



# Summary of public submissions

Independent review of the Biodiversity Conservation Act 2016

Department of Planning and Environment

## Acknowledgement of Country

The Department of Planning and Environment acknowledges the Traditional Custodians of the lands where we work and live.

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

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Cover photo: Aerial image shows rocks and trees on a hill.  
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# Contents

1.	Introduction	1
1.1	Background to the review of the Act	1
1.2	Purpose of this submissions report	1
1.3	Consultation and submissions received	1
2.	Objectives of the Biodiversity Conservation Act 2016	3
2.1	Current objectives	3
2.2	Principles of ecologically sustainable development	4
2.3	Support for new objectives	4
3.	Aboriginal knowledge and engagement	6
3.1	Integrating Aboriginal ecological knowledge	6
3.2	Involvement in decision-making	6
3.3	Supporting traditional cultural values and practices	7
4.	Land-use planning and the Biodiversity Offsets Scheme	8
4.1	Concerns about the planning framework	8
4.2	Biodiversity Offsets Scheme	9
4.3	Biodiversity certification of land	12
5.	Species and ecosystem management	14
5.1	Mitigating threats to biodiversity	15
5.2	Wildlife licensing and animal welfare	15
6.	Information and data	17
7.	Restoring and conserving landscapes	19
8.	Governance and interactions with other laws	21
9.	Compliance and enforcement	23
10.	More information	25
	Appendix A. List of unique submissions from organisations and individuals	26

# List of figures

Figure 1	Submissions grouped by sector (excluding form letter submissions)	2
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# 1. Introduction

## 1.1 Background to the review of the Act

The *Biodiversity Conservation Act 2016* (the Act) commenced on 25 August 2017. Under section 14.11, the Minister is required to review the Act after 5 years of operation to ensure its policy objectives remain valid and its terms are appropriate for securing those objectives. The Minister must table a report on the outcome of the review in each House of Parliament by 24 August 2023. The scope of the review is detailed in its *Terms of Reference: Statutory review of the Act*.

An independent review was led by Dr Ken Henry AC and supported by Distinguished Professor Michelle Leishman, Dr John Keniry AM and Mr Mike Mrdak AO.

**The independent panel's final report on the review of the Act can be found on the *Biodiversity Conservation Act* review website.**

The review of the Act was carried out separately but at the same time as a statutory review of the native vegetation provisions under Part 5A of the *Local Land Services Act 2013*.

## 1.2 Purpose of this submissions report

The purpose of this report is to summarise the key issues from submissions received during the public consultation period.

This report has been prepared by the Environment and Heritage Group of the NSW Department of Planning and Environment on behalf of the review panel. It provides a high-level summary of views put forward in written submissions received during the public consultation process only. It does not present the findings and recommendations the panel made in its final report.

Key issues from submissions are presented in this report against selected themes:

- Objectives of the *Biodiversity Conservation Act 2016*
- Aboriginal knowledge and engagement
- Land-use planning concerns (including the Biodiversity Offsets Scheme)
- Species and ecosystem management
- Information and data
- Restoring and conserving landscapes
- Governance and interactions with other laws
- Compliance and enforcement.

## 1.3 Consultation and submissions received

A consultation paper was released for public comment between 28 February and 21 April 2023. It outlined the Act's broad purpose, specific objectives and key program areas, and featured 25 focus questions to guide submissions.

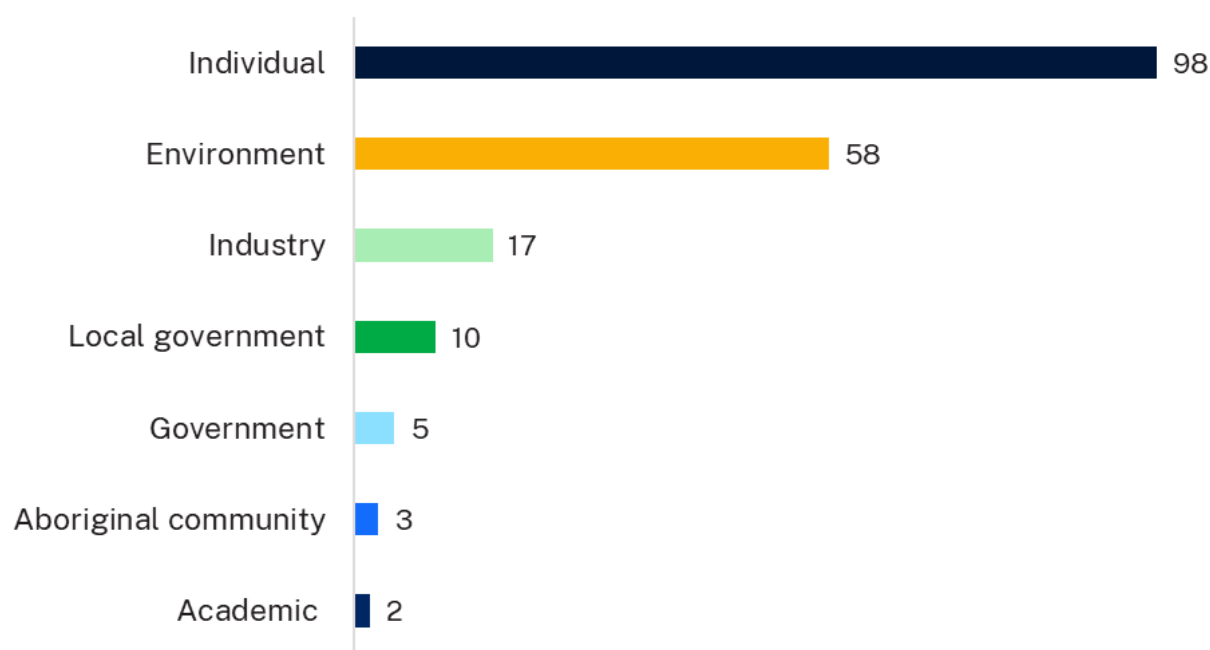
A total of 979 submissions were received:

- 193 unique submissions from individuals and organisations
- 786 form letter submissions.

Unique submissions came from a range of stakeholder groups and sectors (Figure 1 and Appendix A). The majority of submissions came from individuals or environment groups. All submissions authorised for publication are available on the *Biodiversity Conservation Act review* website.

**The independent review panel would like to thank everyone who made a submission.**

The panel also met with a range of environment, planning, industry, Aboriginal, academic, community and government stakeholders, and attended site visits on the North Coast of New South Wales and in the Cooma–Monaro area during the review period. The feedback provided during these meetings informed the final review report but has not been included in this summary of submissions report.



**Figure 1 Submissions grouped by sector (excluding form letter submissions)**

**Sector key**

**Individual:** Individual members of the public, who overwhelmingly expressed concerns for the environment

**Environment:** Non-government environment organisations, animal welfare and care groups, clubs, societies and hobbyists

**Industry:** Ecological, planning and legal professional bodies, development, farming, housing, infrastructure and mining organisations

**Local government:** Individual councils, joint organisations and non-government bodies

**Government:** Commonwealth or New South Wales owned corporations and statutory bodies

**Aboriginal community:** Local Aboriginal Land Councils and individuals

**Academic:** Research groups

**Direct quotes taken from the submissions are presented as indented, blue text.**

## 2. Objectives of the Biodiversity Conservation Act 2016

The consultation paper sought feedback on:

- how effective the objects of the Act are to restore, conserve and enhance biodiversity today and into the future
- whether the current purpose, to conserve biodiversity, consistent with the principles of ecologically sustainable development, is appropriate
- how the Act can best support national and international biodiversity aspirations, including climate change adaptation, nature positive and restoration goals.

### 2.1 Current objectives

#### Key messages

Most submissions from environment groups, individuals, industry and some local councils conveyed strong concerns that the Act is not achieving its current purpose.

Many submissions from environment groups, academics and individuals perceived the Act as lacking ambition compared with the challenges of biodiversity decline and mounting pressures. They often cited a loss of native habitat, species decline, and overall net biodiversity loss in New South Wales as evidence.

A number of government, environment and individual submissions highlighted how current objectives are being undermined by other laws, leading to land clearing and development approvals that impact biodiversity.

Environment, local government, industry and individual submissions indicated a need to improve the Act's implementation to meet its aims and ensure biodiversity outcomes.

The NSW Audit Office, Natural Resources Commission and multiple parliamentary inquiries have all raised concerns about the regulatory framework for biodiversity conservation and land management in NSW. There are serious questions to be asked about whether the *Biodiversity Conservation Act 2016* (BC Act) is up to the task of responding to these challenges and delivering outcomes for biodiversity. We say that it is not...The objects of the BC Act should be strengthened and brought into line with national and international policy ambition. This should include objects to improve the condition of biodiversity; recover species; and prevent further extinctions.

The Biodiversity Act [sic] aims 'to conserve biodiversity at bioregional and state scales' – its key purpose. It has demonstrably failed to deliver on this purpose. Much of this poor performance relates to the inadequacy of the legislation to adequately control threatening processes. Some of the processes that drive ongoing biodiversity decline are enabled by other legislation.

Submissions raised concerns that the objects:

- focus on loss prevention instead of biodiversity improvement, restoration and repair
- lack clear goals and targets
- are challenging to implement and enforce under the Act's terms
- do not acknowledge responsibility to future generations

- do not effectively support biodiversity conservation in the face of a changing climate
- do not support strategic assessment of development or effectively integrate environmental, social and economic considerations in decision-making.

In order to effectively restore, conserve and enhance biodiversity today and into the future, we submit that some of the existing objects of the BC Act should be amended to better reflect the state of biodiversity in New South Wales.

The BC Act has a number of provisions designed to help achieve its objectives, but these are not being effectively implemented resulting in ongoing declines in biodiversity, local extinctions and loss of benefits to local communities and the economy.

## 2.2 Principles of ecologically sustainable development

The principles of ecologically sustainable development (ESD) attracted a range of views across all stakeholder sector submissions, including:

- environment organisations and individuals who had concerns social and economic benefits of development are routinely favoured over protecting biodiversity
- environment organisations and individuals who had concerns that ESD principles including the precautionary principle, are not being effectively applied
- industry and local government comments that ESD is not an ‘either/or’ proposition, and that biodiversity can be protected alongside strategic regional development.

...to date, the BC Act has failed to deliver ESD and the Act has had a detrimental impact on achieving the NSW Government’s strategic goals for conservation, housing and jobs.

The current purpose of the Act is largely consistent with the principles of ecologically sustainable development. However, the objects of the Act are very generalised and do not provide strength in achieving elements of the principles of ESD, including sustainable use, precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and internalising of external environmental costs.

## 2.3 Support for new objectives

### Key messages

There was support from environment groups, academics and individuals for updating the Act’s objects to align with international and national initiatives to protect and restore biodiversity, although not all submissions agree with this approach.

There was significant support across all sectors to expand the Act’s focus from conservation to restoration and improving landscape connectivity. A number of submissions stressed that any New South Wales reform should align with national initiatives, including the Nature Positive Plan and the Threatened Species Action Plan.

Industry groups supported a nationally consistent approach and outcomes to avoid costly duplication and avoid red tape relating to environmental concerns.

The objects of the BC Act lack ambition and will not reverse current trends of declining biodiversity. They are not in line with national and international policy ambitions to halt and reverse biodiversity loss.



Aligning the Act with international initiatives was supported by submissions from individuals, environment groups and local government, including:

- global targets set by the Kunming-Montreal Global Biodiversity Framework (including the Australian Government’s 30 x 30 target to halt or reverse forest loss and land degradation by 2030)
- commitments under the Glasgow Leaders’ Declaration on Forests and Land Use
- acknowledgement of the role of Aboriginal people in biodiversity conservation highlighted in the United Nations Declaration on the Rights of Indigenous Peoples, the Nagoya Protocol on Access and Benefit-sharing, and the Kunming-Montreal Global Biodiversity Framework
- the ‘high seas’ treaty adopted by the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction
- the United Nations 2021–2030 Decade on Ecosystem Restoration declaration
- greater alignment with International Union for Conservation of Nature standards and definitions.

The Objects and Purpose of the BCA [BC Act] as it stands do not reflect the seriousness of the biodiversity crisis and are out of step with the level of national and international ambition. The Objects and Purposes of the Act, should be updated to reflect the increased level of national and international ambition and effort to halt the biodiversity crisis.

Other changes suggested by submissions include:

- the Act should aim to improve the condition of biodiversity, recover species and prevent further extinctions
- the addition of nature positive ambitions and stretch goals to support a thriving society and economy
- a shift from focusing on individual species towards biodiversity and environmental systems more broadly
- a commitment to conserve genetic diversity
- adding the ability to list locally and culturally significant biodiversity.

## 3. Aboriginal knowledge and engagement

The consultation paper asked how the Act could better integrate Aboriginal knowledge and support the aspirations of Aboriginal people in biodiversity conservation.

### Key messages

Submissions acknowledged that Aboriginal people have invaluable knowledge of ecosystems, biodiversity and wholistic species management, and can offer practical solutions to achieve positive biodiversity outcomes now and into the future.

The Act should enable greater Aboriginal participation in conservation programs, decision-making processes, and representation on expert committees and advisory panels.

The Act needs to align with the *Aboriginal Land Rights Act 1983* so that Aboriginal people can realise social, cultural, economic and environmental benefits of their land.

Submissions emphasised the need for any amendments to be developed collaboratively with Aboriginal stakeholders and the Aboriginal community.

NSW Government must consider and embed Aboriginal traditional ecological knowledge, perspectives and cultural practices in work to manage biodiversity, while ensuring Intellectual Property of this knowledge is respected, principled and consensual.

### 3.1 Integrating Aboriginal ecological knowledge

Submissions noted that although Objective (c) of the Act aims to use local and traditional Aboriginal ecological knowledge, there are no enablers in the Act to operationalise this objective.

It was suggested that explicit provisions be included in the Act to ensure direct Aboriginal participation in biodiversity conservation. For example:

- including traditional knowledge in Saving our Species projects
- adding provisions to facilitate cultural practices such as cultural burns
- dedicated funding pathways or programs for managing high conservation value Aboriginal lands
- promoting ranger opportunities for Aboriginal people
- school-based nature programs where children can learn from elders and develop a connection to Country.

The BC Act has multiple statutory purposes. These include 'to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation'. Despite this purpose, there is nothing in the BC Act which requires a consent authority, the BCT, or any other decision-maker, to consider Indigenous knowledge and expertise when making a decision.

### 3.2 Involvement in decision-making

Submissions noted the need to continually consult and partner with Aboriginal communities, and that they should be an active partner in all biodiversity conservation decision-making.

Specific suggestions included:

- ensuring Aboriginal voices are enshrined in the Act
- ensuring Aboriginal voices are included at the strategic planning table
- improving Aboriginal representation on committees, including the Biodiversity Conservation Trust Board and Threatened Species Scientific Committee
- formalising and adequately funding consultation with Aboriginal communities under the Act.

Object c) of the BC Act is purportedly to 'improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation'. However, the BC Act does not currently include any specific mechanisms to ensure this. In addition, this objective alone does not sufficiently recognise First Peoples' governance, values, priorities and culture.

### 3.3 Supporting traditional cultural values and practices

Submissions called for improvements to how Aboriginal cultural values and practices are protected under the Act. Comments included:

- support for the ability to list culturally significant species or populations
- calls for stronger safeguards for Aboriginal culture and heritage, particularly in relation to clearing of native vegetation and offset proposals
- concerns that the Biodiversity Offsets Scheme is impacting the ability of Local Aboriginal Land Councils to realise environmental, social, cultural and economic benefits from their land provided under the Aboriginal Land Rights Act
- calls for removing barriers that impede Aboriginal participation in conservation programs, including measures to address the complexity and costs of entering biodiversity stewardship agreements, and a lack of tailored communications and support.

Submissions noted that efforts to improve Aboriginal engagement and the integration of traditional ecological knowledge will require continued, sustained and genuine consultation with Aboriginal communities.

## 4. Land-use planning and the Biodiversity Offsets Scheme

The consultation paper sought feedback on:

- whether the Act is providing an effective mechanism to ensure that the right developments and land-use changes are being assessed
- whether the Act provides the appropriate framework for avoiding and minimising impacts and addressing serious and irreversible impacts
- whether the Act in its current form can result in improved ecological and environmental outcomes
- how complexity and costs can be minimised while still achieving positive biodiversity outcomes
- how the Act can better support an effective and efficient offset market
- how the Act can support better consideration of impacts on biodiversity from development, including at a regional level.

Across the submissions, feedback on the integration of biodiversity considerations in land-use planning was common.

### 4.1 Concerns about the planning framework

#### Key messages

A range of concerns were expressed by local government, environment groups and individuals about when and how biodiversity is considered in the planning framework. These concerns included:

- the current site-level approach can leave small, fragmented areas with poor ecological functioning and does not consider cumulative impacts
- strategic areas of highest biodiversity value are not identified up front or considered in strategic planning processes
- long-standing development approvals negatively impact biodiversity as they do not consider current impacts at a site
- very different standards apply to proponents clearing for development compared with clearing for agricultural activities
- decision-makers lack the appropriate expertise to properly consider ecological assessments in their planning decisions.

These submissions variously called for:

- more strategic planning delivered at a landscape level to protect areas of large, unfragmented native vegetation
- better assessment of cumulative impacts from development
- streamlining of decision-making through use of a single biodiversity outcomes assessment and decision methodology.

The current system is not in line with this shift in momentum and without further action, it will not adequately support the achievement of these targets. Although the BC Act

provides a strong foundation for protecting and regenerating biodiversity in New South Wales, its present functioning is inconsistent with the principles of ecologically sustainable development. There is under-regulation in some areas, including endangered and critically endangered species, native and domestic animals, and wildlife corridors, as well as loopholes where proponents are able to 'game' the system. In addition, there is a lack of focus on local biodiversity outcomes, and a resulting net loss of biodiversity in some local government areas (LGAs), particularly in coastal and urban areas.

Simply tightening regulation of land use and continuing with business as usual conservation efforts will not suffice. The work of revaluing nature and biodiversity must be done alongside landholders and developers, using relevant and legitimate incentives and effective communication.

## 4.2 Biodiversity Offsets Scheme

A wide range of views were put forward on the Biodiversity Offsets Scheme. While many stakeholder groups expressed support for an offsetting scheme in principle, there was a broad consensus that the scheme could be improved, with a range of suggestions made to address concerns about cost and complexity, and ensuring effective biodiversity conservation outcomes.

Some individuals and environment groups went further, expressing concern about the use of offsetting more broadly, arguing that it is ineffective and unable to achieve appropriate conservation outcomes. Others argued that the scheme disproportionately impacts regional areas and creates excessive barriers to development and job creation in regional New South Wales.

It has also become clear that the operation of the BOS to facilitate a supply of offsets is reliant on a naïve notion that the market will, with very limited support, provide the credits required, at the right time and at an appropriate cost. This market has not materialised. Without clear direction about demand, and confidence that credits will be purchased, private landholders have not engaged with the scheme in any great number.

### Best practice for offsetting

Environment groups, local government and individual submissions expressed the view that current scheme settings should be strengthened to align with best practice standards for biodiversity offsetting. Specific concerns included:

- allowing excessive variation of like-for-like offsetting rules
- allowing discretion to discount offsets
- not requiring a 'no net loss' or 'net positive' outcome from offsets
- no areas being considered off-limits to development.

These submissions suggested:

- that the scheme be governed by a clear, objective standard to improve biodiversity outcomes
- imposing additional limits on variation rules and the use of indirect offsets
- removing or strictly limiting the discretion to discount offsets
- designating high-value areas of biodiversity as off-limits to development.

### Cost and complexity of the scheme

In practice, the BOS is having a serious impact on the economic viability of housing development, as well as other key economic, educational and infrastructure projects.

Submissions from industry and local government expressed the view that the scheme has added uncertainty, complexity and cost to the development process. Comments included:

- the high cost associated with participating in the scheme negatively impacts the viability of some developments, particularly regional housing projects
- requirements are disproportionately burdensome relative to the biodiversity outcomes achieved, particularly for small developments.

These submissions suggested:

- excluding development in regional areas seeking to create employment opportunities or meet housing targets
- adjustments to the thresholds for triggering the scheme to reduce complexity for small developments with minimal biodiversity impacts
- making assessment and offset requirements proportionate to the size and impact of developments
- providing more clarity on where development can and cannot occur
- taking social need into account as part of assessments.

### The 'avoid, minimise and offset' hierarchy

Environment group submissions stated there is a lack of clarity on the requirement to avoid and minimise impacts to biodiversity under the scheme before resorting to offsetting. There was support for the avoid and minimise criteria, and some called for it to be clearly defined in legislation, regulations and guidelines.

...[we support] the objects of the Act to conserve and enhance biodiversity as it provides incentives to projects to avoid and minimise impacts on native vegetation as much as possible.

Individuals and environment groups also expressed concern that proponents were not sufficiently avoiding impacts to biodiversity, and called for stricter enforcement of avoidance and minimisation measures before allowing offsetting.

Industry submissions noted that there are insufficient incentives to restore avoided land or actively manage it for conservation where that land could have otherwise been developed, and recommended better incentives to protect land 'avoided' as part of a development.

There was a call for greater transparency in reporting on how offset obligations are met.

### Biodiversity offset rules

There were a range of views on the types of offsets that can be used under the scheme. Environment groups, individuals and local government sought stricter application of the 'like-for-like' principle, while industry stakeholders called for more flexibility in meeting offset obligations, particularly given difficulties sourcing credits. Some submissions called for more restrictions on or removal of variation rules and the use of indirect offsets.

Submissions from local government expressed concern that the scheme allowed for local biodiversity loss, as offsets do not have to be in the same local government area as the impact. These submissions sought more support for local offsetting.

Divergent views were expressed over the option for proponents to pay into the Biodiversity Conservation Fund (BCF) to meet their offset obligations. Many individuals and environment groups expressed concern that proponents were choosing to pay into the BCF rather than seek like-for-like credits, reducing the certainty of biodiversity

outcomes. They recommended additional restrictions to ensure paying into the BCF is only used as a last resort. Some industry stakeholders strongly supported retaining the BCF as an offsetting option.

## Serious and irreversible impacts

The current serious and irreversible impacts (SAIL) arrangements were criticised for being unclear and inconsistent. Environment groups and individuals argued that current arrangements are not effective at protecting threatened species and ecological communities at most risk of extinction.

Environment groups also opposed major projects being able to be approved with SAIL. These submissions called for the precautionary principle to be applied, citing the cumulative impacts such projects have on threatened entities.

Industry and local government submissions sought a more objective test for determining SAIL, to improve certainty and enable more uniform decisions across consent authorities. Other recommendations included:

- identifying high conservation value areas and making them off-limits to development
- clarifying references to extinction risk in terms of the appropriate scale and scope
- creating a clear and accessible list of all entities at risk of SAIL, potentially as a schedule under the Act.

...more specific guidance on species specific assessment under the scheme is required for Serious and Irreversible Impacts. Currently, it is at the discretion of council assessing officers to form an opinion as to whether an SAIL is likely, this can lead to inconsistent application of SAIL.

## Restoration of biodiversity and strategic conservation

Environment and industry submissions argued that the scheme does not sufficiently incentivise or focus on the restoration of biodiversity, with restoration of degraded vegetation producing fewer credits and carrying higher costs than protecting more intact areas of vegetation.

A range of stakeholders expressed concern that the scheme does not appropriately focus on delivering long-term, strategic biodiversity conservation objectives, such as incentivising landscape connectivity, linking protected areas or focusing protection on under-protected landscapes.

Recommendations included better incentivising restoration and better targeting areas of strategic biodiversity value through the scheme, including through increasing credit yields for restoration and habitat connectivity, and adding biodiversity restoration as an objective under the Act.

## Accredited assessors

Submissions expressed concerns about the selection and use of accredited assessors under the scheme including:

- potential conflicts of interest when parties select their own assessors
- lack of transparency over the accuracy of assessments
- lack of recourse for proponents to challenge what they consider to be inaccurate or poor-quality advice.

Suggestions for improvement included:

- additional training for assessors on issues considered to be inadequately addressed in current advice
- additional resourcing and provisions for government to address compliance issues and ensure accountability
- implementing mandatory peer review by independent assessors.

### Biodiversity stewardship agreements

Some stakeholders noted that establishment processes discourage landholders from considering a biodiversity stewardship agreement (BSA). Specific concerns raised included:

- the time and cost of creating a BSA
- lack of assistance for landowners to establish a BSA and sell the credits generated
- credit generation not adequately incentivising the restoration of degraded biodiversity or the protection of areas of strategic biodiversity value
- significant tax liabilities for landholders that apply before any credits have been sold.

Submissions expressed support for the work of the Biodiversity Credits Supply Taskforce to reduce application processing times, support landholders through the BSA establishment process and stimulate the supply of in demand credits. To further incentivise BSA creation, it was suggested that:

- the efforts to improve the BSA application process and provide additional guidance to landholders be continued and expanded
- habitat restoration be better incentivised, including through increased credit yields
- a strategy be developed to target areas of strategic biodiversity value (such as wildlife corridors and climate refugia).

## 4.3 Biodiversity certification of land

The consultation paper noted the value of biodiversity certification ('biocertification') for streamlining the biodiversity assessment process for areas of land that are proposed for development, enabling development to proceed without site by site biodiversity assessment.

Industry stakeholders broadly supported a biocertification pathway. Local governments also noted the value of biocertification for strategic conservation at regional and local levels, and for improving conservation of habitat corridors. To improve the current pathway, these submissions suggested:

- providing specific thresholds for biodiversity certification
- improving the speed of the process
- aligning biocertification with rezoning
- clarifying how decisions at the rezoning stage apply to subsequent applications
- providing more incentives (such as subsidies) to increase uptake.

Submissions from environment groups and individuals expressed concern over the biocertification process, citing a lack of scientific rigour and long-term outlook. The Cumberland Plain Conservation Plan was frequently mentioned as an example of how strategic biodiversity certification allowed development in sensitive biodiversity areas. These submissions asked for stronger governance, reporting, auditing and compliance in the certification process.



Furthermore, strategic biodiversity certification offers significant opportunities to deliver broader landscape strategic biodiversity corridors due to working across multiple landowners. However...this needs to deliver more than just 'avoided' land within areas that are not developed, such as has occurred within the recently approved Cumberland Plain Conservation Plan.

## 5. Species and ecosystem management

The consultation paper sought feedback on:

- how the Act can best support landscape-scale actions to prevent species from becoming threatened
- improvements that can be made to Areas of Outstanding Biodiversity Value and the Saving our Species program to give both a greater role in enhancing biodiversity.

### Key messages

Submissions from academics, individuals, government and environment groups supported retaining an independent Threatened Species Scientific Committee and a scientifically robust listing process.

Environment groups, animal welfare groups, individuals and local government stakeholders supported the Saving our Species program, but some raised concerns that the regulatory framework allows activities that negatively impact threatened species and their habitat, including areas being actively managed for conservation.

Submissions from environment groups, individuals, animal welfare groups, industry, academics and local government were concerned that no new Areas of Outstanding Biodiversity Value have been declared and called for changes to strengthen the process.

The NSW Threatened Species Scientific Committee (TSSC) is currently not adequately resourced to ensure involvement of leading independent experts and delivery of listings in a timely manner appropriate to current trends of biodiversity loss. The listing process is one of the strengths of the BC Act, ensuring public participation, scientific rigour and independence. The NSW Threatened Species Scientific Committee is a critical body for ensuring public confidence and scientific rigour in listings of threatened species, ecological communities and key threatening processes.

All sectors made recommendations, including:

- increasing resources to enable the Threatened Species Scientific Committee to assess nominations faster and keep the schedules up-to-date
- improving protection of non-vascular plants
- greater use of provisional listing to safeguard native plants and animals while a listing assessment is undertaken
- additional resources to expand the Saving our Species program
- ensuring land-use decisions are consistent with Saving our Species conservation priorities
- enabling species translocation to assist climate change adaptation
- removing barriers to declaring Areas of Outstanding Biodiversity Value including the requirement to gain landholder support
- adding the ability to list regional and local areas of important biodiversity
- the importance of identifying genuine areas of important biodiversity and strengthening protections; for example, declaring them 'no go' areas for development
- broadening the criteria for Areas of Outstanding Biodiversity Value to include key habitat areas or areas of important local biodiversity
- integrating responsibilities for freshwater and marine biodiversity into the Act.

The BC Act, or other appropriate statutes, should explicitly provide a legislative basis for biodiversity conservation strategies or plans of the NSW Government that represents its contribution to national and international agreements... This approach [Threatened Species Strategy] would provide an overarching strategy to guide review, strengthening and implementation of relevant programs and strategies, such as the Saving our Species program, Key Threatening Process Strategy, NSW Koala Strategy, and conservation advices or recovery plans for threatened species and ecological communities. This would fill a current policy gap caused by the absence of a state threatened species strategy. It would set targets and actions consistent with the federal Threatened Species Action Plan 2022-32.

Genuine Areas of Outstanding Biodiversity Value that are rare and significant should be deemed as such and protected. It should be clear to all that such areas are never to be touched or developed.

## 5.1 Mitigating threats to biodiversity

The consultation paper asked stakeholders to provide input on key threatening processes that affect species and ecological communities.

### Key message

Submissions from environment groups, individuals, academics and local councils commented that the Act must do more to mitigate threats to biodiversity, including threats from land clearing, climate change, invasive weeds and pests.

Submissions from environment groups, individuals and academics called for:

- improvements to how key threatening processes are listed under the Act, and how threat abatement strategies to mitigate the impacts of threats on biodiversity are implemented
- a more comprehensive landscape or ecosystem approach to threat management
- provisions to address the impacts of climate change and support translocation and other adaptation activities; for example, prioritising threat abatement actions under the Biodiversity Conservation Investment Strategy and Biodiversity Assessment Method
- prioritising efforts to address biosecurity impacts of invasive species beyond agriculture
- large-scale programs to address invasive species
- requiring reporting on invasive species' effects on biodiversity
- improve alignment with the Biosecurity Act
- strengthen the Act to address the impact of domestic animals on native animals.

## 5.2 Wildlife licensing and animal welfare

The consultation paper sought feedback on:

- whether the Act's penalties and enforcement instruments are an effective way to support the Act to meet its objectives
- how the Act can give the community more confidence and clarity in the approach to regulation
- how the Act can best support the protection of native animals and plants
- whether the Act's requirements and conditions for biodiversity conservation licences are suitable.

## Key messages

Stakeholders from wildlife care, keeping and welfare groups expressed diverse views on the Act's licensing regime – some submissions opposed a tiered, risk-based regulatory framework in favour of a strong licence-based system, while others called for the risk-based framework to be finalised and implemented in full.

Submissions raised concerns that the wildlife rescue and rehabilitation sector is not adequately resourced to cater for growing needs.

The phrase 'risk-based approach' is not defined, is ambiguous and capable of misinterpretation or misrepresentation, making application of the Biodiversity Conservation Act provisions challenging if not impossible.

Submissions from wildlife care, keeping and welfare groups also called for:

- clearer definitions in the Act of 'harm to native wildlife'
- granting of stronger powers to issue infringement notices
- better regulation around keeping native wildlife as pets
- improved consistency between native wildlife, and domestic and farmed animal welfare standards
- a review of the framework governing commercial kangaroo harvesting to ensure it aligns with conservation principles and humane culling practices
- greater investment in the wildlife licensing system including audit and compliance activities.

## 6. Information and data

The consultation paper sought feedback on:

- whether the Act should be strengthened to require additional data collection
- the adequacy of existing evaluation and reporting frameworks
- adequacy, access to and application of ecological data to respond to threats
- use of interactive maps, technology and innovation to support decision-making.

### Key messages

Submissions from environment groups, individuals, local government and government sought improvements in the collection and use of biodiversity data to support transparency, accountability, evaluation and continuous improvement. Submissions also called for public registers and a centralised, publicly accessible database to inform decision-making.

Submissions noted the need to improve the quality of environmental data and allow for greater access to more detailed and fit-for-purpose maps to support decisions about biodiversity. Application of the precautionary principle was recommended when the information isn't available.

There was support for taking an ecosystems approach to mapping and identifying extinction risk using the Global Ecosystem Typology.

Submissions called for a comprehensive monitoring, evaluation and reporting framework to track biodiversity status and program outcomes across the state, and to enable ongoing evaluation of the effectiveness of the Act.

There is no systematic, quantitative and long-term monitoring program for measuring biodiversity across the state, or even a tool to achieve this. This precludes evaluation of the effectiveness of the BC Act in conserving biodiversity. This is a major deficiency in the implementation of the BC Act and the LMBCF [land management and biodiversity conservation framework].

The type of information sought varied with stakeholders' interests and responsibilities but included:

- improved information on land clearing, regrowth, forestry and cumulative biodiversity impacts
- a register of biodiversity certification decisions and conditions, development applications, approvals and offset conditions
- local mapping of biodiversity values and vegetation
- corridors, stewardship sites and other conservation areas
- greater transparency around compliance and enforcement actions.

Submissions included feedback on mapping that would support local government including:

- all mapping (including bushfire and flood mapping that councils are responsible for) should be undertaken by the state and made public through Spatial NSW
- local government should be informed when mapping is updated and ideally consulted on the changes in advance

- support should be provided to government agencies to complete mapping projects in a timely manner and undertake data uploads to SEED (Sharing and Enabling Environmental Data portal developed by the NSW Government).

Need to improve environmental data and allow for greater accessibility to support decisions about biodiversity. Incomplete mapping or guidelines, e.g. not all TECs, EECs and CEECs correctly mapped on Biodiversity Values (BV) map

Individual submissions stated that data and knowledge sharing must be improved locally and across jurisdictions, and made accessible to the community. For example, 'citizen scientist' volunteers suggested data collection (via NSW BioNet) should innovate to include verifiable records, photos and recordings from apps like FrogID and Birddata. They also suggested increasing funding to upload inputs to BioNet without delay, to ensure development assessments and decision-makers have up-to-date information on threatened biodiversity.

Submissions from local government and industry including environmental consultants and farmers noted the need to improve environmental data and allow for greater accessibility of mapping to support decisions about biodiversity.

Provide support to government agencies to complete mapping projects to support decision making in a timely manner and undertake data uploads to SEED more regularly with data from scientific licences to be uploaded within 6 months of being submitted. Additionally, it is recommended that a 'live' system be implemented where consultants, accredited assessors and local government reviewers, and people who hold a valid scientific licence are able to upload survey data to SEED and be reviewed by a moderator within a timely manner so that data of species can reflect records that have occurred within 3-6 months rather than waiting on an upload from a licence that is 12 months or greater. This will provide greater confidence in decision making under the Act and better mitigation measures.

These submissions called for more detailed and fit-for-purpose information and mapping, including:

- improvements to and availability of the statewide high-resolution Biodiversity Values Map to provide landholders, conservation groups, and prospective buyers and developers with a property-value map of biodiversity
- improvements to the draft Native Vegetation Regulatory Map to make it more accurate and complete, and urgent finalisation of this map
- more ground truthing to improve map accuracy along with incorporation of data from a range of sources
- improvements to data informing the Biodiversity Offsets Scheme, including ecological benchmarks and a consolidated credit platform
- better measurement and monitoring of biodiversity, such as through quantitative assessments of biodiversity that measure the biophysical condition of environmental assets
- thermal drone imagery to identify nocturnal wildlife populations
- more resourcing to continuously improve ecological data (e.g. BioNet), and clearer ways to incorporate local data into state mapping revisions
- calls for more investment in monitoring biodiversity, and requirements to report on population abundance and trends.

It is counterproductive to operate programs such as SOS without committing to ongoing monitoring of the impacts of events such as the Black Summer bushfires. The cumulative impact on both threatened and non-threatened species, and on habitat and other landscape values needs to be understood over the long term to ensure the value of SOS project work is not lost due to a lack of data.

## 7. Restoring and conserving landscapes

The consultation paper sought feedback on how the Act could:

- best support partnerships with private landholders to conserve, restore and enhance biodiversity across New South Wales
- best support strategic landscape-scale biodiversity conservation outcomes and improve connectivity
- enable financial investment by government, businesses and philanthropic organisations.

### Key messages

There was strong, broad support across all sector submissions for the provisions in the Act relating to private land conservation, with many submissions calling for these provisions to be strengthened to protect sites.

Submissions generally supported the work of the Biodiversity Conservation Trust, but some academics, local governments and individuals called for improvements to investment strategies and more resourcing for private land conservation to keep up with the rate of clearing.

Submissions raised concerns that landholders are not adequately rewarded or supported to restore and conserve their land, particularly landholders who wanted to enter into private land conservation agreements and natural capital markets.

Submissions recommended landscape-scale connectivity plans to prioritise investment in wildlife corridors, build landscape connectivity, and protect important remnants and climate refuges.

The BC Act lacks recognition of the importance of maintaining viable, resilient and biodiverse landscapes. Resolving this shortcoming requires abandoning the current extinction threshold (where refusing approval is only contemplated if the last individual of a species will be destroyed by a particular development) to a much broader and more comprehensive assessment of impacts on the full range of biodiversity attributes.

Submissions from environment groups, academics, individuals, along with some from local government suggest:

- supporting more restoration on private land
- using an ecosystems-based approach to guide priority investment
- creating a power to acquire land with strategic benefit and high biodiversity value
- ensuring land under a private land conservation agreement is protected from activities that may cause harm to the environment, such as mining
- expanding the scope of agreements to protect natural heritage and scenic areas
- creating automatic land tax exemptions for conservation sites
- creating a covenant to ensure avoidance areas are registered on title
- giving greater protection to vegetation in riparian zones.

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.

All sectors made recommendations around improving private land conservation and landscape restoration programs including:

- more regular updates of the Biodiversity Conservation Investment Strategy and an ability to redirect funding in the aftermath of major environmental events
- more resourcing and landholder incentives, such as increased subsidies
- reducing costs to enter and create private land conservation agreements
- streamlining the process to enter private land conservation agreements to remove uncertainty and delays
- specifications in the Act for an annual proportion of funds devoted to conservation
- greater collaboration with government agencies on conservation efforts, such as Local Land Services and Crown Lands.

... private land conservation is critical for expanding conservation efforts and mitigating the loss of biodiversity. However, challenges exist with private land conservation (PLC) agreements, as established under the Act, given their onerous nature, complexity, cost and the time taken to obtain approval.

The framework in Part 5 of the BC Act can be strengthened to ensure that the investment strategy and private land conservation agreements are delivering the best possible outcomes for biodiversity.



## 8. Governance and interactions with other laws

### Key messages

Submissions from local government, environment groups and individuals commented on how the Act interacts with other legislation, the governance framework and ministerial oversight. Key issues of concern included:

- how the overarching land management and biodiversity conservation framework impacts the Act's ability to achieve its objectives and overrides its protections
- ambiguity, lack of alignment and duplication between the Act and other legislation cause confusion, create loopholes and perverse outcomes and erode the Act's enforceability.

However, there are vast differences in regional/rural and urban outcomes which need to be addressed. Rural and regional areas are facing excessive barriers to development and job creation. Some parts of the Act and associated processes are overly complex and may not be delivering the intended outcomes. It overregulates areas of limited environment value, leads to high costs for small families and restricts land use changes unnecessarily. There is a need to address these issues and ensure they are not exacerbated by any changes to the Act to improve environmental outcomes.

Submissions expressed a range of concerns relating to intersections with other laws and instruments, including:

- development and planning interactions relating to the *Environmental Planning and Assessment Act 1979*
- competing priorities of biodiversity conservation and agriculture relating to the *Local Land Services Act 2013*
- inconsistencies between outcomes intended by the *Aboriginal Land Rights Act 1983* (ALRA) and biodiversity conservation
- bushfire mitigation intent of the *Rural Fires Act 1997* – specifically the Rural Boundary Clearing Code and 10/50 Vegetation Clearing Code of Practice and biodiversity conservation
- sustainable forest management practices within the *Forestry Act 2012* and biodiversity conservation
- coordination and efficiencies between the Act and the *Fisheries Management Act 1994*, specifically in relation to threatened species listing provisions
- the impact on management and regulation of marine ecosystems under multiple legislation, including the Act, the *Marine Estate Management Act 2014* and the *Fisheries Management Act 1994*
- interactions with the *Veterinary Practice Act 2003* – specifically the authority to treat protected native animals
- interactions and alignment with the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, particularly to reduce duplication.

Rather than amendments to the BCA [BC Act], we propose parallel targeted amendments to the ALRA to enable LALC landowners to develop their land and give effect to the intent of the ALRA, while simultaneously protecting threatened species by setting aside other land in their ownership for environmental protection and management.

Submissions from environment and industry groups and individuals suggested:

- improving interagency coordination and collaboration to achieve mutually beneficial outcomes
- integrating biodiversity conservation into decision-making across NSW Government
- giving the Minister for the Environment a concurrence role in significant decisions, such as major projects
- combining statutory reviews of biodiversity and land management laws.

...key areas of lack of cooperation and coordination and sharing of information are around the opportunities for bioregional environmental benefits from site scale land management changes and in facilitating agricultural development...

It is not clear how the terms of reference for either the review of Part 5A of the LLS Act or the review of the BC Act intend to examine the legislative framework as a whole and determine whether checks and balances across the framework are sufficient.

## 9. Compliance and enforcement

The consultation paper sought feedback on:

- whether the Act's penalties and enforcement methods are effective in supporting the Act's objectives
- how the Act can give the community more confidence and clarity in the approach to regulation.

### Key messages

Concerns about land clearing compliance and enforcement activities were common across most sectors. Submissions from environment groups, individuals and academics commented that the laws are too permissive, conditions of approval are not audited, enforcement is rare and penalties fall short of the financial gains on cleared land.

Submissions recommended improvements to the compliance and enforcement framework include establishing clearer compliance pathways, increased penalties, alternative sentencing orders, stricter liability offences and greater transparency.

Submissions also called for more resourcing to undertake audit and compliance activities.

Submissions provided feedback on a broad range of compliance and enforcement issues including:

- concerns that landholders are exploiting loopholes to clear land that needs development approval either intentionally or because they are not adequately supported to comply with land clearing laws
- legal costs are a deterrent for councils to take on small-scale clearing
- recommendations that rehabilitation orders go onto a property's title to ensure any future property owners and council are aware of the area of protection
- centralising responsibility for all audit and compliance functions within the Department of Planning and Environment or an independent regulator, and increased resourcing and use of technology.

Council has often observed development applications where land clearing has been undertaken illegally prior to lodgement to reduce a sites ecological quality to either avoid triggering a Biodiversity Development Assessment Report (BDAR) or to no longer require offsets (due to a poor Vegetation Integrity Score). Support, guidance and resourcing is required from State Government to assist local governments to administer and manage compliance for illegal clearing of vegetation, particular in relation to interaction with the BOS.

Submissions from environment groups and individuals suggested alternatives to standard enforcement and sentencing practices including:

- removing barriers to community enforcement and implementing innovative options for community restorative justice and habitat restoration
- making third-party appeal and civil enforcement powers more readily accessible
- considering further alternative sentencing orders, and updating guidelines that apply to alternative sentencing orders, to make them more consistent with other pieces of environmental and planning legislation, and support the beneficial environmental purposes that can be achieved through sentencing

- requiring restoration and enhancement of habitat where unlawful activities have occurred.

An obvious key role of the Act is to protect native plants and animals. To assist with its role in this area, the Act identifies a range of offences relating to the harming of native plants and animals and includes penalties for doing so...However, the Act could be improved in this regard by making sure the punishment reflects the seriousness of the crime, especially in instances where the offence undermines the objectives of the BC Act.

As with all regulatory regimes, accountability and enforcement are vital for ensuring laws are properly implemented and the aims and objectives of the laws are being met... Compliance and enforcement policies should include restoration and habitat enhancement activities as remedies for unlawful activities.

## 10. More information

- [Biodiversity Conservation Act review](#)
- [Biodiversity Conservation Act 2016](#)
- [SEED data portal](#)
- [Statutory review of the native vegetation provisions of the Local Land Services Act](#)
- [Terms of Reference: Statutory review of the Act](#)

# Appendix A. List of unique submissions from organisations and individuals

The list below shows unique submissions received. Please note that submissions that were authorised for publication, as well as the form letter text, can be viewed on the *Biodiversity Conservation Act review website*. Submissions marked 'confidential' and those that raised legal or other concerns (e.g. privacy, defamation) were not published. Views presented in submissions are the responsibility of the author of the submission.

Allen Price & Scarretts  
Angela Pritchard  
Animal Care Australia  
Animal Defenders Office  
Animal Liberation  
Animal Protectors Alliance  
Ann Sharp  
Anne E Reeves  
Anne Gibbins  
Anne Shanton  
Annette Cam  
ARTC Inland Rail  
Association of Consulting Surveyors NSW  
Australia Network for Plant Conservation  
Australian Land Conservation Alliance  
Australian Marine Conservation Society  
Australian Society for Avian Preservation  
Australian Wildlife Protection Council  
Ballina Shire Council  
Barry Tomkinson  
Bega Valley Shire Council  
Better Planning Network  
Biodiversity Council  
Birding NSW  
Birdlife Australia  
Birdlife Southern Highlands NSW  
Birdlife Southern New South Wales  
Blue Mountains Conservation Society  
Canary and Cage Bird Federation of Australia  
Carolyn Lee  
Cathy Merchant  
Cement Concrete & Aggregates Australia  
Central NSW Joint Organisation of Councils

Central West Environment Council  
Chalk & Behrendt on behalf of Awabakal, Biraban, Darkinjung, Illawarra, La Perouse, Metropolitan, and Mindaribba Local Aboriginal Land Councils  
Chloe Mason  
Christine Pollard  
Clarence Environment Centre  
Clarence Valley Conservation Coalition  
Climate Action Sydney Eastern Suburbs  
Combined Development Group  
Craig Davies  
Daniel McConell  
Desiree Marshall  
Doug Krause  
Dubbo Environment Group  
Dubbo Regional Council  
Ecological Consultants Association of NSW (Part 1 and 2)  
Elaine Oberg  
Environment Defenders Office  
Environment Institute of Australia and New Zealand  
Forest Ecology Alliance  
Frances Myers  
Frank Maguire  
Friends of Berowra Valley  
Friends of Malabar Headland  
Friends of Pine Creek  
Ginninderra Falls Association  
Gloucester Environment Group  
Graeme Batterbury  
Greg Chapman  
Greg Gill  
Hastings Birdwatchers  
Helen Monks  
Housing Industry Association  
Humane Society International  
Inland Rivers Network  
International Fund for Animal Welfare  
JN Cuthbertson  
Jeannie Lawson  
Jennifer Edwards  
Jennifer Hole  
Jenny Medd  
Jonathon Howard

Judy Lambert  
Julie Marlow  
Karen Joynes (Part 1 and 2)  
Koenraad Dijkstra  
Lake Macquarie City Council  
Land and Environment Planning  
Landcom  
Levi Brett  
Linda Gill  
Linda Kendell  
Local Government NSW  
Lucca Amorim  
Lynda Newnam  
Lyndal Breen  
Mark Selmes  
Mary-Lou Lewis  
Melina Mura  
Merran Hughes  
Monika Ball  
Mudgee District Environment Group  
Mulgoa Valley Landcare  
National Parks Association – Tamworth-Namoi Branch  
National Parks Association of NSW  
National Trust of Australia NSW  
Native Animal Education Sanctuary  
Nature Coast Marine Group  
Nature Conservation Council of NSW  
NSW Farmers’ Association  
NSW Local Aboriginal Land Council  
NSW Minerals Council  
NSW Threatened Species Scientific Committee  
NSW Young Lawyers  
Pamela Reeves  
Patricia Durman  
Paul Toni  
Penny Davidson  
Peter Cavanagh  
Peter Maslen  
PJ Watsford  
Port Stephens Council  
Ray Cook  
Rob Barrel



Roman Suwald  
Rose White  
Ross Dearden  
Royal Zoological Society of New South Wales  
Ryde-Hunters Hill Flora and Fauna Preservation Society  
Rylstone District Environment Society  
Sam Nerrie  
Sarah Neal  
Sarah Wright  
Save Sydney Koalas (SW)  
Scout Ecology  
Sealark  
Shalise Leesfield  
Singleton Council  
Spring Gully Protection Group  
STEP  
Steve Tucker  
Stuart Perera  
Sue Gould  
Sue Higginson  
Sue Mossman  
Sue Tolley  
Sustainable Living Armidale  
Sydney Coastal Councils Group  
Sydney Water  
Tammy Small  
The Wilderness Society  
Tom Kristensen  
Total Environment Centre and Sydney Basin Koala Network  
Trevor Brown  
Tullimbah Land Care  
University of NSW Centre for Ecosystem Science  
Upper Snowy Landcare Network  
Urban Development Institute of Australia (New South Wales)  
Vets for Climate Action  
WIRES  
Wollondilly Shire Council  
WWF Australia

Note: 37 submissions are classified Anonymous or Confidential.