



**The Hon. Victor Dominello MP**  
Minister for Customer Service and Digital Government  
Minister for Small Business  
Minister for Fair Trading

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Our reference: BN-08305-2022  
Your reference: 22/685-1

Ms Carmel Donnelly, PSM  
Chair  
IPART  
By email: [ipart@ipart.nsw.gov.au](mailto:ipart@ipart.nsw.gov.au)

Dear Ms Donnelly

I am writing in response to your correspondence on the final terms of reference for an IPART review of the Biodiversity Credits Market.

In October 2022, pursuant to section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992*, I referred the matter to the Tribunal for monitoring and report. I note that IPART gave notice of this referral, sought public comment on the draft terms of reference and consulted the Department of Planning and Environment about its findings following submissions.

I have considered the draft terms of reference you provided, and I am pleased to issue IPART with the final terms of reference (attached).

I ask the Tribunal to publish an annual market monitoring report within 6 months after the end of each financial year, commencing with an annual report for the 2022-23 financial year.

Yours sincerely

**The Hon. Victor Dominello MP**  
Minister for Customer Service and Digital Government  
Minister for Small Business  
Minister for Fair Trading

Date: 20/12/22

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## **Terms of reference for IPART to monitor the biodiversity credits market**

I, Victor Dominello, Minister for Customer Service and Digital Government, under section 12A of the Independent Pricing and Regulatory Tribunal Act 1992, request the Independent Pricing and Regulatory Tribunal (IPART) to monitor and report on the operation of the biodiversity credits market within the Biodiversity Offsets Scheme (the Scheme).

### **Background**

The Scheme is the NSW framework for offsetting unavoidable impacts on biodiversity from development with biodiversity gains through landholder stewardship agreements.

Applications for development or clearing approvals that enter the Scheme must set out how impacts on biodiversity will be avoided and minimised and remaining residual impacts as identified in the approval must be offset. This can be achieved by retirement of biodiversity credits or payment to the Biodiversity Conservation Fund (BCF) which transfers the offset obligation to the Biodiversity Conservation Trust (BCT).

Landholders can establish Biodiversity Stewardship Agreements (BSAs) to create biodiversity credits. These credits are then available to the market for purchase to offset the impacts of biodiversity by development, by the BCT (through the BCF), the Credit Supply Fund (through the Department of Planning and Environment) or by government or others to secure outcomes for conservation.

Developers can also establish their own BSAs to generate and retire the credits they need to offset their development. Part of the proceeds from credit sales are held in trust by the BCT to support the long-term management of the biodiversity stewardship sites.

The current biodiversity credits market builds on the previous NSW biodiversity credits market created under the Biobanking Scheme. The market is rapidly growing, and this is expected to continue over the next 10 years and beyond because of economic development, including housing, manufacturing and infrastructure delivery.

### **The task**

IPART is requested to:

1. Monitor the performance of and competition within the biodiversity credit market, and make findings and recommendations with the aim of:
  - a. maintaining and promoting competition
  - b. addressing the interests of existing and potential biodiversity market participants, and supporting fair trading
  - c. identifying opportunities to improve market efficiency and address market failure
2. Report annually on the performance of and competition within the biodiversity market for a period of three years (annual market monitoring report).

## **Relevant considerations**

In undertaking this task, IPART is to have regard to:

1. The purpose and structure of the Scheme
2. The roles and responsibilities of the Department of Planning and Environment, the BCT, local government authorities and other participants
3. The incentives and impacts of the Scheme on existing and potential market participants, including developers, landholders and Biodiversity Stewardship Agreement holders, accredited assessors, local government authorities and other interested parties
4. The impact of government interventions, including the Biodiversity Credits Supply Fund and the BCF
5. Whether there are gaps in data collected or reported on by participants in the market or the timing of making that data available that could help track performance of the market
6. Recent reviews of the Scheme including the parliamentary inquiry into the integrity of the Biodiversity Offsets Scheme and Audit Office report on the effectiveness of the Biodiversity Offsets Scheme
7. Any other matter that IPART considers relevant.

## **The process**

IPART is required to consult with the Department of Planning and Environment, the BCT, developers, BSA-holders, accredited biodiversity assessors, local government authorities and other interested parties during the preparation of an annual market monitoring report.

IPART is to publish an annual market monitoring report within six months after the end of each financial year, commencing with an annual report for the 2022-23 financial year.

IPART may also publish reports at other times if it considers appropriate.