

BIODIVERSITY CONSERVATION AMENDMENT (BIODIVERSITY OFFSETS SCHEME) BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill proposes to amend the *Biodiversity Conservation Act 2016* (the Act) to implement a package of priority reforms to the Biodiversity Offsets Scheme (the Scheme), focusing on:

1. Improving biodiversity outcomes
2. Supporting a functioning biodiversity credit market
3. Increasing Scheme efficiency and transparency
4. Better balancing the application of the Scheme with biodiversity risks.

The reforms have been developed as part of the NSW plan for nature – which responds to the recommendations of the independent review of the Act led by Dr Ken Henry AC. They also respond to findings from the 2022 Parliamentary inquiry into the integrity of the Scheme, the NSW Audit Office’s report on the Scheme’s effectiveness in 2022 and the Independent Pricing and Regulatory Tribunal’s first annual report on the performance of the biodiversity credits market, released in December 2023.

The Government agrees with the independent review’s finding that the Act is not meeting its primary purpose to maintain a healthy and resilient environment, now and into the future. The proposed reforms are being introduced in the context of a well-documented decline in NSW’s biodiversity¹, as highlighted by the independent review.

The independent panel undertook extensive consultation during the statutory review process and public hearings were held during the Parliamentary inquiry. Further targeted consultation was conducted on the proposed approach to the Government response, including the reforms to the Scheme. The proposed reforms draw from internal departmental expertise and consultation, reflecting extensive experience administering the Scheme.

The evidence base is clear that amendments to the Act are necessary to reform the Scheme and meet the Government’s biodiversity conservation commitments.

Objectives: What is the policy’s objective couched in terms of the public interest?

Based on the evidence outlined above, the Government has made a commitment to strengthen and reform the Scheme. The Bill has four key reform areas delivered through a series of legislative amendments.

Improve biodiversity outcomes

The Bill will better protect our State’s biodiversity for current and future generations. Biodiversity in NSW is in crisis and it is in the public interest for the Government to take urgent action and not simply be the manager of a steady decline. These reforms to the Scheme will be one component of a broader suite of measures to leave nature better off than we have found it.

The Bill will improve the biodiversity outcomes delivered by the Scheme in a number of ways, including by making it clear that the Scheme will transition to ‘net positive’ outcomes. The transition

¹ [NSW Biodiversity Outlook Report 2024](#) published 8 May 2024

will be guided by a strategy – to be developed in consultation with stakeholders – setting out associated targets, timeframes and actions.

A statutory avoid and minimise standard will be introduced that will require biodiversity assessment reports to set out and assess genuine measures to avoid and minimise impacts to biodiversity. Details of the standard will be set out in the regulation, giving particular attention to protecting threatened species at risk of serious and irreversible impacts.

The Bill also creates a requirement for the Minister for the Environment’s concurrence for State significant infrastructure and development projects where it is proposed that approval be granted with conditions other than those requiring the total number and class of biodiversity credits as specified in the Biodiversity Development Assessment Report.

Support a functioning biodiversity credit market

The Bill will help to support a well-functioning biodiversity credit market, which is critical to the operation of the Scheme. Reviews of the Scheme have found that credit supply was insufficient to meet demand, leading to a reliance on transferring obligations to the Biodiversity Conservation Trust through payments to the Biodiversity Conservation Fund. Even where credits are available on the market, the Fund has been used as first choice by developers, undermining market development and allowing impacts to biodiversity to occur before they are offset.

The Bill will support a functioning biodiversity credit market by enabling the regulations to prescribe circumstances in which an offset obligation cannot be met through payment into the Biodiversity Conservation Fund.

Increase Scheme efficiency and transparency

Reviews of the Scheme have found that good quality, accessible information on Scheme outcomes has been lacking and that the biodiversity outcomes the Scheme achieves are unclear. This has undermined trust and confidence in the Scheme.

The Bill will increase the efficiency of the Scheme and provide greater transparency in key decision-making processes. The proposed reforms will enhance accountability and reporting on the Scheme’s operation and outcomes. Increased transparency in key decisions will strengthen public confidence in the Scheme.

The Bill introduces new statutory registers to track decisions to approve or refuse serious and irreversible impacts and to record approved offset obligations. The Environment Agency Head will also be able to issue directions to accredited persons, to ensure the Biodiversity Assessment Method is applied consistently and to improve the quality and consistency of biodiversity assessment reports.

Better balance the application of the Scheme with biodiversity risks

By reducing the regulatory burden for small, low-impact developments, the proposed amendments will better balance the application of the Scheme with the risks to biodiversity posed by development. The Bill will enable the Minister for the Environment to exempt local development from the Scheme in exceptional circumstances and following natural disasters, to help communities rebuild.

Options: What alternative policies and mechanisms were considered in advance of the bill?

To achieve the Government’s reform commitments, legislative amendments are required. This is supported by the findings of the independent review of the Act which found that legislative reforms are now needed to deliver improved biodiversity outcomes, better integrate the Scheme into

strategic planning processes, reduce complexity and build confidence. The Parliamentary inquiry into the integrity of the Scheme similarly found that reform was required, including via changes to the Act. Legislative reform is required to meet these objectives and ensure the scheme is operating effectively.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The independent review of the Act and the Government's NSW plan for nature considered a variety of policy options. The independent review involved extensive consultation with experts, Scheme participants and other stakeholders on reform options, including benefits and impacts.

Legislative reform is necessary to achieve changes to the Scheme required to meet the Government's plan for nature. Continuing to pursue further improvements to the Scheme under existing legislative settings alone would prevent the Government from meeting its commitment to reform the scheme and protect and restore biodiversity.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Commencement of the provisions of the Bill will be via proclamation and will be staged based on implementation considerations.

Many of the legislative reforms will be operationalised through subsequent regulatory amendments and the Biodiversity Assessment Method, which underpins the Scheme. These will be subject to further consultation with stakeholders.

Based on these considerations, legislative amendments will commence:

- For those provisions that do not require any subsequent regulatory amendments – as soon as practicable after assent of the Bill
- For those legislative provisions that create or require amendments to the BC Regulation – as soon as practicable after regulatory amendments are made
- For changes to avoid and minimise considerations in the Act – upon the commencement of a remade Biodiversity Assessment Method that reflects the new requirements.

The Minister for the Environment is responsible for the Scheme under the Biodiversity Conservation Act. The Department of Climate Change, Energy, the Environment and Water will administer the reforms in conjunction with the Biodiversity Conservation Trust.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

There are a wide range of stakeholders with an interest the Scheme, including the environment, development, industry, agriculture and local government sectors as well as Aboriginal organisations.

The views of these affected stakeholders have been canvassed across several different forums and were taken into account in the drafting of the Bill. Many stakeholders provided submissions to the independent review of the Act and to the Parliamentary Inquiry into the Scheme. In developing the Government's response to the review, targeted sessions with a wide range of stakeholders, including key rural industry, environmental, development and local government stakeholders, took place. These stakeholders were also briefed on the proposed Scheme reforms, once developed.

Views of a representative sample of stakeholders have been canvassed at meetings of a Stakeholder Reference Group for the Scheme since 2022. The Stakeholder Reference Group comprises external environmental and industry groups and offers feedback on the Scheme.

Further consultation with stakeholders will take place during Legislative Council Committee consideration of the Bill, as well during the development subsequent regulatory reforms and as part of the development of the net positive strategy required under the Bill.