



Consultation paper

Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

Department of Climate Change,
Energy, the Environment and Water

Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

© 2026 State of NSW and Department of Climate Change, Energy, the Environment and Water

With the exception of photographs, the State of NSW and Department of Climate Change, Energy, the Environment and Water (the department) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required to reproduce photographs.

Learn more about our copyright and disclaimer at www.environment.nsw.gov.au/copyright

Artist and designer Nikita Ridgeway from Aboriginal design agency Boss Lady Creative Designs created the People and Community symbol.

Cover photo: Glossy black-cockatoo. Alex Pike/DCCEEW

Published by:

Environment and Heritage

Department of Climate Change,

Energy, the Environment and Water

Locked Bag 5022, Parramatta NSW 2124

Phone: +61 2 9995 5000 (switchboard)

Phone: 1300 361 967 (Environment and Heritage enquiries)

TTY users: phone 133 677, then ask for 1300 361 967

Speak and listen users: phone 1300 555 727, then ask for 1300 361 967

Email info@environment.nsw.gov.au

Website www.environment.nsw.gov.au

ISBN 978-1-76186-171-0

EH 2026/0081 June 2026

Find out more at:

environment.nsw.gov.au

Contents

- Introduction 1
- Reducing reliance on the Biodiversity Conservation Fund 2
 - Background 2
 - Proposal 3
- Fairer, more efficient credit transaction fees 5
 - Background 5
 - Proposal 6
 - Stakeholder impacts 6
- Stronger measures for avoiding and minimising biodiversity impacts 8
 - Background 8
 - Proposal 8
- Exclude low-impact development from the scheme 10
 - Background 10
 - Proposal 10
 - Stakeholder impacts 10
- Establish an accreditation scheme for conservation brokers 12
 - Background 12
 - Proposal 12
 - Stakeholder impacts 13
- Manage the Biodiversity Stewardship Payments Fund as a pool 15
 - Background 15
 - Proposal 15
 - Stakeholder impacts 16
- Information in public registers 17
 - Background 17
 - Proposal 17
 - Stakeholder impacts 17
- Other proposed amendments 18

List of figures

Figure 1	Biodiversity Offsets Scheme credits (excludes Biobanking credits) acquittal pathways over time	2
----------	--	---

Introduction

The NSW Government's *NSW plan for nature* sets out commitments to reform the NSW Biodiversity Offsets Scheme (the scheme).

To meet these commitments, the NSW Government amended the Biodiversity Conservation Act 2016 in 2024. Further amendments to the Biodiversity Conservation Regulation 2017 (the Regulation) are now required to implement these changes. They will also deliver other commitments under the *NSW plan for nature*.

The proposed Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026 (the draft regulation) has been prepared for this purpose.

The draft regulation has been informed by 2 rounds of consultation undertaken with government, environment and industry peak bodies between June and October 2025.

This consultation paper has been prepared to help stakeholders:

- understand what the proposed amendments are and why the government is proposing them
- provide feedback on whether the proposed amendments will deliver intended outcomes and are practical and workable for those who use the scheme.

To make a submission on the draft regulation, please email your feedback to bos.reforms@dcceew.nsw.gov.au by 17 July 2026.

Reducing reliance on the Biodiversity Conservation Fund

Background

Under current settings, a proponent can meet an offset obligation and commence development by paying a specified amount to the Biodiversity Conservation Fund (BCF). The Biodiversity Conservation Trust (BCT), which manages the BCF, is then required to secure the offset within 3 years.

In 2024, in line with the *NSW plan for nature*, amendments to the *Biodiversity Conservation Act 2016* were passed to allow the Regulation to restrict proponents' use of the BCF.

In recent years, reliance on the BCF by proponents has reduced significantly. The department estimates that the proportion of credit obligations by volume (excluding obligations under the previous Biobanking scheme) met using the BCF has dropped from around 90% in 2021 to 10% in 2025 as proponents increasingly use other pathways to meet their offset obligations (see Figure 1).

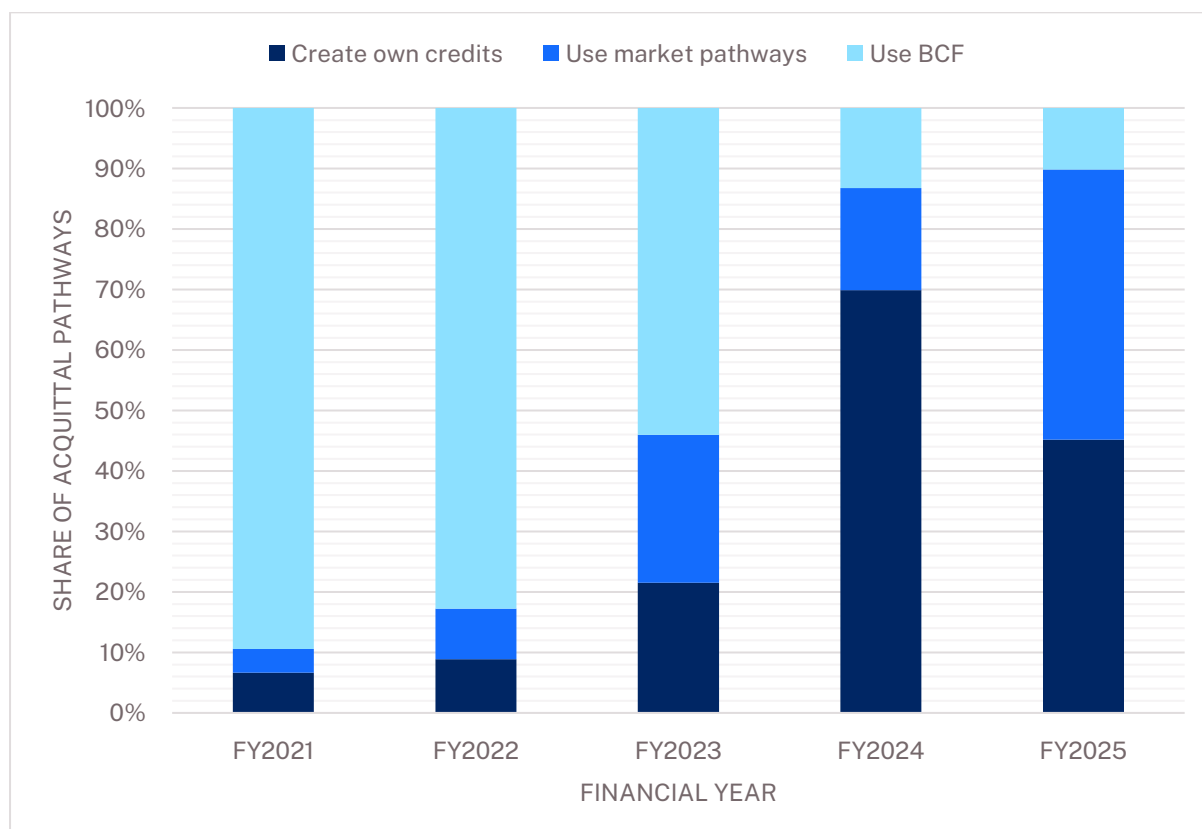


Figure 1 Biodiversity Offsets Scheme credits (excludes Biobanking credits) acquittal pathways over time

Also, in recent years, the proportion of credit obligations held by the BCT for which credits have been secured (that is, retired, purchased or committed for purchase) has increased significantly. As of 1 January 2026, the BCT had secured 75% of its credit obligations, up from 36% on 1 January 2023.

Proposal

Item 22 of the draft regulation will only allow a proponent to transfer a large credit obligation to the BCF, after they have taken measures to purchase the credits in the market.

This requirement will apply to a proponent who transfers to the BCF an obligation of 100 or more biodiversity credits of the same type for a project.

Before the proponent can transfer these credit obligations to the BCF, they must make a declaration that they have undertaken an acceptable measure to meet the credit obligation through another pathway.

The department will publish and maintain a list of acceptable measures on its website. This list could include:

- submitting a demand expression of interest with the Credits Supply Fund and participating in a reverse auction process to seek the required credits
- listing the credits they are seeking on the department's credits wanted register for at least 3 months
- engaging a conservation broker to source credits
- using another measure approved by the department.

This requirement will come into effect on a future date, after the draft regulation is made, to give proponents enough time to prepare.

This proposal is complemented by the separate proposals to remove fees for transferring credits and to establish an accreditation scheme for conservation brokers. These other proposals will support reduced reliance on the BCF by making it easier for proponents to source credits in the market.

Stakeholder impacts

Noting the existing trend in reduced reliance on payment into the BCF, the proposal is expected to deliver a further modest reduction in reliance on the BCF.

There may be modest additional costs for some proponents with obligations of 100 or more of the same type of credits who intend to use the BCF. This is because the need to undertake an acceptable measure could extend the timeframes for meeting their credit obligation.

However, many of the potentially impacted proponents are already likely to be undertaking an 'acceptable measure' and would therefore not incur any additional costs.

Proponents who are not already undertaking acceptable measures could minimise or avoid these costs by undertaking the acceptable measures earlier in the planning process.

Credits found on the market will generally be cheaper than the cost of paying into the BCF, and this may offset the cost of undertaking an acceptable measure.

Questions for stakeholders

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

Are there other 'acceptable measures' the department should consider?

Fairer, more efficient credit transaction fees

Background

Currently, a person must pay the department a fee of \$1,905 to transfer credits and a fee of \$1,905 to retire credits.

Because a biodiversity credit is an asset with a monetary value, the department must apply a high degree of care when processing transfers and retirements. This includes verifying the identity and legal authority of the applicant, ensuring the Total Fund Deposit is met and updating registers.

Since 2023, the department's timeframes for processing credit transfers and retirements have reduced by about 40%. The department has also continued to invest in systems. However, the revenue collected by the credit transfer and retirement fees does not recover costs to the department. The department estimates that it currently recovers around 30% of its transaction-related costs.

The volume of credit transfers and retirements is expected to increase over the coming years. The department is investing in digital solutions that will make it easier to process credit transfer and retirements, putting downward pressure on the department's costs over time.

The current fee structure requires a fee at both the transfer and retirement stage. This creates additional costs for people buying and then retiring credits from the market, compared to people creating their own credits to retire.

These costs can be compounded for people who need to buy credits from multiple sellers. For example, buying credits from 3 sellers requires 3 separate transfer fees. While the transfer fee is technically payable by the person transferring credits, in practice, it is often paid by the buyer either directly or through costs passed on as part of the overall transaction.

The current fee structure may be inequitable for proponents with a small number of credit obligations because:

- proponents can pay the same amount to transfer and retire credits as proponents transferring and retiring much larger numbers of credit
- proponents may be discouraged by transfer fees from sourcing credits in the market and may be encouraged to pay into the BCF to meet their credit obligations
- larger proponents are more likely to generate their own credits and therefore do not need to transfer them
- proponents with very large credit obligations are often those with many credit types, which require more due diligence and validation effort for the department

Proposal

Item 42 of the proposed amendment regulation will establish a new fee structure for transferring and retiring credits.

Under the new fee structure:

- credit transfer fees will be removed altogether to encourage further market activity
- credit retirement fees will be initially set at around \$31 per credit and would be adjusted each year in line with the consumer price index
- credit retirement fees for proponents will be capped at 10,000 credits per project.

The cap on credit retirement fees would not apply to credits retired by the BCT. This is because it would not be possible for the BCT to reflect the cap in the amount it charges proponents.

The fee reflects the estimated costs to the department of processing credit transfers and retirements divided by the expected number of credits that would be retired each year.

The revenue collected by this fee will be used to cover the costs to the department of processing credit transfers and retirements, and other related services. The department will review the fee from time-to-time, for example, if its costs of processing transfers and retirements reduce.

This new fee structure will come into effect on a future day, after the amendment regulation is made, to give scheme participants enough time to get ready.

Stakeholder impacts

The new fee structure will recover the estimated costs to the department of providing transfer and retirement services. The fee, being variable, would better reflect the department's costs of processing credit transfers and retirements.

Removing credit transfer fees will simplify the transfer and retirement process for market participants. It would also encourage proponents, particularly those with small credit obligations, or those who need to buy credits from multiple sellers, to source credits on the market instead of using the BCF.

Proponents with smaller credit obligations for a project (estimated at up to 130 credits) would pay less than they currently do to transfer and retire credits. This would include smaller participants who will find it cheaper to buy credits on the market under the new arrangements.

Proponents with larger credit obligations for a project (estimated at 130 or more credits) would pay less to transfer credits but more than they currently do to retire credits. However, for these proponents, the retirement fee would typically still only account for a very small proportion of their project's capital investment value.

The cap on retirement fees would ensure that proponents with very large credit obligations do not pay fees that were disproportionate to the associated costs to the department.

Questions for stakeholders

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?

Stronger measures for avoiding and minimising biodiversity impacts

Background

Under the *Biodiversity Conservation Act 2016* (BC Act), a consent authority considers whether a proponent has taken all reasonable measures to avoid and then minimise biodiversity impacts before it can allow the proponent to offset a residual impact.

To enable a decision maker to consider whether this principle has been met, the avoidance and minimisation measures are set out in the biodiversity assessment report that forms part of the proponent's development application.

However, under the current framework, the form, quality and depth of information provided in relation to avoidance and minimisation measures are inconsistent. This can result in missed opportunities to reduce impacts to biodiversity.

In line with the government's commitment in the *NSW plan for nature*, the Act amendments allow a regulation to set standards for proponents to demonstrate how they have genuinely avoided and minimised impacts to biodiversity.

Proposal

Items 16 and 18 of the draft regulation require certain information about the genuine measures a proponent has taken or proposes to take to avoid or minimise impacts to be included in the relevant biodiversity assessment report.

They include:

- information about the measures taken in response to the biodiversity values on the site, including mapped biodiversity values of the site and documentation of alternative impact footprints
- justification for why residual impacts cannot be avoided or minimised
- information about measures proposed to be taken after approval to minimise impacts, including a management plan covering all stages of the project.

The draft regulation defines a measure as genuine if it is:

- responsive to identified biodiversity values on the relevant site
- demonstrated to reduce predicted or actual impacts on biodiversity compared with a base case of no avoidance or minimisation
- supported by evidence and can be independently verified.

In effect, this will mean a measure to avoid biodiversity impacts is not genuine if it relates to land that could not legally or practicably have been developed by the proponent for the purpose of the proposed development.

These requirements will increase clarity for proponents about their avoid and minimise obligations and will enable more transparency and consistency in decision-making.

The draft regulation will also allow a proponent, if they choose, to include information about measures previously taken to avoid and minimise impacts as part of a strategic planning, biodiversity certification, or development approval process. These measures must have been taken within the previous 5 years or still be based on reliable information.

This change will enable a decision maker to consider previous measures to avoid and minimise biodiversity impacts that are relevant to a development proposal.

These provisions will start on a future date, once changes to the Biodiversity Assessment Method (BAM) are in place. Transitional arrangements will apply for proponents who have already started a biodiversity assessment report. Updated guidance will be provided in the BAM Operations Manual.

Questions for stakeholders

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

Exclude low-impact development from the scheme

Background

The *NSW plan for nature* is committed to amending the entry thresholds for the scheme to remove small, low-impact local development and clearing proposals.

There are several pathways through which local development or clearing proposals may enter the scheme. These pathways include where a proposed project or clearing:

- exceeds a certain area size, relative to the size of the lot
- impacts any land on the Biodiversity Values Map
- impacts on an Area of Outstanding Biodiversity Value
- meets a statutory test of significance for development.

If a development or clearing proposal enters the scheme, the proponent must engage an accredited assessor to prepare a biodiversity development assessment report. The department estimates that less than 1% of all local development projects enter the scheme, and around two-thirds of these projects are in the Sydney Basin.

Proposal

Item 45 of the draft regulation will exempt development or clearing proposals with a small incursion of 100 square metres or less on the Biodiversity Values Map from entering the scheme via the Biodiversity Values Map pathway.

This exemption will not apply to land that has been declared an Area of Outstanding Biodiversity Value, mapped on the Biodiversity Values Map. This exemption does not prevent a proposal from entering the scheme via another pathway.

This change will take effect on a future date, after the regulation is made, to enable the department to develop a tool for proponents to check if they fall below the threshold, and to give proponents enough time to get ready.

The NSW Government will also, as part of a future remake of the Biodiversity Assessment Method, enable local development projects to undertake a desktop, rather than site-based, biodiversity assessment where data quality is high and biodiversity risks are low.

Stakeholder impacts

The changes to the biodiversity values pathway would deliver significant benefits, in the form of avoided assessment and offsetting costs, for a modest number of projects each year.

These changes would have a modest negative impact on biodiversity because the impacts of projects that were no longer required to enter the scheme would not be assessed and offset.

The changes to allow desktop assessment of biodiversity impacts would deliver significant benefits, in the form of avoided costs of undertaking field-based assessments, for a significant number of projects each year.

The changes would also have minimal negative impacts on biodiversity because proponents who undertake a desktop assessment would still be required to avoid, minimise and offset any residual impacts.

Questions for stakeholders

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

Establish an accreditation scheme for conservation brokers

Background

Conservation brokers, such as people who help clients buy or sell biodiversity credits, are becoming increasingly active in the NSW biodiversity credits market.

Conservation brokers play an important role in the Biodiversity Offsets Scheme, providing services that make the scheme easier to navigate and supporting access to accurate information about the biodiversity credit market.

The integrity and competence of conservation brokers is crucial to confidence in the scheme and may affect people's willingness to participate.

Conservation brokers currently operate in the Biodiversity Offsets Scheme without any direct regulatory oversight. This may make it hard for market participants to be confident that brokers are providing services competently and ethically.

Proposal

Item 43 of the draft regulation will establish a mandatory accreditation scheme for people who provide conservation broking services in the Biodiversity Offsets Scheme. The scheme will complement the existing scheme for accredited assessors.

Under the proposed accreditation scheme, a person will need to be accredited by the department and comply with a code of conduct if they provide any of the following services in relation to the Biodiversity Offsets Scheme:

- negotiate a biodiversity stewardship agreement on behalf of a landowner (unless acting in the role of an accredited assessor)
- negotiate a biodiversity stewardship agreement with a landowner on behalf of a development proponent, to enable the landowner to enter into a biodiversity stewardship agreement
- provide advice and analysis of the costs associated with buying or selling biodiversity credits, including estimating the costs of biodiversity offsets
- provide advice on the buying or selling biodiversity credits
- assist with buying or selling biodiversity credits.

It will be an offence to provide one of these services without accreditation.

To obtain accreditation, a person will need to submit an application for accreditation to the department.

In determining the application, the department will consider the applicant's suitability to be an accredited broker, including their skills and expertise and whether they are a 'fit and proper person'.

To become accredited, an applicant will need to meet competency standards that will form part of the eligibility criteria. The department will develop these standards.

An accredited broker will need to comply with a code of conduct published by the department. The code will be modelled on the code for accredited assessors and will set out requirements to ensure that brokers provide services in an ethical and professional manner, including:

- managing conflicts of interests, including circumstances where a person cannot act as an accredited assessor and an accredited broker
- providing accurate and unbiased advice about biodiversity offsets costs and the value of biodiversity credits.

Once approved to become accredited, and after paying the relevant fees, the department will issue a certificate of accreditation, which will be valid for up to 3 years.

An accredited person would not need to reapply for accreditation on expiry of a certificate of accreditation. They would only need to obtain a new certificate and pay the relevant renewal fee.

A person will need to pay a fee of 2 fee units (\$254 based on the 2025–26 fee unit amount) to submit an application, and if approved, a fee of 31 fee units (\$3,937 based on the 2025–26 fee unit amount) to hold their accreditation for 3 years. This fee, like other statutory fees in the Biodiversity Offsets Scheme, will be adjusted each year for inflation. The fee amount is consistent with the fee amount to become an accredited assessor.

The regulation will provide the department with powers to oversee the conduct of accredited brokers, including to vary, suspend or cancel a broker's accreditation. The department will maintain an online register of accredited brokers. This will make it easy for a person to identify and contact a suitable provider.

The requirement to be accredited would not come into effect immediately. If the proposed regulation is made, the department will provide a suitable period of time for people who provide brokering services to become accredited.

The department will undertake additional consultation with those already providing conservation broker services before this requirement comes into effect. The department encourages brokers to register their interest in further consultation by emailing bos.reforms@dcceew.nsw.gov.au

Stakeholder impacts

There would be costs for persons to become accredited as conservation brokers, including an application fee of \$254 and, if approved, an accreditation fee of \$3,937 for a 3-year term.

There would also be costs associated with the time needed for brokers to undertake mandatory training about the Biodiversity Offsets Scheme and to apply for accreditation. Brokers may pass these costs on to their clients, with the impacts, if spread across multiple clients, likely to be minimal.

The accreditation scheme will help people buying or selling credits identify and engage competent, ethical brokers. It will also make brokers more visible to prospective clients and support the growth of a professional conservation broking sector.

Questions for stakeholders

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

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

Manage the Biodiversity Stewardship Payments Fund as a pool

Background

The *NSW plan for nature* is committed to improving the operation of the biodiversity stewardship payments fund (BSPF) to maximise environmental outcomes.

Under the scheme, when a biodiversity stewardship agreement (BSA) holder transfers or retires credits, they must pay an amount called the total fund deposit (TFD) into the biodiversity stewardship payments fund. The BCT, which manages the biodiversity stewardship payments fund, invests this money and uses the proceeds to make annual payments to landholders to manage the biodiversity on their site in accordance with their biodiversity stewardship agreement.

Under current arrangements for the biodiversity stewardship payments fund, investment earnings or losses must be attributed to each individual stewardship site account for each biodiversity stewardship agreement proportionately. This limits optimal fund management and increases risk for biodiversity stewardship agreement holders because even if the biodiversity stewardship payments fund is in surplus overall, individual accounts may be in deficit.

Proposal

Items 25 to 41 of the draft regulation will allow the BCT to manage the biodiversity stewardship payments fund as a single pool by putting all total fund deposits, and the proceeds of investment of total fund deposits, into a common account. The BCT will use the common account to make annual payments to biodiversity stewardship agreement holders.

The BCT will continue to publicly report on the financial position and sustainability of the biodiversity stewardship payments fund.

The new arrangements will come into effect on a future date after the regulation is made.

Before the new arrangements come into effect, existing biodiversity stewardship agreement holders will be given the opportunity to 'opt out' of the pooling arrangements for up to 5 years.

The department and the BCT will consult with these stakeholders before the new arrangements come into effect, to ensure that they understand what it means for them.

Stakeholder impacts

The proposal will not impact how biodiversity stewardship agreement holders manage their sites or how the BCT processes annual payments for biodiversity stewardship agreement holders. The proposal will strengthen the biodiversity stewardship payments fund over the long term, ensuring it can continue to fund all biodiversity stewardship agreement holders to manage biodiversity values on their sites.

Questions for stakeholders

Are there any other measures that government can take to improve administration of the biodiversity stewardship payments fund?

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

Information in public registers

Background

In line with the *NSW plan for nature*, the Act amendments require the department to establish new public registers for the scheme. The new public registers will improve transparency and accountability for approved measures to avoid and minimise biodiversity impacts, offset obligations, and decisions involving serious and irreversible impacts.

Proposal

Items 60 to 62 of the proposed amendments set out the details of the information that must be included on the new public registers.

The proposed amendments enable the Environment Agency Head to direct a person to provide information required to be included on a public register. It is intended that this power would only be used where the required information is not already available to the department.

Stakeholder impacts

The department is investing in digital solutions that minimise potential costs and administrative burden associated with maintaining the registers. This includes developing digital systems which will allow, as far as possible, automatic data retrieval from the NSW Planning Portal and other sources.

Questions for stakeholders

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

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

Other proposed amendments

Other proposed amendments will operationalise provisions of the Amendment Act and give effect to other BOS-related *NSW plan for nature* commitments or clarify the operation of the Biodiversity Offsets Scheme.

These include:

- Items 5 to 8 – clarifying some of the additional biodiversity impacts (known as prescribed impacts) to which the Biodiversity Offsets Scheme applies. These provisions will commence when corresponding changes to the Biodiversity Assessment Method are made.
- Item 9 – removing mine site rehabilitation as an offsetting option.
- Item 19 – creating an offence for an unaccredited person who applies the Biodiversity Assessment Method.
- Item 21 – broadening the department’s discretionary power to allow a BSA holder to defer payment of a Total Fund Deposit when they transfer credits.
- Item 57 – legislating the existing process for landholders to request a review of the application of the Biodiversity Values Map to their property.
- Item 56 – clarifying that the 14-day period for the Minister to determine a concurrence request under section 7.14 of the Act excludes public holidays and the end of year holiday period.
- Item 55 – clarifying that a local council needs to obtain the Environment Agency Head’s concurrence if proposing to change a biodiversity credit obligation when granting a modification application.
- Item 53 – removing the transitional exemption for entering the scheme via the Biodiversity Values Map pathway for land that was subdivided before the Act commenced in 2017. This provision will commence on a future date.
- Various minor, administrative and consequential amendments.

Questions for stakeholders

Do you have any feedback about these other proposed amendments?