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INQUIRY

THE INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

AN ANIMAL LIBERATION SUBMISSION
PORTFOLIO COMMITTEE NO. 7 – ENVIRONMENT AND PLANNING

We acknowledge the
Traditional Owners of
country throughout
Australia and recognise
their continuing
connection to land, waters
and culture.

We acknowledge that this
document was written on
land stolen from and
never ceded by the
Gadigal People.

We pay our respects to
their Elders past, present
and emerging.





We don't have a duty to **spea**k for the animals;
we have an obligation to be **heard** for the animals.

Matt Ball (2006)

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ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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6 September 2021

We present this submission for the Committee's consideration on behalf of Animal Liberation.

Animal Liberation is pleased to lodge a submission in response to the Portfolio Committee No. 7 – Environment and Planning Inquiry 'Integrity of the NSW Biodiversity Offsets Scheme'.

We request that it be noted from the outset that the following submission is not intended to provide an exhaustive commentary or assessment in response to the integrity of the NSW Biodiversity Offsets Scheme. Rather, our submission is intended to provide a general examination and responses to select areas of key concern. As such, the absence of discussion, consideration or analyses of any particular aspect or component must not be read as or considered to be indicative of consent or acceptance. For the purposes of this submission, Animal Liberation's focus covers aspects that we believe warrant critical attention and response.

In May 2021, Animal Liberation lodged a comprehensive submission in response to the NSW Government's proposed changes to the Biodiversity Offsets Scheme. Our previous submission can be viewed and accessed here <https://bit.ly/2WSzUGu>. We request the Committee take our previous submission points and commentary into consideration during its review of the Integrity of the NSW Biodiversity Offsets Scheme.

In addition to the content of Animal Liberation's previous submission, we have reviewed the Inquiry's Terms of Reference and the "clarifications to the Terms of Reference 1(b) and 1(c), related legislation and documents, our outlined as follows.

Animal Liberation remains strongly opposed to the "offsetting" and "discounting" of biodiversity and contends our precious biodiversity is not 'for sale' even to the highest bidder.

Sincerely,

Lisa J Ryan

Regional campaigns manager

Alex Vince

Campaign director

WHAT HAPPENS TO THEM MATTERS TO THEM

REGAN 1983



1. INTRODUCTION

- 1.1 Globally, nature including natural resources, and our precious shared environment including habitat for native nonhuman species, is increasingly in a perilous position and continues to face an unprecedented level of human induced challenges and risks.
- 1.1.1 Animal Liberation contends that in addition to a failure by government to address climate change, including a failure to recognise the serious risks and impacts of intensive animal agriculture along with other harmful activities and industries such as mining, transport and logging, wilful policy and policy direction such as the NSW biodiversity offsets scheme has and will continue to contribute to excessive land clearing and a worsening of wildlife and habitat loss.
- 1.2 Though some biodiversity offsetting has been in use in NSW since 2005 under various pieces of legislation, the introduction of the biodiversity offsets scheme in 2016/2017 has further exacerbated the plight of around 1,000 NSW species of fauna and flora threatened with extinction. This has been amplified by the rapid erosion of and weakening of environmental protection laws, increased rates of land clearing and habitat loss in NSW
- 1.2.1 Animal Liberation contends the scheme lacks integrity and probity. It has been established to allow a highly questionable formula to justify ongoing land clearing for development and government economic gain. As reported by the Guardian Australia, some companies have gained significant financial gain through their involvement in the “offsets market” and such activity has only further cast doubt over the probity of the system.
- 1.2.2 We fully concur with statements made by the Nature Conservation Council ('NCC') Chief Executive Chris Gambian who said: “the problem with commodifying natural assets like water and biodiversity is they inevitably become prey to speculative investors rather than being managed and protected in the public interest”. Further, we concur with the belief that “the whole system of offsetting must be urgently reviewed to ensure it does what it says on the tin – protects threatened wildlife and bushland in a rigorous and transparent way.”
- 1.2.3 We further contend that our shared environment and the unique habitat it provides for multiple species is a ‘community’ asset and its value and importance is immeasurable in terms of environmental carbon capture to help mitigate climate change and save and protect unique and precious nonhuman animal species which cannot be found anywhere else in the world. Extinct means gone forever.



2. TERMS OF REFERENCE

THE TERMS OF REFERENCE

2.1 The Committee's Terms of Reference ('TOR') are as follows:

- (a) the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales, the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight;
- (b) the use of offsets by the NSW Government for major projects and strategic approvals;
- (c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and;
- (d) any other related matters.

CLARIFICATIONS TO THE TERMS OF REFERENCE

- (1b) **The use of offsets by the NSW Government for major projects and strategic approvals.**

This relates to the use of offsets for state significant development ('SSD') and state significant infrastructure ('SSI') major projects, including as part of strategic assessments (or biodiversity certifications) and the offsetting conditions that consent authorities apply to these types of projects.

- (1c) **The impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme.**

Non-additional offsets are offsets that don't provide any additional conservation values or increase in biodiversity values, but still generate credits to enable the loss of existing biodiversity values. For example, converting existing nature reserves into offset credits.

- 2.2 Further to our comprehensive submission in response to the NSW Government's proposed changes to the Biodiversity Offsets Scheme, we provide the following broad comments in response to the Portfolio Committee No. 7 - Environment and Planning Committee's TOR.
- 2.2.1 Animal Liberation strongly opposes any concept or scheme which allows the discounting of biodiversity credits and offset credit requirements which can be 'discounted' based on claimed social and/or economic benefits. Policies and schemes which prioritise economic outcomes will continue to contribute to biodiversity loss, including extinction. The focus of economic priority in such policies and schemes at the expense of biodiversity, only undermines the integrity and credibility of such policies and schemes.
- 2.3 Supplementary measures, including "biodiversity conservation actions" (such as research or surveys into the biodiversity under threat), can never be considered to be genuine offsets. Rather, these should be critiqued for what they are and as flagged by the NSW Scientific Committee in their 2014 submission on the Draft NSW Biodiversity Offsets Policy for Major Projects (i.e., as "a case of developers being able to buy themselves out of any obligation to protect biodiversity in any meaningful way").
- 2.3.1 Mining sites include a clear legal obligation for restoration and rehabilitation. We totally reject developers being permitted to use mine rehabilitation sites to generate biodiversity offset credits.
- 2.4 The draft Biodiversity Assessment Method ('BAM') doesn't include a clear objective to protect biodiversity in spite of the Biodiversity Conservation Act requiring the biodiversity assessment method adopt a standard that results in no net loss.
- 2.4.1 Under the draft BOS, developers and proponents could potentially discharge offset requirements by paying an amount of money into Biodiversity Conservation Trust, thereby allowing a potentially harmful development to proceed without any certainty surrounding the required offset.
- 2.5 While the BOS refers to "serious and irreversible impacts" and includes some restrictions, we believe the criteria used for assessing such impacts is completely inadequate as it contains only brief mention and recognition of the most endangered and restricted area species and ecological communities. Potentially, risks relating to major projects can be ignored. This includes where endangered species are not listed and forests could be cleared without offset requirements where the land area is below the clearing thresholds.
- 2.5.1 The BAM risk and impact considerations are too limited and restrictive and should be expanded to include other

- 2.5.1 key assessment criteria and methodology covering the health of surface and ground water and soil to ensure a full suite of biodiversity values such as vegetation integrity and habitat suitability.
- 2.6 We have serious concerns about the like-for-like principle that offsets should replace the values being lost, including the potential that offsets can be used for species across similar vegetation classes or between species including threatened species; a koala can be swapped for a wallaby.
 - 2.6.1 Similarly, we are concerned that offsets can be found from a radius of 100 km and where the loss of existing geographic distribution will undermine species resilience and long-term adaptation to climate change.
 - 2.6.2 Ultimately, this principle lacks integrity and credibility and completely undermines the importance of biodiversity protection and conservation.



3. SUMMARY AND CONCLUSION

3.1 Animal Liberation remains strongly opposed to the “offsetting” and “discounting” of biodiversity.

3.1.1 Our environmental protection and native species protection laws in NSW are broken and are not meeting their intended stated purpose. These laws continue to fail the environment, koalas, and their habitat. Rampant land clearing, logging of burnt and un-burnt forests and private land, and the diversion of billions of litres of water from our rivers are placing our forests, woodlands and grasslands and the biodiversity they support, in a perilous and unsustainable state. Inadequate assessment of harmful developments with outrageous ‘offsets’ is further contributing to the rapid decline of healthy and sustainable NSW koala and other native species populations.

3.1.2 For all government's rhetoric, it is indeed government's own failures, manifest in deliberate and willful policy direction, that pose the greatest threats to native fauna and flora. While the NSW Government functions in a "business as usual" approach, ignoring the urgent warnings and evidence, evidenced by the promotion of ineffective or inadequate legislation and an apathetic attitude that prioritises economics and schemes like BOS over biodiversity protection, our environment and precious native fauna and flora will continue to become extinct.



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LEGISLATION AND OTHER POLICIES

Biodiversity Conservation Act 2016

Draft Koala Habitat Protection Guideline 2020

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