

10 August 2023

Biodiversity Conservation Act Review
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124
Submitted via: biodiversity.review@environment.nsw.gov.au



Environment Institute
of Australia and
New Zealand Inc.

To Whom It May Concern,

RE: Submission to the NSW Biodiversity Conservation Act Review on behalf of the EIANZ Biodiversity Offsets community of practice and Ecology Special Interest Section

This submission to the New South Wales (NSW) *Biodiversity Conservation Act 2016* (BC Act) Review is made by the Biodiversity Offsets Community of Practice, under the Ecology Special Interest Section of the Environment Institute of Australia and New Zealand (EIANZ). The submission includes contributions from a group of experienced consultant ecologists that represent multiple experts, ecologists, consultancies, and Biodiversity Assessment Method (BAM) accredited assessors. The members have significant experience of the NSW Biodiversity Offsets Scheme (BOS) since its commencement in 2018, as well as the prior voluntary scheme (Biobanking) from 2006-2017, and assessment and ecology offset process prior to implementation of both schemes (negotiated outcomes on a case-by-case basis).

The contributors to this submission implement the BOS on a day-to-day basis, and together have unparalleled experience on how the scheme operates in real life. We have sought to make our comments under the headings provided, but that matters raised may stray outside of the specific topics.

As a group representing a large number of accredited assessors, we welcome direct discussion of the matters raised in this submission. We believe that we are the group that is best placed to provide commentary on the effectiveness of the BC Act as we are the ones working day-to-day in this space.

The EIANZ has also developed and released a position statement on Biodiversity Offsets (available online [here](#)), developed after the EIANZ's successful 2022 Biodiversity Offsets conference 2.0 attended by many practitioners and regulators from around Australia and New Zealand. We have also appended a copy of an earlier submission made to the BC Act 5-year review from this group.

Whilst we note that the consultation paper seeks input on ten targeted questions, due to time constraints we instead provide below key matters that the group wishes to note. These will relate to some of the targeted questions, for example we support that the BOS has become very complex and that the complexity should be reduced.

We again reiterate that this group has a wealth of experience, and would be prepared to meet and discuss potential approaches to reduce complexity whilst maintaining integrity. In fact, our view is that if appropriately applied, the rigour could be improved by allowing the process to focus on those matters of most relevance to both biodiversity impact assessment (BDAR's) and biodiversity gain (Stewardship sites).

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- We support and endorse the BOS. Based on our experience of ecological assessment outcomes within the BOS compared to the previous impact assessment processes without an offset protocol, the BOS results in superior biodiversity outcomes. Specifically, the BOS system provides an effective financial incentive to avoid or reduce impacts for development proponents; provides for positive in-perpetuity biodiversity management over Stewardship sites; and has a scientifically robust methodology applied on both impact and conservation sites.
- The BOS has become unnecessarily complex, and it is recommended that this complexity is reduced. This has reached the point where accredited assessors (and we believe agency staff) struggle to stay up to date with the constantly changing resources. We have specific ideas we would be happy to discuss with government. For example, the survey requirements for species credit species, application of species polygons, the classification of species to area-based, count-based, or ecosystem credit based, and seeking consistency between agencies.
- We believe that the definition of native vegetation is currently too broad and would benefit from being refined and made clearer.
- Landscape-scale factors should be included into the BC Act assessment process.
- Ecosystem benchmark data should be updated to the PCT level as a priority.
- Making the 'Developer Charge' biodiversity credit prices for use by the Biodiversity Conservation Fund publicly available.
- We encourage government to review the current tax ruling with respect to the generation of biodiversity credits and provide clear advice to landholders on tax implications of establishing a Stewardship site.
- Discussion with the EIANZ Biodiversity Offsets community of practice and other stakeholders on offset trading groups.
- Provision of a user-friendly portal with all credit availability and demand information in the one location, with the best available data.
- EIANZ is committed to raising the integrity of the industry to improve the management of real or perceived conflicts of interest within the Biodiversity Offsets Scheme and offers to work with the NSW Government in developing appropriate codes of conduct, guidelines, training or other material.

Finally, we also note that review of the *Local Land Services Act 2013* (LLS Act) is also occurring, though running through a separate process. We strongly encourage the NSW government to seek to integrate LLS Act review outcomes with BC Act review outcomes.

The observation of our members is that significant resources and effort is put into assessments, offsets and consideration of biodiversity outcomes under the BC Act. However, there appears to be far less rigour and consideration given to outcomes under the LLS Act, despite the amount of native vegetation clearance under this Act appearing to be far greater than under the BC Act. That is, there appears to be far greater potential to improve biodiversity outcomes in NSW through greater consideration of the processes applied under the LLS Act.

On behalf of the EIANZ Biodiversity Offsets Community of Practice under the Ecology Special Interest Section.

Signed

Steven Ward
Chair of Biodiversity Offsets Community of Practice

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