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Your submission for this review:

This submission addresses structural and functional deficiencies within the NSW biodiversity credits market arising from extensive government intervention. The current market structure enables the NSW Government to act simultaneously as regulator, issuer, and the largest purchaser of credits through entities such as the Biodiversity Conservation Trust (BCT) and the Biodiversity Credits Supply Fund (BCSF).

# Submission to the Independent Pricing and Regulatory Tribunal (IPART)

## Review of the NSW Biodiversity Credits Market

**Submitted by:** Biodiversity Credits Australia

**Date:** 7/11/2025

**Contact:** Michael Spork

### Executive Summary

This submission addresses structural and functional deficiencies within the NSW biodiversity credits market arising from extensive government intervention. The current market structure enables the NSW Government to act simultaneously as regulator, issuer, and the largest purchaser of credits through entities such as the Biodiversity Conservation Trust (BCT) and the Biodiversity Credits Supply Fund (BCSF).

This consolidation of roles has created systemic conflicts of interest and inhibited the operation of a transparent and competitive market. Government dominance in both supply and demand has resulted in artificial price suppression, reduced private participation, and declining investor confidence. Furthermore, publicly funded Biodiversity Stewardship Site Assessment Reports (BSSARs) have created an artificial oversupply of credits, disadvantaging self-funded landholders and depressing market values. Developers are increasingly opting to make payments into the Biodiversity Conservation Fund (BCF) rather than purchasing credits directly, further eroding open-market dynamics.

To restore integrity and functionality, the NSW Government must withdraw from direct market participation and re-establish a framework grounded in independence, transparency, and fair competition. This submission outlines key reforms necessary to achieve that objective.

### 1. Introduction

The *Biodiversity Conservation Act 2016* (NSW) was established to promote biodiversity conservation through a market-based mechanism, providing incentives for private landholders to manage and protect high conservation value areas.

However, the current implementation of the Act has led to significant market distortion. The NSW Government's multiple roles—as regulator, issuer, and dominant purchaser—have effectively created a centralised system that undermines the very principles of market operation intended by the legislation.

This submission analyses the structural issues contributing to this dysfunction and presents practical recommendations to restore fairness, efficiency, and investor confidence.

### 2. Structural Conflicts and Market Distortion

#### 2.1 Concentration of Roles

The Government's simultaneous functions as policy-maker, regulator, and purchaser through the BCT and BCSF have created a structural conflict of interest. This arrangement prevents independent market pricing and restricts competition by allowing one entity to influence both sides of the market equation.

#### 2.2 Price Suppression

Through mechanisms such as internal price caps and reverse-auction procurement processes, the Government effectively sets the market price for biodiversity credits. These interventions have artificially depressed credit values, leaving landholders unable to obtain fair compensation for land dedicated to conservation. Sellers bear high costs, reduced agricultural productivity, and ongoing

management obligations, while Government purchasing patterns set de facto price benchmarks across the sector.

### **2.3 Impact of Subsidised Assessments**

The Government's funding of BSSARs for selected participants has further distorted the market by removing normal entry costs and generating an artificial oversupply of credits. This practice undermines self-funded participants—many of whom have invested substantial private capital—and contributes to falling credit prices and declining private sector engagement.

### **2.4 Decline of Open-Market Demand**

The cumulative effect of these policies has shifted the market towards a centrally managed procurement model. Developers increasingly opt to pay into the Biodiversity Conservation Fund (BCF) rather than sourcing credits through open-market transactions, further weakening competition and liquidity.

## **3. Consequences of Market Dysfunction**

The current framework has led to:

- Suppressed credit prices and loss of fair value for landholders;
- Reduced confidence and participation from private investors;
- Misalignment between credit supply and genuine ecological demand;
- Transfer of disproportionate financial and operational risk to landholders;
- Increased fiscal exposure for NSW taxpayers; and
- Outcomes inconsistent with the intent of the *Biodiversity Conservation Act 2016*.

Without reform, these conditions will continue to erode private stewardship investment, impede biodiversity outcomes, and burden the public with escalating long-term costs.

## **4. Guiding Principles for Reform**

A functional biodiversity credits market requires:

- **Independence** between regulatory, issuance, and purchasing functions;
- **Transparency** in pricing, transaction data, and governance;
- **Competition** driven by private investment and open negotiation; and
- **Predictability** to support long-term stewardship commitments.

These principles should underpin any reforms implemented following IPART's review.

## **5. Recommended Reforms**

To address existing distortions and re-establish a credible market framework, the following reforms are recommended:

### **5.1 Market Structure and Governance**

1. **Withdraw Government from Direct Purchasing Activities**
  - Enable independent buyers and sellers to negotiate freely and determine true market prices.
2. **Separate Regulatory and Commercial Functions**
  - Establish clear institutional and operational separation between agencies responsible for regulation, accreditation, and procurement.
3. **Restrict Use of the Biodiversity Conservation Fund (BCF)**
  - Limit developer pay-ins to circumstances where no suitable credits are available in the open market.

### **5.2 Market Integrity and Transparency**

4. **Prohibit Sale of Unissued Credits**
  - Ensure that only formally issued credits can be marketed or traded to protect market integrity.
5. **Publish Transparent Market Data**

- Provide regular public reporting of aggregated credit prices, volumes, and transaction data to enhance transparency and inform investor decision-making.

### **5.3 Market Entry and Participation**

#### **6. Discontinue Publicly Funded BSSARs**

- End subsidies that artificially increase supply and disadvantage self-funded landholders.

#### **7. Align Credit Supply with Verified Demand**

- Ensure credit generation reflects actual offset needs, rather than policy-driven production targets.

#### **8. Support Long-Term Landholder Viability**

- Introduce fair-value pricing mechanisms, indexation, or stewardship incentives to ensure that conservation remains financially sustainable.

### **6. Conclusion**

The NSW biodiversity credits market, as currently structured, is not operating as an efficient or credible market. The Government's dual role in setting rules, issuing credits, and acting as the principal purchaser has eroded competition, suppressed prices, and undermined investor confidence. If these structural issues are not addressed, private participation will continue to decline, biodiversity outcomes will stagnate, and the financial burden on taxpayers will increase.

IPART's review provides an important opportunity to implement reforms that restore integrity, transparency, and independence to the market. By withdrawing from purchasing activities, prohibiting pre-issuance trading, and ending subsidies that distort supply, the NSW Government can re-establish a competitive and transparent biodiversity market that rewards genuine stewardship and delivers enduring environmental benefits for New South Wales.

#### **Submitted by:**

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