
LEGISLATIVE COUNCIL

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

First print

Proposed amendments

No. 1 **Prescribed biodiversity conservation measures as alternative to retirement of biodiversity credits**

Page 3, Schedule 1[2], lines 14–16. Omit all words on the lines. Insert instead—

prescribed biodiversity conservation measure means an action prescribed under section 6.4(2)(b) as an action that qualifies as a biodiversity conservation measure for the offset rules.

No. 2 **Restrictions on variations of biodiversity stewardship agreements**

Page 4, Schedule 1. Insert after line 27—

[8A] Section 5.11(3) and (3A)

Omit the section 5.11(3). Insert instead—

- (3) The Minister must not agree to a variation of a biodiversity stewardship agreement if the variation will have a negative impact on the biodiversity values protected by the agreement.
- (3A) If the Minister agrees to a variation of a biodiversity stewardship agreement under subsection (3), the Minister must prepare a written statement setting out the reasons for the Minister's decision to agree to the variation.

No. 3 **Like-for-like biodiversity credits**

Page 4, Schedule 1. Insert after line 39—

[12A] Section 6.1 Definitions: Part 6

Insert in alphabetical order—

Biodiversity Conservation Fund means the Biodiversity Conservation Fund established under section 10.16.

Biodiversity Conservation Trust means the Biodiversity Conservation Trust of New South Wales established under section 10.1.

like-for-like biodiversity credit means a like-for-like biodiversity credit prescribed by the regulations under section 6.4(2) for the purposes of the application of the offset rules.

No. 4 **Like-for like biodiversity credits**

Page 4, Schedule 1. Insert after line 39—

[14A] Section 6.2 Biodiversity offsets scheme

Insert after section 6.2(f)—

- (f1) In relation to the trading or retirement of biodiversity credits under the scheme—that the trade or retirement be of like-for-like biodiversity credits.

No. 5 **Offsetting principles**

Page 5, Schedule 1. Insert after line 8—

[14B] Section 6.2AA

Insert after section 6.2—

6.2AA Principles underpinning biodiversity offsets scheme

- (1) The following principles underpin the biodiversity offsets scheme—
- (a) biodiversity offsets should be used as a last resort and only after consideration of all available measures to avoid or minimise the impacts of the relevant action on biodiversity values,
 - (b) the use of biodiversity offsets should achieve biodiversity benefits in perpetuity and deliver net positive outcomes for biodiversity in New South Wales,
 - (c) legislation and Government policy should set clear limits on the use of biodiversity offsets,
 - (d) biodiversity offsets should supplement, and not be used as a substitute for or to discharge, other legal obligations relating to the protection, conservation and management of biodiversity,
 - (e) arrangements relating to biodiversity offsets must be legally enforceable,
 - (f) frameworks relating to biodiversity offsets should include mechanisms to respond to climate change and stochastic events.
- (2) In this section—
- biodiversity offsets* means the biodiversity conservation measures available under the biodiversity offsets scheme to offset or compensate for impacts on biodiversity values after any steps taken to avoid or minimise those impacts under the avoid, minimise and offset hierarchy.

No. 6 **Net positive biodiversity outcomes**

Page 5, Schedule 1[15], proposed section 6.2A. Insert after line 26—

(7) In this section—

net positive biodiversity outcomes means the achievement of net gains in biodiversity in New South Wales delivered by biodiversity conservation measures taken in relation to each development or activity that exceeds the biodiversity offsets scheme threshold for the purposes of Part 7 for each impacted species, community or habitat.

No. 7 **Like-for-like biodiversity credits (to be moved as first option)**

Page 6, Schedule 1[17], lines 1–3. Omit all words on the lines. Insert instead—

[17] Section 6.4 Biodiversity conservation offsets under scheme

Omit section 6.4(1). Insert instead—

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- (1) For the purposes of the biodiversity offsets scheme, the biodiversity conservation measures to offset or compensate for impacts on biodiversity values after any measures taken to avoid or minimise those impacts under the avoid, minimise and offset hierarchy are the retirement of like-for-like biodiversity credits.

No. 8 **Like-for-like biodiversity credits (alternative to No. 7—only to be moved if No. 7 is not successful)**

Page 6, Schedule 1[17], lines 1–3. Omit all words on the lines. Insert instead—

[17] Section 6.4 Biodiversity conservation offsets under scheme

Insert after section 6.4(1)—

- (1A) For subsection (1), the retirement of biodiversity credits must represent at least 90 percent of the biodiversity conservation measures to offset or compensate for the impacts.

No. 9 **Like-for-like biodiversity credits**

Page 6, Schedule 1[19], lines 6 and 7. Omit all words on the lines. Insert instead—

[19] Section 6.4(4)

Omit the subsection. Insert instead—

- (4) The regulations may provide for the circumstances in which the ordinary rules for determining the number and class of biodiversity credits required as biodiversity offsets may be varied for the purposes of the Biodiversity Conservation Trust applying amounts from the Biodiversity Conservation Fund under section 6.31 (the *variation rules*).

No. 10 **Biodiversity assessment method to adopt standard of net positive biodiversity outcomes**

Page 6, Schedule 1. Insert after line 18—

[20A] Section 6.7 Minister may establish biodiversity assessment method

Omit section 6.7(3). Insert instead—

- (3) When establishing the biodiversity assessment method, the Minister must—
- (a) have regard to the purpose of this Act, and
 - (b) having regard to the targets and time frames set out in the strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes under section 6.2A(2)—
 - (i) during the transition of the scheme—adopt a standard that, in the opinion of the Minister, will result in no net loss of biodiversity in New South Wales, and
 - (ii) as soon as practicable after the strategy is made—adopt a standard that, in the opinion of the Minister, will result in a net positive biodiversity outcomes in New South Wales.

No. 11 **Declared biodiversity credits for which payment into Biodiversity Credit Fund must not be made**

Page 10, Schedule 1[33], proposed section 6.30(2)–(4), lines 17–21. Omit all words on the lines. Insert instead—

- (2) The regulations may prescribe circumstances in which, including classes of credits in relation to which, a person must not satisfy a requirement under this Act or another Act, including under an instrument, approval or agreement, to

retire biodiversity credits by instead paying the amount into the Biodiversity Conservation Fund under subsection (1).

No. 12 **Declared biodiversity credits for which payment into Biodiversity Credit Fund must not be made**

Page 10, Schedule 1[33], proposed section 6.30(3), lines 22–24. Omit all words on the lines. Insert instead—

- (3) Subject to subsections (1A) and (2), if the person pays the amount determined in accordance with the offsets payment calculator established under this division into the Fund under subsection (1), the requirement to retire biodiversity credits is satisfied when the Biodiversity Conservation Trust has applied all of the amount to retire biodiversity credits or secure biodiversity offsets under section 6.31.

No. 13 **Exemptions of particular developments from scheme**

Page 12, Schedule 1[37] and [38], lines 28–36. Omit all words on the lines.

No. 14 **Natural disasters**

Page 13, Schedule 1[41], proposed section 7.7(3)(a), line 17. Omit “disaster,”. Insert instead—

disaster in relation to which a Natural Disaster Declaration has been made for the purposes of the Natural Disaster Relief and Recovery Arrangements jointly administered by the Commonwealth and the States and Territories,

No. 15 **Biodiversity development assessment reports for Part 5 activities**

Page 13, Schedule 1. Insert after line 26—

[41A] Section 7.8 Biodiversity assessment for Part 5 activity

Omit section 7.8(3). Insert instead—

- (3) If, under subsection (2), the activity subject of the environmental assessment is to be regarded as an activity likely to significantly affect the environment, the environmental impact statement under the *Environmental Planning and Assessment Act 1979*, Part 5 must include or be accompanied by a biodiversity development assessment report.

No. 16 **Requirement to retire biodiversity credits specified in biodiversity assessment reports**

Pages 15 and 16, Schedule 1[49], proposed section 7.14(3A)–(3H), line 17 on page 15 to line 26 on page 16. Omit all words on the lines. Insert instead—

- (3A) If the relevant authority is satisfied that it is justified in the circumstances, the relevant authority may increase the number of biodiversity credits of one or more classes that would otherwise be required to be retired under subsection (3), provided the relevant authority does not reduce the number of any other class of biodiversity credits that would otherwise be required to be retired under subsection (3).

No. 17 **Biodiversity development assessment reports for Part 5 activities**

Page 16, Schedule 1. Insert after line 31—

[50A] Section 7.15 Part 5 activity

Omit “elected under Division 2 to obtain” from section 7.15(1).

Insert instead “obtained”.

No. 18 **Requirement to retire biodiversity credits specified in biodiversity assessment reports**

Page 16, Schedule 1[51], proposed section 7.15(3), lines 37–40. Omit all words on the lines. Insert instead—

approval to carry out the activity, must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class specified in the biodiversity development assessment report.

No. 19 **Requirement to retire biodiversity credits specified in biodiversity assessment reports**

Pages 17 and 18, Schedule 1[55], proposed section 7.17(2)(e), line 47 on page 17 to line 6 on page 18. Omit all words on the lines, Insert instead—

application—section 7.14(3A) applies as if—

- (i) a further assessment report was required to be submitted with the application for modification, and
- (ii) the relevant authority is proposing to impose a condition to increase the number of biodiversity credits of one or more classes that would otherwise be required to be retired under the original approval or consent,

No. 20 **Proposed State significant development or infrastructure that has serious or irreversible impacts on biodiversity values**

Page 17, Schedule 1. Insert after line 11—

[54A] Section 7.16(3)(c)

Omit “granted.” from section 7.16(3)(b). Insert instead—
granted, and

- (c) may only grant consent or approval if satisfied that there are exceptional circumstances that warrant the consent or approval because the development or infrastructure will deliver overwhelming public benefit.

No. 21 **Restrictions on variations of biodiversity stewardship agreement**

Page 18, Schedule 1. Insert after line 36—

[59A] Section 9.7 Registers to which Division applies

Insert “and the Minister’s statement of reasons relating to any variations of the agreements prepared under section 5.11(3A)” after “agreement” in section 9.7(1)(c).

No. 22 **Declared biodiversity credits for which payment into Biodiversity Credit Fund must not be made**

Page 18, Schedule 1. Insert after line 36—

[59B] Section 9.7 Registers to which Division applies

Insert after section 9.7(1)(d)—

- (d1) orders made by the Minister under section 6.30(1A),

No. 23 **Like-for-like biodiversity credits and offsetting principles**

Page 21. Insert after line 15—

Schedule 1A Amendment of Biodiversity Conservation Regulation 2017

[1] Clause 6.2 Offset rules under biodiversity offsets scheme (section 6.4)

Insert after clause 6.2(1)—

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- (1A) The determination of the biodiversity conservation measures under the offset rules are to reflect the principles underpinning the biodiversity offsets scheme set out in the Act, section 6.2AA.

[2] Clause 6.2(2)(b)

Omit the paragraph.

[3] Section 6.3 Like-for-like biodiversity credits (section 6.4)

Omit clause 6.3(2)–(4). Insert instead—

- (2) A *like-for-like biodiversity credit* means a biodiversity credit that represents—
- (a) in relation to impacts on threatened ecological communities—
 - (i) the same threatened ecological community located in—
 - (A) the same Interim Biogeographic Regionalisation of Australia subregion as the impacted site or an adjoining Interim Biogeographic Regionalisation of Australia subregion, or
 - (B) another Interim Biogeographic Regionalisation of Australia subregion that is within 100 kilometres of the outer edge of the impacted site, and
 - (ii) if the threatened ecological community contains hollow bearing trees—vegetation that contains hollow bearing trees, or
 - (b) in relation to impacts on the habitat of threatened species that are ecosystem credit species or other native vegetation, other than impacts on threatened ecological communities—
 - (i) the same plant community type located in—
 - (A) the same Interim Biogeographic Regionalisation of Australia subregion as the impacted site or an adjoining Interim Biogeographic Regionalisation of Australia subregion, or
 - (B) another Interim Biogeographic Regionalisation of Australia subregion that is within 100 kilometres of the outer edge of the impacted site, and
 - (ii) if the impacted habitat contains hollow bearing trees—vegetation that contains hollow bearing trees, or
 - (c) in relation to impacts on threatened species that are species credit species—the same threatened species located in—
 - (i) the same Interim Biogeographic Regionalisation of Australia subregion as the impacted site or an adjoining Interim Biogeographic Regionalisation of Australia subregion, or
 - (ii) another Interim Biogeographic Regionalisation of Australia subregion that is within 100 kilometres of the outer edge of the impacted site.

[6] Clause 6.7(2)(e)

Omit “replaceable.” from clause 6.7(2)(d). Insert instead—
replaceable, or

- (e) the impacted species is at risk from climate change.

No. 24 **Like-for-like biodiversity credits and offsetting principles**

Page 21. Insert after line 15—

Schedule 1A Amendment of Biodiversity Conservation Regulation 2017

Clause 6.2 Offset rules under biodiversity offsets scheme (section 6.4)

Omit clause 6.2(2)(b). Insert instead—

- (b) for the Biodiversity Conservation Trust—the retirement of the required biodiversity credits in accordance with the variation rules,