

Passed by both Houses



New South Wales

# Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Legislative Council*  
2024

*Clerk of the Parliaments*



New South Wales

# **Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024**

Act No \_\_\_\_\_, 2024

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An Act to amend the *Biodiversity Conservation Act 2016* to reform the biodiversity offsets scheme; and to make consequential amendments to the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Biodiversity Conservation Act 2016 No 63

### [1] Section 1.3 Purpose of Act

Insert “, reflecting the avoid, minimise and offset hierarchy,” after “framework” in section 1.3(k).

### [2] Section 1.6 Definitions

Insert in alphabetical order in section 1.6(1)—

*avoid, minimise and offset hierarchy*—see section 6.3A.

*Department* means the Department in which this Act is administered.

*Planning Agency Head* means the Secretary of the Department of Planning, Housing and Infrastructure.

*Planning Minister* means the Minister administering the *Environmental Planning and Assessment Act 1979*, Parts 4 and 5.

*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.

*relevant authority* means—

- (a) for an application for development consent under the *Environmental Planning and Assessment Act 1979*, Part 4 for State significant development—the consent authority within the meaning of that Act, section 4.5 or
- (b) for an application for approval under the *Environmental Planning and Assessment Act 1979*, Division 5.2 to carry out State significant infrastructure—the Planning Minister.

*residual impact*, on biodiversity values, means the impact on biodiversity values of proposed development, activity or clearing after taking the following measures to avoid and minimise the impact—

- (a) the measures on which a biodiversity development assessment report relating to the proposed development, activity or clearing was based,
- (b) the measures required to be carried out under a consent or approval for the proposed development, activity or clearing.

### [3] Section 1.6(1), definition of “Environment Agency Head”

Omit “Chief Executive of the Office of Environment and Heritage”.

Insert instead “Secretary of the Department”.

### [4] Sections 4.41(2)(a), 11.30(c), 13.4(5), definition of “relevant investigation officer”, paragraph (a), 13.23(1), 14.4(1)(a) and (2)(a) and 14.5(1), definition of “protected person”, paragraph (b) and Schedule 7, clause 6(a)

Omit “Office of Environment and Heritage” wherever occurring.

Insert instead “Department”.

### [5] Section 5.5 Minister and land owners may enter into biodiversity stewardship agreements

Omit section 5.5(3). Insert instead—

- (3) Before the Minister enters into a biodiversity stewardship agreement, the Environment Agency Head must consult with—

- (a) the Planning Agency Head, or an employee of the Department of Planning, Housing and Infrastructure nominated by the Planning Agency Head, and
- (b) the Secretary of the Department of Primary Industries and Regional Development, or an employee of the Department of Primary Industries and Regional Development nominated by the Secretary of the Department of Primary Industries and Regional Development.

**[6] Section 5.9 Requirements relating to entering into biodiversity stewardship agreements**

Insert at the end of section 5.9(1)(g)—

, and

- (h) the Environment Agency Head has consulted with the persons required by section 5.5(3).

**[7] Section 5.11 Variation of biodiversity stewardship agreements**

Omit section 5.11(2). Insert instead—

- (2) The Minister must not agree to a variation of a biodiversity stewardship agreement under subsection (1)(a) that increases the area of the biodiversity stewardship site, unless the persons who would have been required to consent or be consulted in relation to the area added to the site at the time of the variation if it were a new agreement have consented to, or been consulted about, the variation.

**[8] Section 5.11(4), note**

Omit the note.

**[9] Section 5.16 Proposals by public authorities affecting biodiversity stewardship sites**

Omit section 5.16(3), note.

**[10] Section 5.18 Prospecting and mining on biodiversity stewardship sites**

Omit section 5.18(2), note.

**[11] Section 6.2 Biodiversity offsets scheme**

Omit “the payment into” from section 6.2(g).

Insert instead “the undertaking of prescribed biodiversity conservation measures or the payment, in particular circumstances, into”.

**[12] Section 6.2(h1)**

Insert after paragraph (h)—

- (h1) The recognition of the avoid, minimise and offset hierarchy as the key principle for avoiding, minimising and offsetting impacts on biodiversity values when carrying out biodiversity assessments and preparing reports under the scheme.

**[13] Section 6.2A**

Insert after section 6.2—

**6.2A Transition of the biodiversity offsets scheme to net positive**

- (1) The biodiversity offsets scheme will transition to net positive biodiversity outcomes.
- (2) For the purposes of giving effect to the objective under subsection (1), the Minister must make a strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes.  
**Note—** Part 9 requires public consultation in relation to the making of the strategy.
- (3) The strategy must specify the actions required and include targets and time frames for the transition to delivering net positive biodiversity outcomes under the biodiversity offsets scheme.
- (4) The Minister must publish the strategy on an appropriate government website.
- (5) The Minister may amend the strategy at any time.
- (6) The Minister must not amend the strategy unless satisfied the amendment will not reduce the effectiveness of the biodiversity offsets scheme by—
  - (a) making the targets for the transition to delivering net positive biodiversity outcomes under the scheme less ambitious, or
  - (b) extending the time frames for the transition to delivering net positive biodiversity outcomes under the scheme.
- (7) The Environment Agency Head must review and report on the implementation of the strategy—
  - (a) 12 months after the strategy is published, and
  - (b) once every 12 months after the first review.

**[14] Section 6.3A**

Insert after section 6.3—

**6.3A Avoid, minimise and offset hierarchy**

For the purposes of the biodiversity offsets scheme, the *avoid, minimise and offset hierarchy* is the principle that avoiding, minimising and offsetting the impacts of actions on biodiversity values be approached as follows—

- (a) the proponent of the action first takes all reasonable measures to avoid the impacts of the action on biodiversity values,
- (b) after taking all reasonable measures under paragraph (a), the proponent then takes all reasonable measures to minimise the impacts that have not been avoided,
- (c) having taken the measures under paragraph (b), the proponent then takes biodiversity conservation measures under the biodiversity offsets scheme to offset or compensate for any residual impact on biodiversity values.

**[15] Section 6.4 Biodiversity conservation offsets under scheme**

Omit “steps taken to avoid or minimise those impacts” from section 6.4(1).

Insert instead “measures taken to avoid or minimise those impacts under the avoid, minimise and offset hierarchy”.

**[16] Section 6.4(3)**

Omit the subsection.

**[17] 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*).

**[18] Section 6.6 Miscellaneous provisions relating to biodiversity offsets scheme**

Insert after section 6.6(3)—

- (4) The regulations may—
  - (a) provide for fees to be payable by a person to the Environment Agency Head for services provided to the person by the Environment Agency Head under the Act,
  - (b) prescribe additional services, relating to any aspect of the biodiversity offsets scheme, that the Environment Agency Head may provide and for which the Environment Agency Head may charge fees,
  - (c) prescribe the amount of, or the method for calculating the amount of, the fees.

**[19] 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 net positive biodiversity outcomes in New South Wales.

**[20] Section 6.8 Matters to be dealt with by the biodiversity assessment method**

Insert after section 6.8(3)—

- (4) The biodiversity assessment method may include provisions of a savings or transitional nature consequent on the amendment or replacement, whether arising from a review under section 6.9 or otherwise, of the biodiversity assessment method.

**[21] Section 6.12 Biodiversity development assessment report**

Omit section 6.12(c). Insert instead—

- (c) sets out and assesses, in accordance with the biodiversity assessment method and the regulations—
  - (i) the genuine measures the proponent of the proposed development, activity or clearing has taken to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values of the land, and

- (ii) the genuine measures the proponent of the proposed development, activity or clearing proposes to take to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values of the land, and

**[22] Section 6.13 Biodiversity certification assessment report**

Insert after section 6.13(b)—

- (b1) sets out and assesses, in accordance with the biodiversity assessment method and the regulations—
  - (i) the genuine measures that the applicant for the proposed biodiversity certification has taken to avoid and minimise the impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies on the land proposed for biodiversity certification, and
  - (ii) the genuine measures that the applicant for the proposed biodiversity certification proposes to take to avoid and minimise the impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies on the land proposed for biodiversity certification, and

**[23] Section 6.13(c)**

Omit the paragraph. Insert instead—

- (c) specifies—
  - (i) other conservation measures in relation to other land to offset the impacts on biodiversity values, and
  - (ii) the value, in terms of numbers and classes of biodiversity credits, of the measures as determined in accordance with the biodiversity assessment method.

**[24] Section 6.15**

Omit the section. Insert instead—

**6.15 Certification of biodiversity assessment reports**

- (1) A biodiversity assessment report cannot be submitted in connection with a relevant application, unless—
  - (a) the accredited person certifies in the report that the report has been prepared on the basis of the requirements of, and information given under, the biodiversity assessment method as at a specified date (the *certification date*), and
  - (b) the report is submitted within 14 days after the certification date.
- (2) In this section—

*certify*, a biodiversity assessment report, means make the certification in the report under subsection (1)(a).

*relevant application* means the following—

  - (a) an application for planning approval,
  - (b) an application for vegetation clearing approval,
  - (c) an application for biodiversity certification,
  - (d) an application in relation to a biodiversity stewardship agreement.



**[25] Section 6.16 Miscellaneous provisions applying to biodiversity assessment reports**

Insert after section 6.16(1)—

- (1A) The regulations may make provision about the following—
  - (a) standards (*assessment standards*) against which the following must be assessed—
    - (i) genuine measures taken, or proposed to be taken, by proponents of proposed development, activity or clearing to avoid and minimise the impact of proposed development, activity or clearing on biodiversity values of land,
    - (ii) genuine measures taken, or proposed to be taken, to avoid and minimise the impact on biodiversity values of the actions to which the biodiversity offsets scheme applies on land proposed for biodiversity certification,
  - (b) requirements for biodiversity assessment reports to include information demonstrating whether the following meet the assessment standards—
    - (i) genuine measures taken, or proposed to be taken, by proponents of proposed development, activity or clearing to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values of land,
    - (ii) genuine measures taken, or proposed to be taken, to avoid and minimise the impact on biodiversity values of the actions to which the biodiversity offsets scheme applies on land proposed for biodiversity certification.
- (1B) Without limiting subsection (1A)(a), the assessment standards may prescribe higher assessment standards against which the matters referred to in that subsection must be assessed in the following circumstances—
  - (a) where, in preparing a biodiversity assessment report, potential impacts on biodiversity values that may be serious and irreversible are identified, or
  - (b) other circumstances prescribed by the regulations.

**[26] Section 6.21, heading**

Insert “**Biodiversity Stewardship Payments**” before “**Fund**”.

**[27] Section 6.21(3A)**

Insert after subsection (3)—

- (3A) If the Environment Agency Head considers an amount that would be payable under subsection (3) is not appropriate—
  - (a) the Environment Agency Head may determine another amount as being the amount payable, and
  - (b) the amount determined under paragraph (a) is the amount payable under subsection (3).

**[28] Section 6.29 Minister may require retirement of credits if not retired in accordance with credit retirement requirement**

Omit section 6.29(3), note.

**[29] Part 6, Division 5A**

Insert after section 6.29—

## **Division 5A Prescribed biodiversity conservation measures as alternative to retirement of biodiversity credits**

### **6.29A Prescribed biodiversity conservation measures as alternative to retirement of biodiversity credits**

- (1) A person who is required under this Act or another Act, including under an instrument, approval or agreement, to retire biodiversity credits may satisfy the requirement by instead undertaking prescribed biodiversity conservation measures determined in accordance with the regulations.
- (2) If the person undertakes the prescribed biodiversity conservation measures, the requirement to retire biodiversity credits is satisfied.
- (3) A regulation under this section may apply, adopt or incorporate a publication of the Environment Agency Head as in force from time to time.

### **[30] Section 6.30 Payment as alternative to retirement of biodiversity credits**

Omit section 6.30(2). 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).
- (3) Subject to subsection (2), if the person pays the amount determined in accordance with the offsets payment calculator established under this division into the Fund, the requirement to retire biodiversity credits is satisfied.
- (4) A regulation under this section may apply, adopt or incorporate a publication of the Environment Agency Head as in force from time to time.

### **[31] Section 6.31**

Omit the section. Insert instead—

#### **6.31 Corresponding obligation to secure required biodiversity offsets**

- (1) The Biodiversity Conservation Trust is to apply money paid into the Biodiversity Conservation Fund under this division in accordance with the object of the Trust under section 10.4.
- (2) For subsection (1), the Biodiversity Conservation Trust must, in relation to each BCF offset biodiversity credit—
  - (a) apply money from the Fund to retire either of the following types of biodiversity credits as the BCF offset biodiversity credit—
    - (i) a like-for-like biodiversity credit provided for in the offset rules under section 6.4(2),
    - (ii) a biodiversity credit provided for in the variation rules under section 6.4(4), or
  - (b) apply money from the Fund of an amount equal to the BCF individual offset amount for the BCF offset biodiversity credit towards securing biodiversity offsets in accordance with the regulations in substitution for the BCF offset biodiversity credit.
- (3) The Biodiversity Conservation Trust—

- (a) may apply an amount under subsection (2)(a) whether or not the amount is equal to the BCF individual offset amount for the BCF offset biodiversity credit to which the application of the amount relates, and
  - (b) may only apply amounts paid into the Fund under section 6.30 in a way specified in subsection (2), whether in relation to satisfying the requirement to retire—
    - (i) the BCF offset biodiversity credit, or
    - (ii) another BCF offset biodiversity credit, whether under the same or another requirement in relation to which an amount was paid into the Fund under section 6.30.
- (4) The Biodiversity Conservation Trust’s obligation to apply money from the Fund under subsection (2) is limited to the amount of money in the Fund that is equal to the total of the BCF individual offset amounts paid into the Fund under section 6.30.
- (5) The Biodiversity Conservation Trust must apply money in relation to a BCF offset biodiversity credit under subsection (2) within 3 years after the BCF individual offset amount for the BCF offset biodiversity credit was paid into the Fund (the *acquittal period*).
- (6) If the Biodiversity Conservation Trust does not apply money in relation to a BCF offset biodiversity credit under subsection (2) within the acquittal period, the Trust must enter into an agreement with the Minister about how the Trust will meet its obligation in relation to the BCF offset biodiversity credit under subsection (2).
- (7) However, the Biodiversity Conservation Trust is not required to enter into an agreement with the Minister under subsection (6) if, before the Minister signs the agreement, the Trust meets the Trust’s obligation in relation to the BCF offset biodiversity credit.
- (8) Despite subsection (6) —
- (a) if, at the end of the acquittal period, the Biodiversity Conservation Trust does not enter into an agreement with the Minister in accordance with that subsection, the Trust is not liable to any claim, action or demand by any person in relation to the Trust’s obligations under this section, other than by the Minister to require the Trust to enter into an agreement under subsection (6), and
  - (b) if the Biodiversity Conservation Trust enters into an agreement with the Minister under that subsection after the end of the acquittal period—the Trust is not liable to any claim, action or demand by any person, other than by the Minister in relation to the Trust’s obligations under the agreement or otherwise.
- (9) In this section—
- BCF deposited offset amount*** means an amount paid into the Biodiversity Conservation Fund to satisfy a requirement to retire biodiversity credits under section 6.30.
- BCF individual offset amount***, for a BCF offset biodiversity credit, means the part of a BCF deposited offset amount that represents the amount to satisfy the requirement to retire that particular BCF offset biodiversity credit under the relevant BCF offset obligation, less the delivery cost for the BCF offset biodiversity credit.
- BCF offset biodiversity credit*** means a particular biodiversity credit required to be retired under a BCF offset obligation.

**BCF offset obligation** means a requirement to retire biodiversity credits satisfied by the payment of an amount into the Biodiversity Conservation Fund under section 6.30.

**delivery cost**, in relation to a BCF offset biodiversity credit, means an amount determined by the offsets payment calculator that represents cost recovery by the Biodiversity Conservation Trust in connection with securing biodiversity offsets in relation to the BCF offset biodiversity credit.

**[32] Section 7.1 Definitions: Part 7**

Omit section 7.1, definition of *biodiversity development assessment report*.

Insert instead—

*biodiversity development assessment report* does not include—

- (a) a biodiversity development assessment report that is no longer eligible to be submitted under section 6.15(1)(b), or
- (b) a biodiversity development assessment report that is withdrawn under section 6.14.

**[33] Section 7.1, definition of “Planning Agency Head”**

Omit the definition.

**[34] Section 7.2 Development or activity “likely to significantly affect threatened species”**

Omit “if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values” from section 7.2(1)(b).

**[35] Section 7.2(3)**

Insert after section 7.2(2)—

- (3) Subsection (1)(a) does not apply to development that requires development consent under the *Environmental Planning and Assessment Act 1979*, Part 4, other than State significant development or complying development, that is prescribed by the regulations.

**[36] Sections 7.3(2), 8.1, definition of “planning authority”, paragraph (a) and 8.6(2) and Schedule 8, clause 2(4)**

Omit “Minister for Planning” wherever occurring. Insert instead “Planning Minister”.

**[37] Section 7.4 Exceeding biodiversity offsets scheme threshold**

Insert after section 7.4(3)—

- (4) The regulations may make provision about applications by landholders to the Environment Agency Head to amend a map applied, adopted or incorporated by a regulation under subsection (3), including the following—
  - (a) the form, content and publication of applications,
  - (b) processes and requirements for considering and deciding applications, including consultation requirements,
  - (c) fees for applications,
  - (d) the form, content and publication of decisions on applications,
  - (e) the declaring of decisions on applications to be taken to have amended relevant maps, including for particular periods or in particular circumstances.

**[38] Section 7.7 Biodiversity assessment for Part 4 development (other than State significant development or complying development)**

Insert after section 7.7(2)—

- (3) The Minister may, by order published in the Gazette, exempt an application in relation to development, or a kind of development, from the requirement under subsection (2) to be accompanied by a biodiversity development assessment report on either of the following grounds—
  - (a) for the purposes of expediting the application in response to, or otherwise in connection with, a natural disaster,
  - (b) in the Minister’s opinion, there are exceptional circumstances that make it appropriate to exempt the application from the requirement.
- (4) An order under subsection (3) must set out the following—
  - (a) the ground on which the order is made,
  - (b) the development, or kind of development, to which the application must relate,
  - (c) the Minister’s reasons for making the order, including the Minister’s consideration of the facilitation of ecologically sustainable development.

**[39] Section 7.11 Consultation with Minister administering this Act if a Minister is consent authority under Part 4 or determining authority under Part 5**

Omit “However, consultation is not required if the application is accompanied by a biodiversity development assessment report in accordance with Division 2 and the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.” from section 7.11(2).

**[40] Section 7.11(2A)**

Insert after section 7.11(2)—

- (2A) However, consultation under subsection (2) is not required if—
  - (a) the application is an application to which an order under section 7.7(3) applies, exempting the application from the requirement to be accompanied by a biodiversity development assessment report, or
  - (b) for other applications—
    - (i) the application is accompanied by a biodiversity development assessment report in accordance with Division 2, and
    - (ii) the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.

**[41] Section 7.12 Concurrence of Environment Agency Head if a Minister is not consent authority under Part 4 or determining authority under Part 5**

Omit section 7.12(2). Insert instead—

- (2) The consent authority must not grant development consent if the development is likely to significantly affect threatened species, unless the consent authority has obtained the concurrence of the Environment Agency Head.
- (2A) However, concurrence under subsection (2) is not required if—

- (a) the application is an application to which an order under section 7.7(3) applies, exempting it from the requirement to be accompanied by a biodiversity development assessment report, or
- (b) for other applications—
  - (i) the application is accompanied by a biodiversity development assessment report in accordance with Division 2, and
  - (ii) if the biodiversity offsets scheme applies to the impacts of the development the subject of the application—the conditions of the consent require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of at least the number and class specified in the report.

**[42] Section 7.13 Development other than State significant development or infrastructure**

Omit section 7.13(3), including the note. Insert instead—

- (3) Subject to subsection (4), if the consent authority decides to grant consent and the biodiversity offsets scheme applies to the proposed development, the conditions of the consent 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.

**[43] Section 7.13(5) and (5A)**

Omit section 7.13(5). Insert instead—

- (5) A condition to retire biodiversity credits must be complied with before any development is carried out that would impact on biodiversity values.
- (5A) Despite subsection (5)—
  - (a) a concept development consent may provide for a corresponding staged retirement of biodiversity credits before each stage of development is carried out and without the need for a further biodiversity development assessment report in connection with development applications for the subsequent stages of the development, and
  - (b) a staged development consent may provide for a corresponding staged retirement of biodiversity credits before each stage of development is carried out under the consent.

**[44] Section 7.13(8)**

Insert after section 7.13(7)—

- (8) In this section—
  - concept development application* has the same meaning as in the *Environmental Planning and Assessment Act 1979*, section 4.22(1).
  - concept development consent* means a consent to a concept development application.
  - staged development application* means an application for development consent that provides for the staged development of a site or for separate parts of a site as part of the application.
  - staged development consent* means a consent to a staged development application.

**[45] Section 7.14 State significant development or infrastructure**

Omit “Minister for Planning” wherever occurring in section 7.14(2) and (5).

Insert instead “relevant authority”.

**[46] Section 7.14(3)–(3H)**

Omit section 7.14(3). Insert instead—

- (3) If the relevant authority decides to grant development consent or approval and the biodiversity offsets scheme applies to the proposed development or infrastructure, the conditions of the consent or approval must, subject to subsection (3A), 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.
- (3A) If the relevant authority is satisfied it is justified in the circumstances, the relevant authority may, with the concurrence of the Minister, impose a condition other than to retire the number and class of biodiversity credits that would otherwise be required under subsection (3).
- (3B) Despite subsection (3A), if the relevant authority is satisfied that it is justified in the circumstances, the relevant authority may, without the concurrence of the Minister, 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).
- (3C) In deciding whether to give concurrence under subsection (3A), the Minister—
  - (a) must have regard to the following matters—
    - (i) the biodiversity development assessment report and the impacts of the development or infrastructure on biodiversity values that will not be offset because biodiversity credits are not being retired as specified in the report,
    - (ii) any further assessment report prepared by or for the proponent,
    - (iii) the facilitation of ecologically sustainable development,
    - (iv) any other mandatory matters prescribed by the regulations, and
  - (b) may have regard to the following matters—
    - (i) matters the Minister considers relevant,
    - (ii) any other discretionary matters prescribed by the regulations.
- (3D) Within 14 days, or another period prescribed by the regulations, after receiving a written request for concurrence from a relevant authority, the Minister administering this Act must—
  - (a) decide whether to give concurrence under subsection (3A), and
  - (b) give the relevant authority written notice of the decision.
- (3E) The Minister may give concurrence under subsection (3A) with or without conditions.
- (3F) If the Minister gives concurrence under subsection (3A) subject to conditions, the conditions must be included as conditions of the development consent or approval.
- (3G) If the Minister has not given the relevant authority notice under subsection (3D) at the end of the relevant period, the Minister is taken to have given concurrence without conditions.

- (3H) The regulations may make further provision about matters relating to the concurrence of the Minister under subsection (3A), including—
- (a) matters relating to the processes for obtaining and deciding whether to give concurrence, including the following—
    - (i) time frames within which relevant authorities must seek concurrence,
    - (ii) periods of time that must not be taken into account in calculating the expiration of the period within which the Minister must decide whether to give concurrence,
    - (iii) notice and information requirements,
    - (iv) provision for development consents or approvals granted without concurrence, or without properly obtained concurrence, to be invalid and of no effect, and
  - (b) matters relating to conditions of concurrence, including the following—
    - (i) the effects of failing to comply with conditions,
    - (ii) provision for development consents or approvals that do not include, or properly include, the conditions as conditions of the development consents or approvals to be invalid and of no effect.

**[47] Section 7.14(5)**

Omit “Minister may require to avoid or minimise those impacts or the power of the Minister”.

Insert instead “relevant authority may require to avoid and minimise the impacts or the power of the relevant authority”.

**[48] Section 7.15 Part 5 activity**

Omit section 7.15(3). Insert instead—

- (3) If the determining authority decides to carry out the activity or approve the carrying out of the activity and the biodiversity offsets scheme applies to the proposed activity, the conditions on which the activity is carried out, or of the approval to carry out the activity, may require the proponent to retire biodiversity credits to offset the residual impact on biodiversity values, whether of the same number and class specified in the report or of another number and class.

**[49] Section 7.16 Proposed development or activity that has serious and irreversible impacts on biodiversity values**

Omit section 7.16(2). Insert instead—

- (2) The consent authority must refuse to grant consent under the *Environmental Planning and Assessment Act 1979*, Part 4 for an application for development consent to which this division applies if, in the consent authority’s opinion, the proposed development is likely to have serious and irreversible impacts on biodiversity values.
- (2A) However, subsection (2) does not apply to the following applications—
- (a) an application for State significant development, or
  - (b) an application that is exempt from the requirement to be accompanied by a biodiversity development assessment report by an order under section 7.7(3).



**[50] Section 7.16(3)**

Omit “Minister for Planning”. Insert instead “relevant authority”.

**[51] Section 7.16(3)**

Omit “values, the Minister”. Insert instead “values, the relevant authority”.

**[52] Section 7.17 Modifications of planning approvals or activities**

Omit section 7.17(2). Insert instead—

- (2) The provisions of this division relating to applications for development consent or State significant infrastructure approval apply to the application for modification as follows—
- (a) the provisions apply in relation to the original development as proposed to be modified (the *proposed modified development*),
  - (b) if this division applies to the proposed modified development, a biodiversity development assessment report (a *further assessment report*) must be submitted with the application for modification and taken into consideration, even if—
    - (i) a biodiversity development assessment report was submitted in connection with the application for the original development, or
    - (ii) this division did not apply to the original development, including because the modification results in the development exceeding the biodiversity offsets scheme threshold,
  - (c) however, a further assessment report is not required to be submitted with the application for modification if—
    - (i) the authority or person determining the application for modification, or determining the environmental assessment requirements for the application, is satisfied that the modification will not increase the impact on biodiversity values, or
    - (ii) the application would, if it were an application for a development consent for the proposed modified development, be exempt from the requirement to be accompanied by a biodiversity development assessment report under an order made under section 7.7(3),
  - (d) if a further assessment report must be submitted with the application for modification—the further assessment report must take into account any measures already taken to avoid, minimise and offset the impact on biodiversity values in connection with the consent or approval before the proposed modification,
  - (e) if a further assessment report is not required to be submitted with the application for modification and the relevant authority proposes to change any offset obligations as part of granting the modification application—sections 7.14(3A) and (3B) apply 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 retire biodiversity credits of a number and class that differs from the number and class required to be retired under the original approval or consent,
  - (f) if an application for a development consent, or State significant infrastructure approval, for the proposed modified development would have been required to be refused because of serious and irreversible

impacts on biodiversity values—the application for modification must also be refused.

**[53] Section 8.1 Definitions: Part 8**

Omit the definition of *biodiversity certification assessment report*.

Insert instead—

*biodiversity certification assessment report* does not include—

- (a) a biodiversity certification assessment report that is no longer eligible to be submitted under section 6.15(1)(b), or
- (b) a biodiversity certification assessment report that is withdrawn under section 6.14.

**[54] Sections 8.1, definition of “planning authority”, paragraph (e) and 8.24(1)(b)**

Omit “Secretary of the Department of Planning, Housing and Infrastructure” wherever occurring.

Insert instead “Planning Agency Head”.

**[55] Section 8.3 Approved conservation measures under biodiversity certification**

Omit section 8.3(2), note.

**[56] Section 9.1 Public consultation required on documents under this Act to which Division applies**

Insert after section 9.1(1)(d)—

- (d1) the strategy to transition the biodiversity offsets scheme to net positive under section 6.2A,

**[57] Section 9.7 Registers to which Division applies**

Insert after section 9.7(1)(e)—

- (e1) orders made by the Minister under section 7.7(3),
- (e2) the following decisions by an approval authority—
  - (i) decisions to grant development consent or approval in relation to which the approval authority was required to consider and determine the matters under section 7.16(3),
  - (ii) decisions to grant the modification of a development consent or approval in relation to which the approval authority was, under section 7.17(2)(a), required to consider and determine the matters under section 7.16(3),
- (e3) the following decisions by a determining authority—
  - (i) decisions to grant approval for the carrying out of an activity in relation to which the determining authority was required to consider and determine the matters under section 7.16(4),
  - (ii) decisions to grant the modification of an approval for the carrying out of an activity in relation to which the determining authority was, under section 7.17(2)(a), required to consider and determine the matters under section 7.16(4),
- (e4) decisions to refuse to grant planning approvals or vegetation clearing approvals, or confer biodiversity certifications, if the grounds for refusal included the ground of serious and irreversible impacts on biodiversity values,

**[58] Section 9.7(1)(h1) and (h2)**

Insert after section 9.7(1)(h)—

- (h1) conditions of planning approvals and vegetation clearing approvals, whether imposed on the original approval or as a result of a modification of the approval, that require biodiversity conservation measures to be taken to offset the residual impact of the development, activity or clearing on biodiversity values, and any modification of the conditions, including the following details—
  - (i) whether the conditions have been met, including the number and class of biodiversity credits yet to be retired, and
  - (ii) if the conditions have been met—when and how the conditions were met, including the following details—
    - (A) the number of each credit type retired on a like-for-like basis,
    - (B) any variations applied for,
    - (C) the biodiversity stewardship agreements that created the credits,
    - (D) how any other conservation measures were implemented,
- (h2) measures to avoid and minimise the impact of development, activity or clearing on biodiversity values of land that—
  - (i) are identified in a biodiversity development assessment report relating to the development, activity or clearing as measures the proponent has taken or will take, or
  - (ii) the proponent of the development, activity or clearing must take under a planning approval or vegetation clearing approval for the development, activity or clearing,

**[59] Section 9.7(5)**

Insert after section 9.7(4)—

- (5) In this section—

***approval authority*** means—

- (a) for development consent under the *Environmental Planning and Assessment Act 1979*, Part 4—the consent authority, and
- (b) for development consent for State significant development or approval for State significant infrastructure—the relevant authority.

***ground of serious and irreversible impacts on biodiversity values***, in relation to a refusal to grant a planning approval or vegetation clearing approval or confer biodiversity certification, means the ground that the proposed development, activity, clearing or biodiversity certification is likely to have serious and irreversible impacts on biodiversity values, determined in accordance with section 6.5, that would remain after the measures proposed to be taken to avoid and minimise the impact of the proposed development, activity, clearing or biodiversity certification on biodiversity values have been taken into account.

***planning approval*** has the same meaning as in section 6.1.

***vegetation clearing approval*** has the same meaning as in section 6.1.

**[60] Section 9.11**

Omit the section. Insert instead—

#### **9.11 Regulations relating to public registers**

- (1) The regulations may make further provision about public registers required to be kept under this division.
- (2) Without limiting subsection (1), the regulations may provide for the following—
  - (a) the form of the registers,
  - (b) the information required to be included in the registers,
  - (c) the requirement for persons to give the Environment Agency Head information for the purposes of the registers,
  - (d) the correction of the registers.

**[61] Section 11.25 Order requiring biodiversity stewardship site owner to retire biodiversity credits**

Omit section 11.25(3), note.

**[62] Section 11.27 Offence—contravention of biodiversity offsets enforcement order**

Omit section 11.27(2), note.

**[63] Section 13.15 Civil proceedings for enforcement of private land conservation agreements**

Omit section 13.15(4), note.

**[64] Section 14.7A Provisions relating to regulation or enforcement of native vegetation legislation**

Omit “Department of Industry” from section 14.7A(5), definition of *native vegetation agency*, paragraph (d).

Insert instead “Department of Primary Industries and Regional Development”.

**[65] Schedule 7 Provisions relating to members and procedure of Threatened Species Scientific Committee**

Omit “that Office” from clause 6(b). Insert instead “the Department”.

**[66] Schedule 8 Members and procedure of Board of Biodiversity Conservation Trust**

Omit “Minister for Primary Industries” from clause 2(4).

Insert instead “Minister administering the *Local Land Services Act 2013*”.

**[67] Schedule 9 Savings, transitional and other provisions**

Insert at the end of the schedule—

## **Part 4 Provisions consequent on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024**

### **5 Strategy for the transitioning of the biodiversity offsets scheme to net positive**

The Minister must make the strategy for the transitioning of the biodiversity offsets scheme to net positive under section 6.2A as soon as practicable after the commencement of that section.

**6 Application of amounts from Biodiversity Conservation Fund**

- (1) This clause applies to the application of an amount by the Biodiversity Conservation Trust under section 6.31 before the commencement of this section.
- (2) The application is not invalid merely because the amount applied was not equal to the amount paid into the Biodiversity Conservation Fund to satisfy an obligation to retire biodiversity credits under section 6.30 to which the application related.

## **Schedule 2      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,

### **Schedule 3      Amendment of the State Environmental Planning Policy (Biodiversity and Conservation) 2021**

**[1]    Section 2.2 Definitions**

Omit section 2.2(1), definition of *biodiversity development assessment report*.

Insert instead—

*biodiversity development assessment report* means a biodiversity development assessment report under the *Biodiversity Conservation Act 2016*, section 6.12, but does not include—

- (a) a report that is no longer eligible, under the *Biodiversity Conservation Act 2016*, section 6.15(1)(b), to be submitted in connection with an application for approval to clear native vegetation, or
- (b) a report that is withdrawn under the *Biodiversity Conservation Act 2016*, section 6.14.

**[2]    Section 2.15 Biodiversity development assessment report and retirement of biodiversity credits**

Omit section 2.15(3), note.