Submission on the Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

July 2026

1.1 About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ) is the not-for-profit, multidisciplinary association of environmental practitioners across Australia and Aotearoa New Zealand. Our members include scientists, ecologists, planners, engineers, lawyers, economists and policy specialists, many with direct experience in designing, assessing, approving, delivering, monitoring, auditing and reviewing environmental offsets under Commonwealth, state and territory environmental frameworks, including the NSW Biodiversity Offsets Scheme.

This submission reflects practitioner experience and draws on input from members of the EIANZ Biodiversity Offsets Community of Practice, with a focus on the practical implementation, transparency, professional practice and regulatory workability of the proposed amendments.

1.2 Introduction

EIANZ welcomes the opportunity to provide feedback on the *Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026*.

EIANZ supports the overall policy direction of improving the operation, transparency and integrity of the Biodiversity Offsets Scheme. This is consistent with EIANZ's position that biodiversity offsetting can play an important role in environmental planning and regulatory systems, but only as the final step in the mitigation hierarchy after impacts have first been avoided, minimised and mitigated (EIANZ 2025a).

This submission focuses on whether the proposed amendments are clear, practical and workable for those who use the scheme, including environmental practitioners, proponents, landholders, consent authorities and market participants. The NSW Department of Climate Change, Energy, the Environment and Water has identified these as key matters for feedback through this consultation process (NSW DCCEEW 2026a).

EIANZ's Biodiversity Offsets Position Statement also emphasises the need for transparent data sharing, transparency in market demand and supply, ethical market practices, adequate resourcing, fit-for-purpose systems and simple guidance for practitioners, decision-makers and the public (EIANZ 2025a).

2. Reducing reliance on the Biodiversity Conservation Fund

Is the threshold, 100 credits per type, set at the right level?

The proposed direction of reducing reliance on payments into the Biodiversity Conservation Fund (BCF) is supported. Encouraging greater use of market-based pathways should assist the Biodiversity Offsets Scheme to operate more as an active biodiversity credit market and less as a default payment mechanism.

The consultation paper indicates that the proportion of credit obligations met using the BCF has declined substantially in recent years, from around 90 per cent in 2021 to 10 per cent in 2025. It also states that the proportion of Biodiversity Conservation Trust-held credit obligations secured had increased from 36 per cent on 1 January 2023 to 75 per cent on 1 January 2026 (NSW DCCEEW 2026b).

However, the proposed threshold of 100 credits per type may be too high to achieve the intended market benefits. Based on practitioner experience, proponents may seek credits through the market for substantially smaller obligations where there is a clear cost saving, reasonable certainty and a practical transaction pathway. The Department should consider testing a lower threshold, such as 20 credits per type, through further consultation, implementation modelling or staged commencement. Alternatively, the Department could include a post-implementation review mechanism that allows the threshold to be adjusted once market impacts are better understood.

The effectiveness of this reform will depend not only on the threshold, but also on transaction efficiency. Current processing timeframes for credit transfer and retirement can discourage proponents, particularly smaller or less experienced proponents, from using the market where they face approval or construction time pressures. Removing transfer fees will assist, but should be accompanied by practical measures to reduce processing times, simplify forms, improve digital systems and provide clearer guidance to proponents early in the planning process.

Previous EIANZ submissions have identified the need for a consolidated, user-friendly credit platform that includes credit availability and forecast credit demand in one location, using the best available data (EIANZ 2023). This remains directly relevant to reducing reliance on the BCF and improving market function.

Are there other acceptable measures the Department should consider?

The Department should broaden the list of acceptable measures to better reflect how the biodiversity credit market operates in practice.

Acceptable measures should include:

- listing the required credits on the NSW Government credits wanted register once a development application, environmental impact statement or equivalent assessment has been submitted and the likely credit obligation is sufficiently known
- submitting a demand expression of interest through the Credits Supply Fund
- providing evidence that the proponent, or a person acting on their behalf, has contacted relevant market participants and that credits were not available on reasonable terms
- engaging an appropriately qualified conservation broker, accredited assessor or ecological consultant to assist with identifying potential market supply
- documenting efforts to source credits through public registers, credit supply tools or other Department-approved market mechanisms.

Earlier publication of credit demand would improve transparency and allow landholders, brokers and credit holders to respond to known market need. It would also reduce the practical burden on proponents who may not understand how to source credits, while supporting the market to operate more efficiently.

The acceptable measures should not inadvertently exclude accredited assessors or ecological consultants from assisting clients to understand credit requirements, identify potential sources of credits, or navigate the offset process. This distinction is important and is addressed further below in relation to conservation broker accreditation.

3. Fairer, more efficient credit transaction fees

Will applying a per-credit fee at the credit retirement stage and removing credit transfer fees make it simpler for people to participate in the credit market?

Removing credit transfer fees is likely to improve participation in the credit market, particularly for proponents who need to purchase credits from multiple sellers or who have smaller obligations where fixed transaction costs can make market purchasing less attractive.

The consultation paper identifies the current transfer and retirement fees as $1,905 each and notes that multiple transfer fees can create additional costs where credits must be purchased from several sellers (NSW DCCEEW 2026b). A per-credit fee at retirement may be simpler and more equitable than the current fixed transfer and retirement fee structure, provided it does not create a new disincentive to market participation.

The proposed fee should be reviewed after implementation, particularly as the Department's digital systems improve and transaction processing costs reduce.

To support market participation, the Department should:

- provide clear examples showing how the new fee structure will affect small, medium and large credit obligations
- publish the basis for future fee reviews
- set service standards for transfer and retirement processing timeframes
- enable transfer and retirement forms to be completed and paid online
- ensure the fee structure does not make payment into the BCF more attractive than purchasing available credits from the market.

These steps would support the stated objective of making credit transactions fairer, more efficient and more accessible.

4. Stronger measures for avoiding and minimising biodiversity impacts

Do the proposed changes appropriately clarify requirements for proponents to genuinely follow the avoid, minimise, offset hierarchy?

The intent of strengthening the avoid, minimise, offset hierarchy is supported. This aligns with EIANZ's Biodiversity Offsets Position Statement, which states that offsetting is the final stage in the mitigation hierarchy and that biodiversity impacts must, in strict order, be avoided, minimised and mitigated before any remaining impacts are offset (EIANZ 2025a).

The proposed requirements to document mapped biodiversity values, alternative impact footprints, evidence of avoidance and minimisation, and justification for residual impacts should improve transparency and consistency where they are applied proportionately.

Based on practitioner experience, further guidance is needed on the proposed concept of a “base case”. If applied too broadly, a theoretical base case could add significant time and cost without necessarily improving biodiversity outcomes. In some circumstances, it may require ground truthing or analysis of values outside the actual proposal footprint, or require assessors to examine alternative development layouts that are more properly matters for the proponent, project designer or consent authority.

The Regulation, Biodiversity Assessment Method and supporting guidance should clarify the respective roles of proponents, consent authorities and accredited assessors. In particular, guidance should make clear how proponents are expected to document site selection, design alternatives and project justification, and how accredited assessors are expected to assess and report on the biodiversity consequences of the proposal and the documented avoidance and minimisation measures.

Guidance is also needed on how avoidance and minimisation should be applied where sites contain a mosaic of degraded, highly degraded and fragmented biodiversity values. Retaining small, isolated and poor-condition remnants may not always deliver meaningful biodiversity outcomes when viewed in the broader landscape context. Decision-makers should be able to consider whether avoidance will protect functional, enduring biodiversity values, while ensuring this flexibility is not used to justify avoidable impacts to high-value biodiversity.

EIANZ has previously stated that biodiversity conservation planning works best when considered early and at a landscape scale, and that strategic assessment processes can support positive conservation outcomes by promoting that approach (EIANZ 2021). This reinforces the importance of applying avoidance and minimisation in a way that considers both site-specific values and broader landscape-scale biodiversity outcomes.

5. Excluding low-impact development from the scheme

Do the proposed changes to the Biodiversity Values Map pathway appropriately target low-risk development?

The proposed exemption for small incursions of 100 square metres or less on the Biodiversity Values Map is supported, provided the exemption is implemented with appropriate safeguards and does not prevent entry into the scheme through another applicable pathway.

This change should reduce the number of small-scale local development proposals entering the Biodiversity Offsets Scheme solely because of a minor Biodiversity Values Map incursion. When used alongside a practical and accessible Biodiversity Values Map review process, the reform should help better align assessment effort with biodiversity risk.

It is appropriate that the proposed exemption will not apply to land declared as an Area of Outstanding Biodiversity Value. The Department should also monitor the cumulative effect of exempted impacts over time, particularly in areas experiencing high levels of local development pressure.

The proposed tool to help proponents check whether they fall below the threshold will be important. It should be easy to use, publicly available, capable of producing a clear record for consent authorities, and supported by plain English guidance.

6. Establishing an accreditation scheme for conservation brokers

Is the scope of the proposed accreditation scheme clear and practical?

Accreditation for genuine conservation brokers is supported. The integrity, competence and ethical conduct of people acting as market intermediaries is critical to confidence in the Biodiversity Offsets Scheme.

This is consistent with EIANZ's position that ethical biodiversity market practices should be facilitated through regulation, policy, guidelines, accreditation and training (EIANZ 2025a). EIANZ has also previously raised the need to manage real or perceived conflicts of interest in the Biodiversity Offsets Scheme and offered to work with the NSW Government on codes of conduct, guidance, training or other material (EIANZ 2021; EIANZ 2023).

However, the proposed scope requires further refinement. As currently described, the proposed conservation broker services overlap with activities routinely undertaken by accredited assessors and ecological consultants as part of normal professional services. This includes providing indicative credit pricing, explaining likely offset costs, advising on Biodiversity Stewardship Agreement feasibility, supporting offset strategies, preparing biodiversity assessment reports, and helping clients understand credit transfer or retirement processes.

These activities should not be treated as conservation broking unless the person is acting as an intermediary in a credit transaction, negotiating or arranging a transaction on behalf of another party, or receiving a commission, success fee, brokerage fee or other transaction-based benefit.

The Department should distinguish between:

- a conservation broker, who acts as an intermediary for another party in arranging or facilitating biodiversity credit transactions
- a credit owner, credit supplier, landholder, accredited assessor, ecological consultant, planning consultant, legal adviser or other professional who may discuss credit values or offset costs as part of their own business, statutory assessment work, feasibility advice or professional services.

Without this distinction, the proposed scheme may unintentionally require ecological consultants and accredited assessors to become accredited brokers merely to provide indicative cost advice or offset strategy advice. This could increase compliance costs, reduce early price transparency, discourage practical conversations between proponents and advisers, and reduce the flow of information in a market that already relies heavily on practitioner knowledge.

To assist implementation, the Department should consider refining the definition so that conservation broking services are limited to transactional intermediary services provided on behalf of another party. The following wording is offered as a practical policy example rather than proposed legislative drafting. Final drafting should be settled by the Department and Parliamentary Counsel following consultation with accredited assessors, conservation brokers, ecological consultants, landholders and other affected market participants.

A conservation broking service could be defined as a service where a person, for fee, reward, commission or other commercial benefit, acts as an intermediary on behalf of another person in relation to the purchase, sale, transfer or proposed purchase, sale, transfer or retirement of biodiversity credits.

The definition should capture services where a person:

- negotiates, arranges or facilitates the purchase or sale of biodiversity credits on behalf of another person
- introduces or matches a buyer and seller for the purpose of completing a transaction

- represents a buyer, seller, landholder or proponent in negotiations for the purchase, sale or transfer of biodiversity credits
- receives a commission, success fee, transaction fee or other benefit contingent on a credit transaction
- holds themselves out as providing biodiversity credit brokerage or market intermediary services.

The Regulation should also expressly exclude legitimate non-broker activities, including where a person:

- sells, markets, prices or provides information about biodiversity credits they own, control, have generated, are authorised to sell, or reasonably expect to generate
- provides indicative or preliminary information about credit prices, market values, BCF charge prices, likely offset costs or credit supply options as part of their role as a credit owner, landholder, developer, accredited assessor, ecological consultant, planning consultant or legal adviser
- prepares or advises on Biodiversity Stewardship Agreement feasibility assessments, including likely credit generation, likely credit values, establishment costs, Total Fund Deposit implications, landholder returns or commercial viability
- prepares or advises on a Biodiversity Development Assessment Report, Biodiversity Certification Assessment Report, offset strategy, planning proposal, development feasibility assessment, due diligence report or environmental impact assessment, including estimates of likely biodiversity offset costs
- provides professional advice about the likely cost, value, availability or suitability of biodiversity credits, provided they do not arrange, negotiate or facilitate the purchase or sale of credits on behalf of another person.

A streamlined additional accreditation pathway should be available for accredited assessors who choose to provide conservation broking services. This pathway should recognise existing training and accreditation, while still requiring additional training in brokerage-specific obligations, conflicts of interest, market conduct and client duties. Accredited assessors should not be automatically treated as brokers. The relevant question should be whether the person is actually performing brokerage services.

What experience, knowledge and qualifications would be required or expected to provide the community with confidence in an accredited broker?

At a minimum, accredited conservation brokers should demonstrate knowledge and competence in:

- the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*
- the Biodiversity Assessment Method
- biodiversity credit classes, trading rules, and offset rules
- Biodiversity Stewardship Agreement establishment pathways
- credit transfer and retirement processes
- Biodiversity Conservation Fund charge settings and market limitations
- market data sources and the limitations of publicly available information
- conflicts of interest and ethical conduct
- client duties, confidentiality and probity
- risks associated with misleading price representations
- basic ecological principles relevant to biodiversity credits and offset obligations.

Accredited brokers should also be required to comply with a code of conduct, undertake training and maintain continuing professional development. The training should be proportionate to the role. If the conservation broker accreditation requirements are significantly less technically intensive than the accredited assessor program, the fees and training burden should reflect that difference.

The Department should consider a transitional or staged approach, including further consultation with existing market participants before mandatory accreditation commences. This would allow competency standards and training requirements to be calibrated to the actual risks in the market.

7. Managing the Biodiversity Stewardship Payments Fund as a pool

Are there any other measures the government can take to improve the administration of the Biodiversity Stewardship Payments Fund?

This submission does not provide a detailed comment on the proposed pooling arrangements, as this issue requires direct input from Biodiversity Stewardship Agreement holders and the Biodiversity Conservation Trust.

Clear, transparent and accessible communication with existing Biodiversity Stewardship Agreement holders should occur before the new arrangements commence. Annual stewardship payments are central to the long-term management of biodiversity values on stewardship sites. Any change to fund administration should therefore be accompanied by clear information about how the pooling model will operate, how fund sustainability will be reported, how risk will be managed, and what the practical implications are for existing agreement holders.

How much time should existing BSA holders have to decide whether to opt out of the proposed pooling arrangements?

This submission does not nominate a specific timeframe without direct feedback from Biodiversity Stewardship Agreement holders.

Existing agreement holders should be given sufficient time after receiving clear written information, plain English guidance and, where relevant, site-specific financial implications, to seek advice and make an informed decision. The Department and Biodiversity Conservation Trust should consult directly with BSA holders before commencement.

8. Information in public registers

Are the proposed information requirements for the registers clear and practicable?

The proposed public registers are supported. Public registers are important for transparency, accountability and market confidence.

The NSW Government has identified increased transparency through new public registers as part of the Biodiversity Offsets Scheme reform agenda, including registers for tracking offset obligations, avoid and minimise measures, and decisions to approve or refuse serious and irreversible impacts (NSW DCCEEW 2026c).

The registers should be designed as practical tools for proponents, landholders, consent authorities, accredited assessors, conservation brokers and the public. They should not simply record information after decisions have been made. Where possible, they should help the market understand likely credit demand and supply in time to support better decision-making.

The registers should include, or link clearly to, relevant market information where this can be published without compromising privacy, commercial confidentiality or probity. This should include:

- known or likely offset obligations once a development application, environmental impact statement or equivalent assessment has been submitted and the obligation is sufficiently defined
- the status of offset obligations, including whether credits are being sought, secured, retired, paid into the BCF or otherwise acquitted
- serious and irreversible impact decisions, including the entity affected, the scale and nature of the impact, the decision outcome and the reasoning relied on by the decision-maker
- avoidance and minimisation measures relied on in assessment and approval decisions
- management plans or enforceable measures that are required to avoid or minimise impacts after approval
- credits wanted, credits available, credits retired, and relevant market transactions, presented in a way that is searchable and usable.

EIANZ has previously recommended a consolidated, user-friendly credit platform containing credit availability and demand information in one place (EIANZ 2023). The need for this remains pressing. Information is currently spread across multiple tools and registers, which can be difficult to use without specialist knowledge.

Should any other information be included in the registers? If so, why?

Offset obligations and credit demand should be published as early as practicable once they are sufficiently known. This would allow the market to respond directly and reduce the burden on proponents who may otherwise struggle to source credits late in the assessment or approval process.

The Department should also improve the usability of existing public registers. Registers should be searchable by Plant Community Type, offset trading group, species credit, region, status and transaction type. Data should be downloadable, current, and clearly distinguish between market transactions, credits held for future obligations, credits retired without prior sale, BCT purchases, and credits genuinely available for sale.

Improved public registers would support market transparency, reduce information asymmetry and assist the Department's objective of reducing reliance on the BCF. This is consistent with EIANZ's Biodiversity Offsets Position Statement, which identifies transparent data sharing, transparency in biodiversity market demand and supply, and fit-for-purpose systems as key elements of effective offset frameworks (EIANZ 2025a).

9. Other proposed amendments

Do you have any feedback about the other proposed amendments?

This submission provides specific comment on Item 21, which would broaden the Department's discretionary power to allow a Biodiversity Stewardship Agreement holder to defer payment of a Total Fund Deposit when transferring credits.

Flexibility that helps landholders participate in the biodiversity credit market is supported, provided appropriate safeguards are in place to maintain long-term management funding and scheme integrity. Greater flexibility around Total Fund Deposit timing could assist landholders to sell credits sooner, particularly where current arrangements require a sufficiently large initial sale to cover the Total Fund Deposit and other establishment or financial considerations.

However, the circumstances in which Total Fund Deposit payment may be deferred should be made clear. The Department should publish guidance setting out eligibility criteria, decision-making considerations, safeguards, reporting requirements and how the long-term funding of stewardship obligations will be protected.

EIANZ has previously identified uncertainty around upfront costs as a barrier to private landholder participation in Biodiversity Stewardship Agreements, and encouraged clearer advice to scheme participants (EIANZ 2021; EIANZ 2023). The proposed amendment may assist, but should be accompanied by practical guidance for landholders. Landholders should obtain appropriate professional advice on tax and financial implications, and the Department should continue engaging with relevant Commonwealth agencies and professional advisers to improve the clarity of scheme guidance.

10. Conclusion

EIANZ supports the intent of the proposed amendments and welcomes reforms that strengthen avoidance and minimisation, improve transparency, reduce unnecessary reliance on the BCF, support ethical market conduct and make the Biodiversity Offsets Scheme more practical for those who use it.

The effectiveness of the reforms will depend on implementation detail. In particular, the Department should focus on:

- lowering or reviewing the proposed BCF threshold
- improving credit market transparency and early publication of credit demand
- reducing processing timeframes for transfers and retirements
- ensuring avoid and minimise requirements are clear and proportionate
- carefully defining conservation broker services so routine professional advice is not captured unintentionally
- improving public registers and digital systems
- providing clear guidance for landholders, proponents, practitioners and consent authorities.

EIANZ and its Biodiversity Offsets Community of Practice would welcome the opportunity to continue working with the Department on guidance, implementation, training and practical refinements to the scheme.

Sincerely,

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