



Blue Mountains Bird Observers Inc.

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21st June 2016

Biodiversity Reforms - Have your say
Office of Environment and Heritage
PO Box A290
Sydney South NSW 1232

Submission: Opposing NSW Draft Biodiversity Reform Legislation

Dear Minister

Blue Mountains Bird Observers Inc (BMBO) is a community-based organisation whose main objectives are to encourage birdwatching, knowledge about and appreciation of birds, and to promote the conservation and protection of native birds and their habitat. The club has around 180 members.

While our club is based in the Blue Mountains in Greater Sydney LLS Area, members have interests, including property ownership, in other Areas such as Central Tablelands (Capertee Valley and Cowra) and travel on club trips and individually to most parts of New South Wales and other parts of Australia. We are affiliated with BirdLife Australia and maintain close links with a large number of groups in New South Wales through the Bird Interest Group Network.

Many members are actively involved in maintenance and restoration of native bird habitat, both privately on their own properties and through Bushcare and Landcare activities. BMBO conducts regular surveys in dozens of locations under the **Important Bird Area** umbrella, specifically for Rockwarbler habitat and Honeyeater migration.

BMBO is therefore intimately concerned with any potential for reduction in bird habitat, particularly but not exclusively relating to threatened species.

BMBO has significant concerns as to the efficacy of the draft legislation to achieve the stated goals and no confidence that the results will be adequately monitored, measured or reported. There can be only one result from the documents currently on exhibition and that is less of the particular habitats that many birds are adapted to and hence more threatened and ultimately extinct bird species in New South Wales.

On that basis BMBO has no alternative but to **strongly oppose** both the Draft *Biodiversity Conservation Bill 2016* and the draft *Local Land Services Amendment Bill 2016* in their current forms.

We note that submissions from BMBO, other Bird Clubs and Environmental Organisations to the 2014 Review appear to have been largely ignored in the detail

of the Draft Bills, while lip service is given in the motherhood statements included in promotional material. With that in mind, we doubt that the work put in by our and other organisations on this matter will have any effect; if that is the case, we consider the requirements of public consultation to have not been fulfilled by the Government and its instrumentalities. Simply receiving submissions, logging the numbers into a report and ignoring their content is not acceptable.

Representatives from BMBO have attended information sessions of various types including some LLS and Farmers NSW presentations. While accepting the integrity of the presenting individuals and their good intentions, if both the legislation and compliance structure are weak, the outcomes will be poor for birds, the environment and biodiversity.

Further, the material is so complex and related to other documentation, legislation and regulation that is not yet available for public review that BMBO considers proceeding with this process in the present expected timeframe is inadvisable.

Our submission detail is to refer you to the 15 Recommendations listed in the Summary of the BirdLife Australia (BLA) submission, as provided here as Appendix A and recommend BLA's detailed expansions on those recommendations for your consideration.

Thank you for the opportunity to contribute to this process,

Sincerely

A handwritten signature in blue ink that reads "Paul Vale". The signature is written in a cursive style and is positioned above a horizontal line that extends across the width of the signature.

Paul Vale
Conservation Officer

Appendix A

BirdLife Australia Submission Summary

Recommendation 1: That the public comment period extended by a period of no less than six months and include genuine engagement of the community in the design of new biodiversity legislation.

Recommendation 2: The objects of the *Biodiversity Conservation Bill 2016* must include objects and subsequent provisions to:

- prevent the extinction and promote the recovery of threatened species, populations and ecological communities;
- protect critical habitat of threatened species, populations and ecological communities; and
- avoid further species becoming threatened with extinction.

Recommendation 3: Prior to the clearing of any vegetation in NSW, adequate site-based assessment by experienced Ecologists must be undertaken to ensure:

- a. no immobile threatened fauna or flora species are accidentally killed or destroyed
- b. threatened species habitat is not removed or destroyed without the creation of adequate offsets that meet strict criteria (see <http://www.birdlife.org.au/documents/POL-Offsets-Policy.pdf>) to ensure the offset provides direct benefit for the population(s) (not just the species) impacted.

Recommendation 4: Publically commit to making available the necessary staff and funding resources for LLS to certify and regulate vegetation management under the proposed reforms.

Recommendation 5: That the NSW Government undertake accurate modelling and calculations of the total area of vegetation that is likely to be cleared under the proposed new *Local Land Services Amendment Bill 2016*, compared to the total areas of the same that can be cleared under the current legislation (*Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995*) and publish it for the NSW public to comment on prior to the end of the submission period. We specifically wish to see:

- a. an accurate estimate of the all the native vegetation that will be cleared under the new legislation
- b. all the pre-1990 vegetation that will likely be cleared
- c. all the post-1990 vegetation that will likely be cleared
- d. the total area of NSW-listed Endangered Ecological Communities and Critically Endangered Ecological Communities that will be likely cleared
- e. the total area of *Environmental Protection & Biodiversity Conservation Act 1999* (Cth) listed Endangered Ecological Communities, Critically Endangered Ecological Communities and habitat for matters of national environmental significance that will be cleared.
- f. the total volume of *greenhouse emissions caused by the proposed land clearing* and a clear explanation of how these emissions will be 'offset'
- g. the NSW Government must undertake a formal environmental impact assessment of activities permitted under the biodiversity reform package.

Recommendation 6: That the NSW government:

- a. undertake a formal Commonwealth Referral to assess the impact of all activities permitted under the biodiversity reform package on MNES
- b. clearly acknowledge how the proposed reforms will interact with the EPBC Act, including the possibility of inconsistency between what is an offence under the State and Commonwealth regimes
- c. provide clear, detailed information to help land managers conserve nationally listed MNES habitat on their properties and avoid clearing that would breach the EPBC Act..

Recommendation 7: That the Minister and public authorities (including the Chief Executive) take any appropriate action available to implement a Biodiversity Conservation Program for threatened species and threatened ecological communities and not make decisions that are inconsistent with the provisions of a Biodiversity Conservation Program as was required by s.69 of the *Threatened Species Conservation Act 1995*.

Recommendation 8: Undertake an honest and transparent economic analysis of the financial costs and gains of implementing the proposed legislation reforms.

Recommendation 9: That the government retain 'Endangered Populations' in the *Biodiversity Conservation Bill 2016*

Recommendation 10: BirdLife request that:

- a. the board/panel who decide upon the AOBV contains at least one BirdLife Australia Scientist
- b. BirdLife Australia is invited to provide a list of sites in NSW that should be immediately placed on the AOBV list, owing to their irreplaceable biodiversity values of state, national or international importance, particularly in relation to rare, threatened and declining bird species and communities.

Recommendation 11: All proposed 'exempt wildlife' that are native birds, are clearly listed. BirdLife also requests an invitation to review the proposed 'exempt wildlife species' along with the science of the recommended lethal control and the area it is proposed to take place in. Any proposed lethal control of birds should be conducted in the presence of experienced ornithologists to ensure correct identification of target species and avoid misidentification. BirdLife Australia is opposed to wildlife destruction that is inhumane or ill-considered. We refer the NSW Government to our pest bird management policy (<http://www.birdlife.org.au/documents/POL-Pest-Bird-mngment.pdf>)

Recommendation 12: Retain current requirements for public consultation and registers. Retain the rights of the people of NSW to challenge Environmental Planning and Biodiversity decisions in the Land and Environment Court

Recommendation 13: The proposed reforms should be based on a hierarchy of controls by where negative impacts are avoided or mitigated. Offset should be a last resort. If offsets are used, do not allow exemptions and discounts from any offset pathways. See BirdLife Australia's Biodiversity Offset policy <http://www.birdlife.org.au/documents/POL-Offsets-Policy.pdf>

Recommendation 14: All threatened bird species should be listed as 'species credits' and not 'ecosystem credits'. The use of 'habitat surrogates' to predict species presence on an offset site as proposed under the BAM is also not an appropriate measure. At a minimum the BAM should be revised to ensure that appropriate species experts (i.e. Ecologists and, where they exist, recovery team chair people) are consulted when assessing site-based impacts on threatened species.

Recommendation 15: Retain the requirement to 'maintain or improve environmental outcomes'.
