

NSW Department of Climate Change, Energy, the Environment and Water and NSW Biodiversity Conservation Trust – information about the Biodiversity Offsets Scheme.

Government undertakes functions as part of implementing the Biodiversity Offsets Scheme to ensure alignment with NSW legislation and policy direction

Summary: The Government performs functions relating to the scheme's implementation. These functions are performed with high standards of probity, integrity and transparency. This includes supporting credit market operation to ensure the market delivers legislative and policy objectives, regulatory and administrative functions.

The Department performs functions relating to the scheme's implementation. This includes developing and reviewing the Biodiversity Assessment Method, the accreditation scheme for suitably qualified people to apply the biodiversity assessment method, regulatory functions associated with creation of biodiversity credits, and other programs to support the scheme to operate effectively. This includes the Biodiversity Credits Supply Fund (Supply Fund), Stewardship Support Program and establishing Strategic Offset Delivery Agreements (SODAs) to improve efficient and strategic delivery of biodiversity offsets associated with renewable energy projects. The Biodiversity Conservation Trust administers the Biodiversity Conservation Fund (BCF) and the Biodiversity Stewardship Payments Fund (BSPF).

The Department is not responsible for setting offset obligations, as these are established by consent authorities as part of considering applications for development and infrastructure. Proponents are responsible for meeting those offset obligations, through the means specified in the Biodiversity Conservation Regulation 2017 (BC Regulation), including retiring like-for-like biodiversity credits (a proponent can buy these credits or generate their own), paying an amount into the BCF or funding a biodiversity conservation action.

The biodiversity credit market enables landowners who establish biodiversity credits by entering into biodiversity stewardship agreements (BSAs) to sell credits to proponents who need them to meet offset obligations. As noted above, this is only one way in which proponents meet those obligations, and the most common way for obligations to be met is for proponents to establish their own BSAs to create credits and retire these credits to meet an offset obligation.

The scheme's rules are set out the *Biodiversity Conservation Act 2016* (BC Act), regulations, and other published statutory instruments. This includes the Biodiversity Assessment Method, and orders for the Biodiversity Offsets Payment Calculator (BOPC) and Accredited Assessor Scheme.

The Department's roles in administering the scheme are closely managed through robust governance arrangements and meets all requirements for procurement, probity and decision-making in line with statutory instruments. Each branch working on the scheme has very clear functions and accountability, and there is appropriate separation of responsibilities. For example, the branch that manages the Stewardship Support Program is separate to the branch that determines BSA applications and the creation of credits.

The Department also has an External Service-Related Complaints Policy to guide the management of service-related complaints made by external stakeholders. Members of the public can access the policy and submit service-related complaints and feedback related the Biodiversity Offsets Scheme via the Department's website.

The Supply Fund, led by the Department, operates in accordance with the Government's procurement rules, confidentiality requirements to benefit market participants, and is overseen by

independent probity advisers. The purpose of the Supply Fund is to provide buyers and sellers with a mechanism to participate in the market, to improve efficiency of the scheme's operation and that of the market. It operates using the same rules as other market participants, to help proponents find biodiversity credits to meet offset obligations on a like-for-like basis.

The BCT operates independently to the Department and is oversighted by an independent statutory Board. The BCF charge is calculated under the Minister-approved BOPC Order, which has been revised to better account for production costs of credits with several method improvements over the last few years. The BCT often pays above the BOPC charge to secure credits. The BCF does not act to stifle market returns for landholders or artificially depress purchase prices.

The BCT does not profit from its role in securing offsets via the BCF. All funds from developer payments are used to secure offsets in accordance with the BC Act and the *Biodiversity Conservation Regulation 2017* (BC Regulation). The delivery fee the BCT receives as part of the BOPC method is used to meet costs in administering this function. The Department and the BCT ensure there is no coordination on pricing between the Supply Fund and the BCT through their credit procurement processes. The BCT applies its own value-for-money criteria when purchasing credits which the Department's Supply Fund does not have visibility of, and likewise the BCT cannot access detail of the Supply Fund's price assessment criteria and processes. The BCT does purchase credits through the Supply Fund but is treated like any other proponent in terms of the information provided.

The Department and the BCT follow the Department's *Guideline for managing and disclosing unpublished information that may impact on biodiversity credit prices* and external probity advice when sharing or disclosing any unpublished market-sensitive information.

The Department considers and applies the NSW Government's competitive neutrality guidelines. Competitive neutrality principles do not preclude government agencies from taking a significant role in the supply of services if it is more efficient or in the public interest. The Department regularly obtains probity advice to ensure it is not taking an unfair advantage and that its activities are operating in the overall interest of the market and other participants.

The Department and the BCT are continuing to improve information about credit pricing

Summary: The Department and the BCT recognise the importance of public information on credit transactions including credit prices. All market transactions are recorded and published on the scheme's registers. Credit prices are published through the scheme's public registers and the Market Sales Dashboard. The BCT is also moving to more frequent publication of BCF charges.

The Department and the BCT acknowledge the importance of clear, timely and reliable market information. Information about credits purchased by the Department through the Supply Fund, including for SODAs, is recorded in the public register and the Department's sales dashboard within one day of the transaction being approved.

The Department is also improving accessibility and quality of information about credit supply, demand and pricing. The Department's credit supply and demand registers were upgraded in 2023 to improve data quality and allow users to view, download and analyse data in multiple formats.

Credit sales dashboards are available to visualise credit prices over time, and the Department is expecting to release upgrades to the dashboard in 2026.

The BCT publishes BCF charge quote information quarterly and, in accordance with the BOPC Order, charge prices are withheld for a period of 3 months. The BCT is currently consulting on a proposal to increase frequency of BCF charge quote reporting to at least weekly.

The BCT must prioritise like-for-like offsetting when acquitting transferred credit obligation

Summary: The BCT continues to prioritise like for like offsetting, in accordance with its statutory offset hierarchy. The BCT is improving transparency and reporting of its obligations, credit purchases and retirements.

Some submissions argue that amendments made via the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024* (the Amendment Act) weakened BCF delivery by enabling pooling of BCF funds and expanding access to variation rules. The submissions assert amendments shifted away from like for like outcomes and disadvantage suppliers of scarce credit types.

The Amendment Act did not expand nor change the BCT's access to variation rules nor did they weaken the BCT's requirements to acquit transferred credit obligations. On the contrary, the amendments that enable pooling of BCF funds improve the BCT's capacity to secure like for like credits. If the BCT can secure credits for less than the amount paid in to the BCF, the excess funds can now be used to secure higher-cost like-for-like credits to meet other offset obligations held by the BCT.

The Amendment Act did not change requirements for the BCT to apply the offset hierarchy as set out in the BC Regulation. The BC Act requires the BCT to retire the same number of credits as were paid into the BCF when securing developer offsets under like for like or variation rules set out in the regulations.

The BCT continues to apply the offsets hierarchy conservatively (market tested before any variation) and to prioritise securing like for like credits. BCT reports like for like acquittal percentages and will publish a public acquittal report by April 2026 to improve traceability from BCF payments to credit retirements.

SODAs are governed by statutory transparency requirements and offsetting rules, and are intended to secure strategic biodiversity outcomes

Summary: The BC Regulation enables eligible projects to use a SODA to meet biodiversity offset obligations in certain circumstances. This conservation measure has been established to recognise the urgency of the transition to renewable energy while maximising strategic biodiversity outcomes from the investment in biodiversity offsetting. SODAs are subject to statutory transparency and offsetting requirements.

The Department can enter a SODA with proponents of eligible renewable energy projects. The Department must publish a notice of intent at least 28 days before entering a SODA, maintain a public register of SODAs (including credit types) and publicly report quarterly on progress and expenditure under a SODA.

Under a SODA, the Department must meet offset obligations on a like-for-like basis in accordance with the same rules that apply to proponents. The SODA is also implemented consistent with the conservation investment strategy for the region in which the project is occurring. This ensures that offsets are delivered in locations that optimise strategic conservation outcomes.

The Department does not use variation rules for SODAs. Credit purchases are achieved through the Supply Fund in accordance with procurement strategies approved by the Department's Secretary and overseen by probity advisors. This ensures a transparent and fair procurement process that is available to all credit owners. Participants in these reverse auctions submit their preferred sale price (there is no cap or ceiling) however procurement is undertaken on a competitive basis, aligning with legislative requirements on the funding of electricity infrastructure.

The Department's Supply Fund runs reverse auctions for credits in accordance with published guidelines and independent probity advice

Summary: Department-run reverse auctions assist stakeholders to buy and sell credits at a price determined by the market. Auctions are run in accordance with published guidelines, procurement standards and with oversight from probity advisors.

The Supply Fund reverse auction process, led by the Department, makes it easier for buyers and sellers to participate in the market and improves market functioning. For each Supply Fund reverse auction, the Department makes participant guides available to stakeholders who are interested in participating in a reverse auction which set out eligibility and assessment criteria.

Sellers offering credits through Supply Fund reverse auctions may be matched with a range of prospective buyers from government and private sectors. The Supply Fund then undertakes the procurement process to secure these credits for the prospective buyers.

The Supply Fund operates on a price-led basis, with consideration for any other buyer requirements – such as timing or location constraints – set out in the participants guide.

The Department does not restrict landholders from supplying credits to other buyers. For example, landholders who receive financial support from the Department to establish a Biodiversity Stewardship Agreement are not required to sell their credits through the Supply Fund, and are free to sell to any buyer. The Department does not restrict proponents from purchasing credits from other credit sellers.

All Supply Fund procurement is overseen by an independent probity advisor who monitors compliance with procurement documentation.

The Department is reducing barriers for landholders entering Biodiversity Stewardship Agreements and participating in the credits market

Summary: The Department has significantly reduced cost and time barriers for landholders to enter Biodiversity Stewardship Agreements (BSAs). BSA holders are also selling credits and generating revenue to actively manage their land more quickly.

In the last three years, the Department has refined its products and processes to significantly reduce the time taken to determine a BSA, without compromising integrity. Many BSAs are now being finalised for landholder approval within six months.

The Stewardship Support Program also enables eligible landowners to participate in the scheme without meeting high biodiversity assessment costs, which are a barrier for some potential participants. This is fairer for those who could not otherwise afford to participate in the scheme.

The Stewardship Support Program is supporting Aboriginal landholders by helping to identify stewardship opportunities and conducting upfront assessments at no cost to the landholders. Several Aboriginal-owned sites are currently being assessed for BSA establishment.

On the impact of the Australian Government's capital gains tax regime on landholders entering BSAs. The Department has applied to the Australian Tax Commissioner for a public ruling which will clarify how the Commonwealth taxation law applies to those seeking to establish BSAs. The Department expects that the Australian Tax Commissioner will publish the ruling in 2026.

In relation to credit sellers facing delays in selling enough of their credits, the timeframes between landholders entering BSAs and selling enough credits to cover their management costs has decreased in the last three years, and the BCT and DCCEEW have undertaken targeted work to address this issue.

The scheme is underpinned by best available scientific methods and data

Summary: A 2024 statutory review of the Biodiversity Assessment Method (BAM) found that it meets statutory requirements to assess biodiversity values to a standard of 'no net loss'. BSA sites are monitored by the BCT for compliance and biodiversity outcomes via a published ecological monitoring module.

The 2024 statutory review of the BAM that the BAM has successfully met statutory requirements to assess biodiversity values to a standard of 'no net loss'. Further, BSA sites are monitored by the BCT for compliance and biodiversity outcomes via a published ecological monitoring module.

The scheme is subject to ongoing academic scrutiny. Research used in the BAM has been published in peer reviewed scientific journals.

The Department is improving information for proponents in estimating offset costs

Summary: The Department is making information available to support proponents to cost biodiversity offsets using best-available information.

Estimating costs for development or infrastructure projects requires information on biodiversity impacts and the cost of obtaining credits to offset the project. Early estimates of predicted cost can be unreliable because the proponent may still be considering the scope of a project and has not yet considered how to avoid and minimise impacts, which can significantly reduce offset costs. Threatened species surveys may also be incomplete which can lead to reliance on assumptions about the presence of threatened species, increasing both the projected project impact and offset cost.

There are a number of ways in which proponents can meet offset obligations, and proponents can take into account the time and cost of these various methods, from establishing a biodiversity stewardship agreement, through to purchase of credits on the market or use of the Biodiversity Conservation Fund.

The Department is developing guidance material on estimating offset costs.