

Terms of Reference

Statutory five-year review of the *Biodiversity Conservation Act 2016*

Background

The Land Management and Biodiversity Conservation (LMBC) reforms commenced on 25 August 2017. The LMBC reforms are the NSW Government's response to the Independent Biodiversity Legislation Review Panel's 43 recommendations delivered in December 2014.

The objectives of these reforms, as described in the NSW Government's second reading speech, included to arrest and ultimately reverse the decline in the State's biodiversity while facilitating ecologically sustainable development, in particular efficient and sustainable agricultural development.

The *Biodiversity Conservation Act 2016* (BC Act) and Part 5A (and Schedules 5A and 5B) of the *Local Land Services Act 2013* (LLS Act) are the key legislative instruments that underpin the NSW Government's LMBC framework.

Requirements of the review

Under section 14.11 of the BC Act, the Minister administering the BC Act (the Minister for Environment and Heritage) is required to begin a review of the BC Act as soon as possible after 25 August 2022.

In accordance with section 14.11 of the BC Act, the review will:

- determine whether the policy objectives of the BC Act remain valid
- determine whether the terms of the Act remain appropriate for securing those objectives
- include public consultation.

The review of the BC Act will be undertaken in conjunction with the review of Part 5A and Schedules 5A and 5B of the LLS Act.

Scope

Objectives of the BC Act

The review will examine whether the objectives of the BC Act are being achieved, whether they remain valid and whether the terms remain appropriate for securing the objectives. The objectives of the BC Act to be examined in the statutory review are listed below.

The objectives of the BC Act are contained in section 1.3 of that Act, which provides:

The purpose of the *Biodiversity Conservation Act 2016* is to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development (described in section 6(2) of the *Protection of the Environment Administration Act 1991*), and in particular—

- (a) to conserve biodiversity at bioregional and State scales, and
- (b) to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and
- (c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation, and
- (d) to support biodiversity conservation in the context of a changing climate, and
- (e) to support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions, and
- (f) to assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process, and
- (g) to regulate human interactions with wildlife by applying a risk-based approach, and
- (h) to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature, and
- (i) to support and guide prioritised and strategic investment in biodiversity conservation, and
- (j) to encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity, and
- (k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity, and
- (l) to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values, and
- (m) to establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales, and
- (n) to support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation, and

- (o) to make expert advice and knowledge available to assist the Minister in the administration of this Act.

Intersections with other Acts

Achievement of some objectives of the BC Act is significantly dependent on intersections with other legislation.

The BC Act was established as part of an 'integrated legislative package' alongside Part 5A of the LLS Act with the expectation that 'the reforms, taken as a whole' would 'arrest and ultimately reverse the current decline in the State's biodiversity while facilitating ecologically sustainable development, in particular efficient and sustainable agricultural development.'¹

The reform package comprised '4 key themes':

- a new rural land management framework under the LLS Act
- a new market-based system under the Biodiversity Offsets Scheme for avoiding, minimising, measuring and offsetting the biodiversity impacts of development, established under the BC Act with links to the *Environmental Planning & Assessment Act 1979* (EP&A Act)
- a modern, risk-based approach for identifying, protecting and regulating interactions with native plants and animals
- new arrangements to deliver conservation outcomes on private land through direct NSW Government investment.

Government acknowledged that this new approach 'may lead to some increased clearing at a property scale, but there are checks and balances to ensure that the impacts of that clearing are managed through a suite of set asides, caps, offsets, investments, market-based instruments, monitoring and regulatory enforcement'.

Government committed that 'the reforms will also be subject to regular review, to ensure that they are achieving the proposed aims of the Biodiversity Conservation Bill 2016 to conserve biodiversity on a statewide and bioregional scale.'²

To effectively evaluate whether the terms of the BC Act remain appropriate for securing the objectives of the BC Act, interdependent policy settings across other legislation need to be considered but only to the extent they are directly relevant.

The review will consider the findings of previous reviews that relate to the achievement of the BC Act objectives.

¹ *Biodiversity Conservation Bill 2016, Local Land Services Amendment Bill 2016*, 2nd reading speech, NSW Legislative Council, 9 November 2016 [<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3357>]

² *Biodiversity Conservation Bill 2016, Local Land Services Amendment Bill 2016*, 2nd reading speech, NSW Legislative Assembly, 16 November 2016 [<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3357>]

Process

The Minister for Environment and Heritage is required to review the BC Act. The Minister's review of the BC Act will be conducted with the support of an independent reviewer and experts.

Regular updates will be provided to relevant Ministers and agencies.

Final report

The Minister for Environment and Heritage will table a report on the outcome of the review in each House of Parliament by 24 August 2023.