


# ***CR 2026/15 - Department of Climate Change, Energy, the Environment and Water (New South Wales) - biodiversity stewardship agreements***

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Status: **legally binding**

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## Class Ruling

# Department of Climate Change, Energy, the Environment and Water (New South Wales) – biodiversity stewardship agreements

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### **📌 Relying on this Ruling**

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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### **What this Ruling is about**

1. This Ruling sets out the income tax consequences for an owner of land (Landowner) who enters into a biodiversity stewardship agreement (BSA) under Division 2 of Part 5 of the *Biodiversity Conservation Act 2016 (NSW)* (BCA) in respect of a landholding or part of a landholding in New South Wales (NSW).
2. Details of this scheme are set out in paragraphs 39 to 86 of this Ruling.
3. All further legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Note: by issuing this Ruling, the ATO is not endorsing this product. Potential participants must form their own view about whether to enter a BSA.

### **Who this Ruling applies to**

4. This Ruling applies to you if you:
  - are an Australian resident as defined in subsection 6(1) of the *Income Tax Assessment Act 1936*
  - own land (Land), or own an interest in Land
  - hold the Land on capital account (not revenue account), and
  - enter into a BSA under Division 2 of Part 5 of the BCA on all, or part, of the Land (biodiversity stewardship site).

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5. This Ruling, however, does not apply to a Landowner if they enter into a BSA on the Land for the purposes of:

- obtaining and selling biodiversity credits in the ordinary course of their business (and hold their biodiversity credits as trading stock) or
- making a profit from an isolated transaction that is income and therefore assessable income under section 6-5 as described in Taxation Ruling TR 92/3 *Income tax: whether profits on isolated transactions are income*, or
- obtaining and retiring biodiversity credits to satisfy the development approval conditions for a proposed activity, development or clearing on their land.

### **When this Ruling applies**

6. This Ruling applies to entities that enter into the scheme from 1 July 2025 to 30 June 2030.

## **Ruling**

### **Entering into a biodiversity stewardship agreement**

#### **Assessable income**

7. The receipt of biodiversity credits by the Landowner on entering into a BSA does not result in an amount being included in the assessable income of the Landowner under section 6-5, as the biodiversity credits do not have the character of ordinary income in the hands of the Landowner and are considered to be held on capital account.

8. Further, the receipt of biodiversity credits by the Landowner on entering into a BSA does not result in an amount being included in the assessable income of the Landowner under section 15-15, as the biodiversity credits are not acquired as part of a profit-making undertaking or plan.

#### **Capital gains tax consequences – CGT event D4**

9. A BSA is a conservation covenant for the purposes of subsection 104-47(1). CGT event D4 will happen when a Landowner enters into a BSA over land they own. The capital gain or capital loss will be determined in accordance with section 104-47.

10. A Landowner will make a capital gain if the capital proceeds from entering into a BSA are more than that part of the cost base of the Land that is apportioned to the covenant. If the capital proceeds are less than that part of the reduced cost base of the Land that is apportioned to the covenant, a Landowner will make a capital loss.

11. The capital proceeds from entering into a BSA is the market value of the biodiversity credits (worked out as at the time of the CGT event) that the Landowner receives or is entitled to receive under the BSA (section 116-20).

12. The capital proceeds from entering into a BSA do not include the annual management payments, or the right to receive management payments, that the Landowner may receive or be entitled to receive under the BSA.

13. The part of the cost base and reduced cost base of the Land that is apportioned to the covenant is worked out in accordance with the formula set out in subsection 104-47(4).

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14. A capital gain made from CGT event D4 happening will be a discount capital gain under Subdivision 115-A, provided that the Land was acquired by the Landowner at least 12 months before entering into the BSA and the other conditions in that Subdivision are met.

15. A capital gain made from CGT event D4 happening will qualify for the small business CGT concessions, provided the requirements in Division 152 are met.

16. A capital gain made from CGT event D4 happening in these circumstances will not be reduced under section 118-20, as there are no amounts that have been included in the Landowner's assessable income (by a provision outside of Part 3-1 including section 6-5 or section 15-15) as a consequence of the Landowner entering into the BSA.

### **Sale of biodiversity credits by the Landowner**

#### **Assessable income**

17. Any profit made by the Landowner from the sale of a biodiversity credit received from entering into a BSA is not assessable income of the Landowner under section 6-5 or section 15-15.

18. Any loss made by a Landowner from the sale of a biodiversity credit received from entering into a BSA is not deductible under section 8-1.

### **Capital gains tax consequences – CGT event A1**

19. CGT event A1 will happen when a Landowner disposes of a biodiversity credit (section 104-10).

20. A Landowner will make a capital gain from CGT event A1 happening if the capital proceeds from the disposal of a biodiversity credit are more than the biodiversity credit's cost base. If the capital proceeds are less than the reduced cost base of the biodiversity credit, a Landowner will make a capital loss (subsection 104-10(4)).

21. The capital proceeds from the disposal of a biodiversity credit are the total of the money and the market value of property that a Landowner receives or is entitled to receive in respect of the disposal (section 116-20).

22. If an amount is paid directly by the purchaser of a biodiversity credit to the Biodiversity Stewardship Payments Fund (BSPF) to satisfy a Landowner's obligation to pay the total fund deposit (or a proportion thereof) under the BSA, this payment will form part of the Landowner's capital proceeds from the sale of a biodiversity credit as it is money that has been applied for the Landowner's benefit or as directed by the Landowner (section 103-10).

23. The first element of the cost base or reduced cost base of a biodiversity credit is the total of the money paid, or required to paid, and the market value of property given in respect of acquiring that biodiversity credit (subsections 110-25(2) and 110-55(2)). This expenditure will include that part of the following amounts, to the extent they are reasonably attributable to the acquisition of the biodiversity credit (subsection 112-30(1)):

- the application fee paid to the Department of Climate Change, Energy, the Environment and Water (NSW) (DCCEEW) by a Landowner (Application Fee), and

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- the market value of the rights (worked out at the time of the acquisition) created by the Minister administering the BCA (Minister) when a Landowner enters into a BSA.

24. The second element of the cost base of a biodiversity credit is the incidental costs incurred. The proportion of the incidental costs incurred by a Landowner that is reasonably attributable to a biodiversity credit will form part of the second element of the cost base or reduced cost base of that biodiversity credit (section 110-35, subsection 110-55(2) and subsection 112-30(1A)). This may include:

- expenditure on Initial Costs<sup>1</sup> (excluding the Application Fee), and
- the total fund deposit (including where the Landowner directs the purchaser of the biodiversity credits to pay the total fund deposit on behalf of the Landowner from the capital proceeds from the disposal of the biodiversity credits).

25. Where a third party (Sponsor) reimburses a Landowner for the Initial Costs incurred, this recouped expenditure will be excluded from the cost base of a biodiversity credit, under either subsection 110-40(3) or subsection 110-45(3), or the reduced cost base under subsection 110-55(6), except if the recoupment is included in the Landowner's assessable income.

26. A capital gain made from CGT event A1 happening will be a discount capital gain under Subdivision 115-A, provided that the biodiversity credit was acquired at least 12 months before the Landowner disposed of the biodiversity credit (when CGT event A1 happened) and the other conditions in that Subdivision are met.

27. A capital gain made from CGT event A1 happening will qualify for the small business CGT concessions provided that the requirements in Division 152 are met.

### **Cancellation of biodiversity credits – CGT event C2**

28. CGT event C2 under subsection 104-25(1) will happen if a biodiversity credit is cancelled by the DCCEEW.

29. A Landowner will make a capital gain if the capital proceeds from the cancellation of a biodiversity credit are more than the cost base of the biodiversity credit. Conversely, a Landowner will make a capital loss if the capital proceeds are less than the reduced cost base of the biodiversity credit (subsection 104-25(3)).

30. Where a Landowner receives no capital proceeds from a CGT event, they are taken to have received the market value of the CGT asset that is the subject of the event (subsection 116-30(1)). Where CGT event C2 occurs, the market value is to be worked out as if the event had not occurred and was never proposed to occur (subsection 116-30(3A)).

### **Receipt of management payments by the Landowner from the Biodiversity Stewardship Payments Fund**

31. Management payments received by a Landowner from the BSPF are ordinary income of a Landowner and are included in the assessable income of a Landowner under section 6-5.

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<sup>1</sup> As outlined in paragraph 52 of this Ruling.

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**Expenses incurred by a Landowner in fulfilling obligations arising under a biodiversity stewardship agreement**

***Section 8-1 – general deductions***

32. Section 8-1 allows a deduction for losses or outgoings to the extent that they are incurred in gaining or producing assessable income or are necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income.

33. However, a deduction is not available under section 8-1 where the losses or outgoings are of a capital, private or domestic nature, or are incurred in gaining or producing exempt income, or another provision prevents the taxpayer from deducting them.

34. A Landowner may be able to deduct some of the expenses incurred in the course of producing the assessable income represented by the ongoing management payments. This may include:

- labour and administration costs for performing management actions
- material costs such as materials for repairs, herbicides and baits
- the annual compliance monitoring fee, and
- annual rates and insurance payments (to the extent that they relate to the biodiversity stewardship site that is subject to the BSA).

***Division 40 – capital allowances***

35. A depreciating asset to which Division 40 applies is used for the purposes of producing assessable income to the extent it is used to fulfil obligations arising under a BSA. A deduction for the decline in value of the asset is available, provided all the other conditions in Division 40 are met.

***Division 43 – deductions for capital works***

36. Capital works to which Division 43 applies are for the purposes of producing assessable income to the extent they are used to fulfil the Landowner's obligations arising under a BSA. A deduction for an amount of the construction expenditure of the capital works is available, provided all the other conditions in Division 43 are met.

***Sponsor payment or reimbursement***

37. Where a Sponsor reimburses a Landowner, or directly pays, for an expense relating to the Landowner's business operations (including carrying on a business of managing the biodiversity stewardship site), the payment by the Sponsor possesses the characteristics of ordinary income and is assessable to the Landowner under section 6-5.

38. Where a payment by a Sponsor is not assessable under section 6-5, it will be assessable to the Landowner under section 20-20 where it is received as a recoupment of a loss or outgoing that a Landowner can deduct in the current year or an earlier year under a provision listed in section 20-30.

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## **Scheme**

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39. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

### **Overview**

40. The Biodiversity Offsets Scheme, which is administered by the DCCEE, is a NSW Government framework for assessing and offsetting the impact of development and some types of clearing activities on biodiversity in NSW. The Biodiversity Offsets Scheme replaced the BioBanking Scheme in NSW in 2016.

41. Under the Biodiversity Offsets Scheme, a Landowner may enter into a BSA with the Minister, pursuant to Division 2 of Part 5 of the BCA, under which the Landowner agrees to establish a biodiversity stewardship site on all, or part, of their Land to protect and enhance its biodiversity in perpetuity.

42. The BSA sets out a Landowner's obligations and entitlements in relation to the biodiversity stewardship site, including the management actions which are required to be carried out at the site to improve the biodiversity values and the annual reporting obligations to demonstrate compliance with the BSA. It also stipulates an amount, referred to as the total fund deposit, that the Landowner is required to pay into the BSPF, along with a payment schedule and conditions for the Landowner to receive management payments from this fund.

43. When a BSA is entered into, a Landowner is entitled to receive a specified number of biodiversity credits. There are 2 types of biodiversity credits, species credits and ecosystem credits (with different types within each category). The number and type of biodiversity credits generated by a BSA varies depending on the type and condition of the vegetation and threatened species present on the site, and how the land will be managed to improve the biodiversity.

44. The biodiversity credits received by a Landowner from entering into a BSA may be sold on the open market. Biodiversity credits are typically purchased by owners, and other persons, who have an obligation to acquire and retire biodiversity credits under the Biodiversity Offsets Scheme to offset the impact of actions they propose to undertake on land which are considered detrimental to biodiversity. The sale price of a biodiversity credit is determined by agreement between a Landowner holding biodiversity credits and a purchaser.

### **Establishment of biodiversity stewardship site**

45. A Landowner who wants to enter into a BSA and establish a biodiversity stewardship site on their Land must lodge an application in an approved form to the Minister and pay an Application Fee.

46. A Landowner can decide which areas of their Land they want to include as the biodiversity stewardship site, allowing for different economic activities to continue on other parts of their Land.

47. For land to be eligible to be a biodiversity stewardship site, it must satisfy various criteria, which are described in the *Biodiversity Conservation Regulation 2017 (NSW)* (Regulations). These include whether the current, previous or proposed use of the land is inconsistent with biodiversity conservation or will prevent relevant management actions from being carried out.

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48. The application for a BSA is required to be accompanied by a biodiversity stewardship site assessment report, which is prepared by an accredited person and, broadly, assesses biodiversity value, sets out the management actions and the number and class of the credits that can be generated, in respect of the proposed biodiversity stewardship site.

49. The Minister may decline an application for a BSA in various circumstances, including if the Landowner of the proposed biodiversity stewardship site is not a fit and proper person.

50. If an application is approved, the Landowner and the Minister will enter into a BSA which establishes the biodiversity stewardship site on eligible Land pursuant to the BCA. The BSA is registered on the land title and is binding in perpetuity (including upon any subsequent owners of the land).

51. The BSA includes the following legally enforceable conditions:

- the specific actions that the Landowner agrees to take to protect and manage the biodiversity values of the biodiversity stewardship site (including restricting certain activities on the site)
- the number and class of biodiversity credits created in respect of the management actions that have been carried out, or are proposed to be carried out
- the amount of the total fund deposit payable by the Landowner into the BSPF, and
- a schedule of payments from the BSPF to the Landowner.

52. A Landowner may incur a range of expenses prior to entering into a BSA. These expenses (collectively referred to as the 'Initial Costs') may include:

- fees paid to obtain a feasibility study to assess the biodiversity values of a proposed biodiversity stewardship site
- fees paid to an accredited assessor to apply the Biodiversity Assessment Methodology, undertake a site assessment and prepare a biodiversity stewardship site assessment report
- the Application Fee, and
- fees paid to a legal adviser, accountant, recognised tax agent, valuer or consultant for advice about entering into a BSA.

### **Issue of biodiversity credits**

53. The BSA is the legal basis for issuing the biodiversity credits to a Landowner and the biodiversity credits exist until they are cancelled or retired under the BCA.

54. The BSA lists the amount and type of biodiversity credits that a Landowner is entitled to receive from entering into the agreement.

55. The biodiversity credits are created on the date that the BSA is registered on the title of the Land by the Registrar General in NSW in accordance with section 5.12 of the BCA.

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### **Sale of biodiversity credits**

56. The holder of a biodiversity credit that is in force (including a Landowner) may transfer the credit to any person, subject to the BCA and the Regulations.

57. The holder of a biodiversity credit and the purchaser must apply to register the transfer of a biodiversity credit. The transfer will not have effect until it is registered by the Secretary of the DCCEEW.

58. Potential purchasers of biodiversity credits include:

- developers seeking to use biodiversity credits to offset negative impacts on biodiversity
- government bodies using the market to achieve affordable conservation outcomes on private lands
- brokers, and
- philanthropic organisations.

59. Biodiversity credits available for sale are listed on a public register. The sale price of a biodiversity credit is determined by agreement between the holder of the biodiversity credit and the purchaser.

60. In accordance with section 6.21 of the BCA and the terms of the BSA, a Landowner who is generating biodiversity credits must pay the total fund deposit (or relevant proportion thereof), or an amount considered appropriate by the Secretary of the DCCEEW, for the biodiversity stewardship site into the BSPF before the first transfer of each biodiversity credit can be registered.

61. The total fund deposit for a biodiversity stewardship site is the amount that represents the present value of the total of all scheduled management payments in respect of the site under the BSA during the life of the BSA.

62. If the registration of the first transfer of biodiversity credits is only in respect of a portion of the total credits created in relation to the biodiversity stewardship site, the amount payable into the BSPF is the relevant proportion of the total fund deposit or the proceeds of sale of the biodiversity credits paid by the purchaser, whichever is the greater, unless the Secretary of the DCCEEW determines another amount. The relevant proportion is the proportion that the number of biodiversity credits to be transferred bears to the total number of biodiversity credits created in respect of the biodiversity stewardship site.

63. Under the BSA, a Landowner is required to pay the total fund deposit. However, a Landowner and a purchaser of the biodiversity credits may agree that the purchaser will pay the total fund deposit to the BSPF on behalf of a Landowner from, or as part of, the consideration that a Landowner is entitled to receive for the sale of their biodiversity credits.

### **Cancellation of biodiversity credits**

64. The DCCEEW may cancel a biodiversity credit held by a Landowner in various circumstances, including where management actions are not being carried out in accordance with the BSA, the biodiversity credits were created under false or misleading pretences, or the holder of the biodiversity credit requests or agrees to cancel the biodiversity credits.

65. No compensation is payable by the DCCEEW for the cancellation of a biodiversity credit (apart from in limited circumstances permitted under the BCA).

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### **Management payments and ongoing management actions**

66. Under a BSA, a Landowner is required to perform a number of specified management actions in respect of a biodiversity stewardship site.
67. Management actions are divided into passive and active actions. Passive actions have little or no cost and include refraining from doing something, such as not removing fallen logs or clearing vegetation. Passive management actions must be commenced as soon as the BSA is signed.
68. Active management actions are only required to be commenced once the entire total fund deposit has been paid into the BSPF and the first management payment has been paid from the BSPF to a Landowner. Active management actions include actions which are aimed at improving the biodiversity of the biodiversity stewardship site (for example, weed control and the management of human disturbance).
69. A Landowner is required to complete and submit an annual report to the Minister, as specified in the BSA, which provides details on how the Landowner has complied with their obligations under the BSA.
70. Management payments are made to a Landowner from the BSPF in respect of management actions which are carried out, or to be carried out, in accordance with the BSA.
71. The first management payment is made once the entire total fund deposit has been paid into the BSPF.
72. The BSA provides that the Minister will only permit a management payment to be made to a Landowner where the Landowner has submitted an annual report, the Minister is satisfied with its contents and satisfied that the Landowner has complied with their obligations under the BSA (which includes carrying out the management actions).

### **Expenditure of the Landowner on management actions**

73. Landowners typically incur the following types of expenditure in the fulfilment of the management actions under the BSA:
- labour and administration costs for management actions
  - material costs such as materials for repairs, herbicides and baits
  - the annual compliance monitoring fee
  - annual rates and insurance payments (to the extent that they relate to the biodiversity stewardship site that is subject to the BSA)
  - capital expenditure on plant or equipment
  - capital expenditure on land management, and
  - structural improvements, including those which are integral to the construction of a structural improvement required under a BSA.
74. In some circumstances, a Landowner may have certain expenses, such as those described in paragraph 73 of this Ruling and the Initial Costs, paid directly, or reimbursed by a Sponsor.

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**Variation or termination of a biodiversity stewardship agreement**

75. A BSA may only be varied or terminated in writing to the Minister and in accordance with the BCA.
76. Changes to a BSA can only be made in limited circumstances. A variation may be requested where, for example, an additional threatened species (that qualifies for species credits) is found by a Landowner or a new area is added to an existing biodiversity stewardship site.
77. A BSA may be terminated, in limited circumstances, by the Minister.
78. Under the terms of a BSA, a Landowner waives any right to request voluntary termination of a BSA in accordance with subsections 5.10(5) and 5.10(6) of the BCA.

**Biodiversity Stewardship Payments Fund**

79. The Biodiversity Conservation Trust is the fund manager for the BSPF and manages and controls the BSPF in accordance with the BCA and the Regulations.
80. The BSPF is established under the BCA and, among other things, holds and invests the total fund deposits paid by Landowners.
81. Each biodiversity stewardship site will have a separate account within the BSPF.
82. The money held in each account (initially made up of the total fund deposit) may be invested as part of a common pool and any proceeds generated from the investment are distributed to each biodiversity stewardship site account that contributed to the common pool in proportion to the amount contributed, or in such other manner as the Minister directs.
83. Management payments made from the BSPF to a Landowner are dependent on a Landowner meeting their management obligations under a BSA.
84. If a biodiversity stewardship site account has an operational surplus exceeding 30% of the total present value of all future scheduled management payments in respect of the biodiversity stewardship site, the Minister may direct the fund manager of the BSPF to make an additional payment to the relevant Landowner in addition to the annual management payment.
85. The Minister may direct the fund manager of the BSPF that a management payment or payments are not made from the BSPF, or are reduced, if a biodiversity stewardship site account has an operational deficit greater than 20% of the total present value of all future scheduled management payments in respect of the biodiversity stewardship site.
86. Should the funds in a biodiversity stewardship site account be exhausted, there will be no further management payments to the Landowner from the BSPF.

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**Commissioner of Taxation**

22 April 2026

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Status: **not legally binding**

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## References

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*Related rulings and determinations:*

TR 92/3

*Legislative references:*

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  - ITAA 1997 Div 43
  - ITAA 1997 Pt 3-1
  - ITAA 1997 103-10
  - ITAA 1997 104-10
  - ITAA 1997 104-10(4)
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  - ITAA 1997 110-25(2)
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  - ITAA 1997 112-30(1)
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  - ITAA 1997 116-20
  - ITAA 1997 116-30(1)
  - ITAA 1997 116-30(3A)
  - ITAA 1997 118-20
  - ITAA 1997 Div 152
  - BCA 2016 (NSW) Pt 5 Div 2
  - BCA 2016 (NSW) 5.10(5)
  - BCA 2016 (NSW) 5.10(6)
  - BCA 2016 (NSW) 5.12
  - BCA 2016 (NSW) 6.21
  - Biodiversity Conservation Regulation 2017 (NSW)
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ATO references

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