



Environment Institute  
of Australia and  
New Zealand Inc.

8 October 2024

Independent Pricing and Regulatory Tribunal (IPART)  
PO Box K35, Haymarket Post Shop, NSW, 1240s  
Email: [ipart@ipart.nsw.gov.au](mailto:ipart@ipart.nsw.gov.au)

Dear IPART,

Thank you for the opportunity for the Environment Institute of Australia and New Zealand (EIANZ) to provide feedback on the IPART Discussion Paper, 'Monitoring the NSW Biodiversity Credits Market'.

EIANZ supports the NSW Biodiversity Offsets Scheme (BOS) and is committed to assisting the Government to make it run smoothly and efficiently for all stakeholders. As ecologists and environment professionals, our members care deeply about the scheme's outcomes.

EIANZ's Biodiversity Offsets Community of Practice (CoP) currently represents approximately 85 Accredited Assessors (AAs) under the BOS, within their respective companies. This represents around 30% of the ~300 registered consultant AAs. We have provided more information about the group's vision and objectives below (**Attachment A**).

EIANZ is eager to collaborate with the Government and IPART to further improve the Scheme for all stakeholders. In consultation with our members, we have prepared this response to the consultation questions in the Discussion Paper. The comments reflect experiences that individual AAs have had working in the scheme as it has developed and changed over time.

We believe there are opportunities to improve efficiency and transparency of the Scheme and we would welcome the opportunity to meet with IPART to discuss our feedback further.

### **1. What has been your experience with the market? For example, have you faced any difficulties or inefficiencies in buying or selling credits?**

Our members have experienced difficulties and inefficiencies including:

- Limited direct interaction with private sellers/buyers in the past few years due to Government auctions taking communication away from direct trading.
- Most purchases are now going through Biodiversity Conservation Fund (BCF), managed by the Biodiversity Conservation Trust (BCT). Trading is therefore limited to sellers unless they participate in Government-run auction processes.
- A lack of open and transparent registers of landholders who submit EOs potentially interested in BSA establishment. **These registers should be publicly available to further facilitate engagement in the scheme directly with developers.**
- Inadequate and unconsolidated registers of who owns credits and, more specifically, who is selling/willing to sell the credits they have (many credits are reserved for projects by the holder).
- Market resources (credit registers, dashboards etc) have proved inadequate: e.g. Dashboard does not report BAM-equivalent credit trades (i.e. not true reflection of market); Register does not distinguish non-market trades (i.e. Part A only trades) or Linking Landscape trades under BioBanking; supply register is not updated when BAM-equivalent credit sales have occurred. **We suggest all registers are rolled into one, and any potential buyers are**

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**provided with an option to contact the market directly rather than pay into the BC Fund, this could be facilitated easily with an automated email to sellers directly from the register.**

- Trade of remnant BioBanking credits obfuscating the market. Having different registers/prices creates confusion for credit-holders and buyers alike. **We suggest transferring all remaining BioBanking credits to BAM credits.**
- Buyers often rely on the BCF charge report as a guide for credit prices, however this is not relevant to the market – the costs on the charge report do not always reflect the actual market price of generating credits. **We recommend a feedback mechanism if BCF cannot get credits at a price for the BCF price for that entity to be increased.** For example, if repeated tenders with all (or most) prices being higher, then increase the BCF price for any new quotations as a market sounding?
- Developers have access to 'ceiling price' of credits through acquisition of BCF Developer Charge Quote; suppliers do not. Suppliers may request an estimate of credit price for a given point in time. **BCT credit price estimates should be made public**, so buyers and sellers have access to same information that influences market pricing. Presently BCF quotes do not appear on the register for up to 6 months, and sometimes longer.
- Nature Markets and Offsets (NMO), the Division of the Government that run the Biodiversity Credits Supply Fund (Supply Fund), only goes out to market in cases where developers plan to purchase credits within the following 6 months. **A longer lead time is required in practice.**
- The NMO Supply Fund may, in some instances, distort the market by offering prices for credits in excess of the seller's asking price. Our members are aware of instances where the NMO was asking a price three times what the private seller was offering.
- The BC Fund Charge Quote system creates a ceiling for credits prices, that as previously stated does not reflect the actual price of creating credits, it also does not allow for a true market influence of supply and demand to drive market prices. In effect the charge quote system acts as a regulator and the system is *not* a market-based system at all. This can be seen in credits sales of species such as the Southern Myotis, for example.
- The cumbersome process currently used to sell credits, which requires manually filling out repetitive paperwork, is inefficient. **With all the information already in the system, a more automated online system should be used, not to dissimilar to the share market.**
- The NMO Supply Fund reverse auction process is in direct competition to brokers, as they are acting as a broker for developers. When a bid is made, if a developer does not take the offer, the opportunity stops there. If the developer were acting directly with the credit owner or their broker, more of a negotiated process could occur to see if a sale / purchase price could be agreed upon. The Supply Fund reverse auction often ends up with credits not being sold and potential future demand not being satisfied.

## **2. What do you see as the costs or obstacles to participating in the market?**

- Significant upfront costs with limited certainty around ability to sell credits. While NMO are working to discount upfront costs, this has the potential to disadvantage landholders who are setting up sites independently. Policies are not clear on the extent to which NMO will sponsor a site and the terms. **Transparency of how the NMO and BCT are interacting with landholders is recommended.**
- Delays frequently occur for species credit generation because rules are not clear as to how to generate species credit polygons or are interpreted on a case-by-case basis. This adds to cost and can result in missed selling opportunities. Clarification of the rules is critical to avoid delays. **Recommend engagement with industry groups prior to releasing species survey and polygon guidelines.**

- Capital gains tax implications are significant, poorly understood and potentially crippling for sellers when substantial tax bills are incurred prior to any income from a site through credit sales.
- SAll (serious and irreversible impact) category 4 entities are an emerging issue, as NMO are not allowing Stewardship sites to generate credits. This means that there effectively cannot be a market for these entities, and landholders with these biodiversity values are not rewarded. This is forcing proponents to make payment to the BCF.
- Lack of clarity on application of species polygons across both impact (BDAR) and offset (BSA) sites.
- Inconsistent application of the BOS between regulatory authorities compared to that of Accredited Assessors.
- Accreditation is losing relevance, as advice given to landholders that is considered to be consistent with the BAM is not accepted by the Department/NMO. Sometimes, the Department relies on policy documents that are either not publicly available or difficult to access (e.g. appropriate application of Active Restoration Management Actions).
- The NMO have entered the market as a third-party consultant offering to prepare BSSARs for landholders with no upfront cost. This creates a potential for unfair competition with AAs working for private consultancies.

### **3. What changes, if any, have you noticed in the performance and competition in the credits market during the last financial year?**

- We have seen a distinct reduction in developers approaching the market directly; likely due to NMO involvement in market.
- We also note that Biodiversity Conservation Services/NMO are likely to also take a larger role in the biodiversity credit market via Strategic Offset Delivery Agreements (SODA). It is unclear how these will operate. Our view is that there is also significant potential for perceived conflicts of interest between the agency's role to review stewardship site assessments and becoming active within the biodiversity credit market themselves.

### **4. What has your experience with the Biodiversity Conservation Fund and/or Credits Supply Fund been?**

- The Credit Supply Fund's role should be to facilitate supply and trading directly between parties, by providing access to dependable consolidated, up to date data. We would like to see the role of the fund's role in the market be reviewed.
- NMO Policies which are used to guide assessments can be opaque and are often implemented without consultation with Accredited Assessors. An example is Strategic Offset Delivery Agreements whereby NMO would take on large offset liabilities for projects under agreed terms with proponents. This practice could distort the market, however no information regarding the details of these practices has been made available.
- The Supply Fund should work to increase supply by focusing on landholders looking to establish credit sites, not working with the ones that already have credits on the market.
- The BCT is routinely using variations to 'like for like' credits (with approximately 60% of credits purchased in the latest BCT Credit Tender process using the variation rules; *BCT Credit Tender 24-01 Outcomes report, September 2024*). It is important that these variations are applied consistently to all proponents applying the BOS. Lack of certainty when using variation rules. When there is uncertainty or limited confidence that variations will be approved there is less likelihood that credits will be pursued. This may result in increased payments into the BC Fund for the given entities rather than the private market.

- Asymmetry in Supply Fund auction process significantly impacts sellers' confidence in the market and the BOS. For example:
  - Suppliers required to submit binding offers, while buyers not required to commit to buying credits (some 'approved' offers were 'subject to securing a buyer').
  - Binding sellers limits their ability to trade in BCT Auction processes or directly with the market (i.e. developers).
  - Lack of clarity on purchase strategy. For example, offers for credits where there have been no trades were refused as 'price too high for buyers,' when our members were aware there were no other suppliers in the market, no previous trades to indicate market price and the credits were priced below the BCF Developer Charge Quote price.
  - Developers may be using the Developer Charge Quote process as a price-checking exercise without the intent to commit to purchase.
  - Supply Fund is able to buy any number of the credits offered at the set price; sellers must provide a fixed credit price regardless of volume. It is to a seller's advantage to offer a lower price for a large credit purchase, this is not recognised in the process.

#### **5. What oversight of brokers and accredited assessors would allow you to be confident in their activities in the market?**

- We would like to see all brokers registered through an accredited system that sets up some rules they must follow, so that perceived conflicts of interest can be seen to be managed. At present there is a lack of advice on exactly what constitutes a perceived or actual conflict of interest. If Brokers are to be Accredited in some way, we contend that the Government, if it is a market player, must also have transparency in the way they are trading and charging for broker services. **Recommend Conflict of Interest policy be developed so that conflicts are managed accordingly, rather than broad statements of 'no actual, potential or perceived conflicts' (current wording of Code of Conduct, and current BDAR and BSSAR templates).**

#### **6. What information do you need to make decisions about buying or selling in the market? What is currently missing?**

- **Recommend transparent and accurate registers replace existing array of registers (i.e. BioBanking registers, BAM Registers; BC Fund quotes; Biodiversity Credit Market Sales dashboard).** Make trading data available to sellers with reliable market information (see earlier comments on Registers).
- Having a simple online automated processes for credit transfers and retirements to reduce timeframes.
- Current approval timeframes are open ended due to inconsistent application of the BAM by the NMO, or requests to change information in BSSARs. This increases survey time, costs, and extends the trading window for landholders. **Recommend NMO engage with industry to better understand these issues and how they might be reduced.**

#### **7. What form of market oversight would you like to see going forward to ensure your ongoing confidence in the market?**

- Independent guidance on brokering and conflict arising for assessors and government agencies involved in the market.

**8. For Aboriginal landholders: what are the main barriers to your participation in the credits market? Are there any aspects of the biodiversity credits market that do not align with Aboriginal ways of managing Country?**

Our members are not Aboriginal landholders, so we have not addressed this question.

**9. Has the removal of the price cap in October 2023 impacted your use of the Biodiversity Conservation Fund? Have you noticed any secondary impacts resulting from this on the market?**

- The most severe pay-into-fund price movements appeared to occur outside of the cap. Our experience was that the cap capped prices for already high-cost entities but not for low-cost entities. Therefore, a relatively cheap-to-purchase species credit could increase 10-fold without any influence from the cap. Prices that were already high (and therefore capped) did not move to the same degree.

**10. What information, communication or other measures could be taken to assist market participants navigate new market reforms?**

- A number of these measures have been identified within our submission above and our previous submissions to the NSW Government are listed below.
- Bringing the existing register up to date and combining the many variations of Registers so they include BAM and BioBanking trades, as well as recent quotations from the BC Fund or NMO Credit Supply Fund.
- Resolve the issue of multiple registers (transactions, demand, BCT credits sought, etc) which are fragmented and unclear.
- The credit transfers and credit retirement processes could be greatly simplified which could significantly improve timeframes and costs for all parties.
- Allow Stewardship sites to generate credits for SAll category 4 entities.
- Work with accredited assessors to develop clear guidelines for application of species polygons across both impact (BDAR) and offset (BSA) sites.
- More detail in the BCT credit tender outcomes report as to why certain credits bids were not accepted and why some credit obligations were not satisfied.
- There can be a perception that the BCT are profiting from the process they are using, due to the loading on all credits paid into the fund, hence any offer below the charge quote listings, which does not include the loading, should be purchased so the credit obligation can be satisfied. The latest outcome report clearly shows many credits obligation were not satisfied, and the reasoning behind that is ambiguous.

Best regards,

[Redacted signature]

[Redacted name]

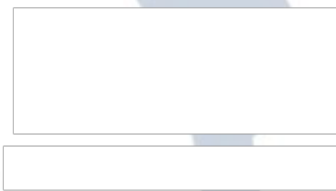
Chair  
EIANZ Biodiversity Offsets Community of Practice



President  
EIANZ NSW Division

**Declaration**

EIANZ's Biodiversity Offsets Community of Practice includes accredited assessors who regularly interact with the Department about the Scheme, have worked in Department and in some cases interact on other matters. Members of our group have been subject to audit by the Department.



## Attachment A: About the EIANZ Biodiversity Offsets Community of Practice

- **Vision:** To maintain and improve standards regarding biodiversity offsets schemes by working collaboratively with policy makers to ensure that these schemes deliver practicable and robust outcomes.
- **Mission:** Establish a group of highly qualified ecological professionals to enhance and elevate the role of biodiversity offsets as an effective tool for managing impacts from development on biodiversity values.
- **Membership:** Currently experienced NSW biodiversity offset scheme (BOS) accredited assessors (AAs) or someone who brings specific useful knowledge to the group, but it is expected that this will expand over time to include those from other jurisdictions. The group will also collaborate with other parts of EIANZ, in particular the Ecology SIS, and with other areas of EIANZ, and areas of expertise where appropriate. The community of practice sits under the EIANZ Ecology Special Interest Section.

### Previous submission from the EIANZ Ecology SIS and Biodiversity Offsets CoP regarding the Biodiversity Offsets Scheme

EIANZ (2021). Letter to Portfolio Committee No. 7 - Environment and Planning, Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme. Submission on behalf of the EIANZ Ecology Special Interest Section, dated, 13 Sept 2021.

EIANZ (2021). Letter of Introduction of the Biodiversity Offsets Community of Practice to the NSW BCT, DPIE and Commonwealth DAWE, dated 13 December 2021.

EIANZ (2022). Submission to the NSW BCT Re. Biodiversity Conservation Fund Charge System on behalf of the EIANZ Biodiversity Offsets Community of Practice, dated 31 March 2022.

EIANZ (2022). Letter to Portfolio Committee No. 7 - Environment and Planning, Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme. Submission on behalf of the EIANZ Ecology Special Interest Section, dated, 16 Sept 2022.

EIANZ (2023). Submission to the NSW Biodiversity Conservation Act Review on behalf of the EIANZ Biodiversity Offsets community of practice and Ecology Special Interest Section, dated, 10 April 2023.

EIANZ (2024). Email following consultation with DCCEEW and BCT, requesting support and guidance Re 'Top 20 Species requiring clarity on' on assessment under the BAM (2020).

EIANZ (2024). Email to Nature Markets and Offsets Division, NSW DCCEEW, RE: Comment on Biodiversity Credit Registry RFI, dated 13 August 2024.

EIANZ (2024). Submission to the Director, Assurance & Biodiversity Stewardship, Nature Markets and Offsets, NSW Department of Climate Change, Energy, the Environment and Water. Feedback on the Department's consultation draft, 'Ensuring compliance with the Code of Conduct (the Code) for Accredited Assessors', dated, 30 August 2024.