in those markets.
19. It should be ensured that NSW landholders participating in schemes under the Act are not inadvertently penalised or precluded from participating in the forthcoming Federal Government Nature Repair Market<sup>22</sup>.

## Wildlife transfers

20. Some ALCA members engage in rewilding efforts and/or the transfer of wildlife both from and to wildlife sanctuaries.

There is significant scope for reform of NSW intrastate and interstate wildlife transfers for conservation and would recommend that the reviewers contact relevant ALCA members for further details<sup>23</sup>.

Thank you again for the opportunity to contribute to the NSW Government's statutory review of the *Biodiversity Conservation Act 2016*.

ALCA and its members look forward to ongoing engagement with the NSW Government to help reverse Australia's rapid decline in biodiversity.

## Australian Land Conservation Alliance

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<sup>22</sup> See: *Nature Repair Marker Bill 2023* (Cth); [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r7014](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7014)

<sup>23</sup> Just by way of a few examples, the Australian Wildlife Conservancy and Odonata; ALCA would be happy to facilitate contact with relevant members on these matters for the review team.