



Biodiversity
Conservation
Trust

Biodiversity Conservation Trust Compliance Policy

For private land conservation agreements under Part
5 of the NSW *Biodiversity Conservation Act 2016*

| August 2019

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1. Introduction

The BCT is a statutory not-for-profit body established under the NSW *Biodiversity Conservation Act 2016* (BC Act).

The BCT is responsible for establishing, managing and monitoring all new and existing private land conservation agreements across NSW.

Under Part 5 of the Act, the BCT can enter different types of private land conservation agreements with landholders:

- funded **Biodiversity Stewardship Agreements** (BSAs), which enable landholders to generate and sell biodiversity credits in turn for carrying out funded biodiversity stewardship actions
- funded **Conservation Agreements** (CAs), under which the BCT makes annual payments for conservation management of under-protected NSW landscapes or other priority conservation assets
- unfunded **Conservation Agreements** for landholders wishing to protect and manage biodiversity on their land (for landholders who are ineligible to participate in the Conservation Management Program or who are not seeking a funded agreement)
- unfunded **Wildlife Refuge Agreements** (WRAs), which are an entry level option for landholders who want to protect the wildlife on their property but do not wish to enter into a permanent agreement.

Landholders with 'unfunded' agreements are eligible to apply for the BCT's Conservation Partners Grants.

The existing types of agreements that the BCT also administers include:

- BioBanking Agreements under the *Threatened Species Conservation Act 1995* (TSC Act)
- Voluntary Conservation Agreements under the *National Parks and Wildlife Act 1974* (NPW Act)
- Wildlife Refuge Agreements under the NPW Act
- Trust Agreements under the *Nature Conservation Trust Act 2001* (NCT Act).

The NSW government is investing \$70 million per annum in private land conservation via the BCT. In addition, governments and/or developers pay the BCT to secure biodiversity offsets, to offset the impacts of development.

The BCT's vision is to maximise the biodiversity conservation outcomes achieved with the public and private resources entrusted in the BCT to support private land conservation. The conservation outcomes of this investment rely on the landholders who enter conservation agreements to undertake the management actions set out in their agreements.

The BCT delivers financial and technical support and aims first and foremost to support landholders to comply with their conservation agreements. The BCT's experience is that most landholders who participate in private land conservation wish to do the right thing and implement their agreement. Some of these landholders need practical or technical support to do this well or efficiently. The BCT has developed a comprehensive Landholder Technical Support Package to meet this aim. The BCT's

technical support activities include things like technical guidelines, landholder workshops and phone-call advice.

This compliance policy sets out the approach the BCT will take in any apparent situation where a landholder is or may be allegedly failing to comply with the provisions of their agreement.

This policy has been developed in line with the BCT's Governance Framework and the NSW government's Quality Regulatory Services (QRS) Initiative 2014, which requires government agencies to take a risk-based, outcomes-focussed approach to compliance.



2. Purpose and objectives of this compliance policy

The primary purpose of this compliance policy is to outline how the BCT will conduct appropriate, fair and proportionate compliance assurance. Our compliance approach is risk based and aligns with the BCT's risk appetite statement.

The objectives of the BCT's compliance activities are to:

- ensure only fit and proper persons enter funded agreements
- deliver education and support to landholders to maximise voluntary compliance
- provide landholders wishing to ensure compliance with assurance they are doing so or provide advice as to how they can do so
- provide governments and the community with assurance that their investments in private land conservation are achieving the intended biodiversity conservation outcomes
- uphold the integrity of the NSW Biodiversity Offsets Scheme by providing assurance that the biodiversity credits sold to offset the impacts of development are backed by the intended biodiversity conservation gains
- ensure procedural fairness and justice in implementing any compliance action
- be transparent in BCT's monitoring and compliance approach
- ensure that consistent principles are followed by staff when monitoring agreements, reporting non-compliances and in responding to and managing non-compliances
- build and maintain community confidence in the BCT as being effective and credible in ensuring compliance with agreements
- ensure any breaches of the law (outside the BCT's jurisdiction) are referred to the appropriate regulatory authority.

This policy outlines the range of mechanisms that can be used by the BCT to ensure landholders comply with the provisions of their private land conservation agreements to achieve biodiversity conservation outcomes.

This policy also outlines the BCT's legal obligations, its legal jurisdiction, and its relationship and joint compliance assurance activities with other government agencies.

3. BCT's role

Sections 5.6, 5.22 and 5.29 of the BC Act provide for the three different types of agreements to contain terms that are binding on the land owner. Section 13.15 of the BC Act enables civil proceedings to enforce private land conservation agreements.

As part of its responsibility to administer agreements, the BCT Board has agreed that the BCT's role extends to ensuring compliance with the provisions of private land conservation agreements. While the BCT may initiate civil enforcement proceedings to remedy or restrain a breach of an agreement, we see our role as being primarily to support voluntary compliance with agreement terms and conditions through landholder support and education.

Where non-compliance with an agreement is suspected, BCT staff will immediately report this to the relevant manager for escalation to the BCT Executive. Any decisions relating to actions to be taken in response to instances of non-compliance are solely the responsibility of the BCT Executive.

Beyond this, the BCT is not established as a regulator to act on alleged offences under the Act. There are no criminal offences associated with agreement non-compliance. If an agreement holder is alleged to have committed an offence against the BC Act, such as removing a protected or threatened plant species, this would be a matter for the appropriate regulatory authority. Generally, this would be the Department of Planning, Industry and Environment (DPIE).

4. Guiding principles

To ensure credibility of BCT programs and agreements, the BCT will respond to alleged non-compliance with agreement terms in a consistent and transparent way to ensure integrity and credibility and according to its risk ranking.

The BCT will be guided by the following operating principles when undertaking its agreement compliance role.

Responsive and effective

- We will consider all alleged non-compliances to determine the necessary action to minimise impacts and maximise deterrence.
- We will respond in an effective and timely manner in accordance with statutory timeframes and established service principles and standards.
- We will follow through on all actions to completion.

Targeted

- We will focus on the most important issues and problems to achieve the best outcomes.
- We will focus our compliance activities on any unauthorised or illegal activities that pose the highest risk.
- We will apply the right tool for the right problem at the right time.

Proportional

- Our actions will be proportionate to the risks posed and the seriousness of the alleged non-compliance.

Firm but fair

- We will use our discretion justifiably and ensure our decisions are appropriate to the circumstances.
- We will provide agreement holders with appropriate resources and support to assist them in complying with their agreement terms and conditions.
- We will assist DPIE to take proportionate regulatory action where appropriate.

Informed

- We will use an evidence-based approach to our decision making.
- Our decisions will be informed by a range of sources, including sound science, and relevant information received from other agencies, members of the community, agreement holders, industry and interest groups.

Consistent

- Our actions will be consistent with the legislation and within our powers.
- Compliance and any civil action outcomes will be consistent and predictable for similar circumstances.
- We will ensure that our staff have the necessary skills and are appropriately trained and there are effective systems and policies in place to support them.

Transparent

- We will provide clear information and explanation to our agreement holders and the community about the standards and requirements for compliance.

Ethical and accountable

- The BCT will apply the NSW Public Sector core values of service, integrity, trust and accountability.
- We will conduct ourselves in accordance with the NSW Government Code of Conduct, and any other relevant policies and guidance.
- We will document and take responsibility for our compliance decisions and actions.
- We will measure and report on our compliance performance.
- The BCT will operate in accordance with *Privacy and Personal Information Protection Act 1998*.

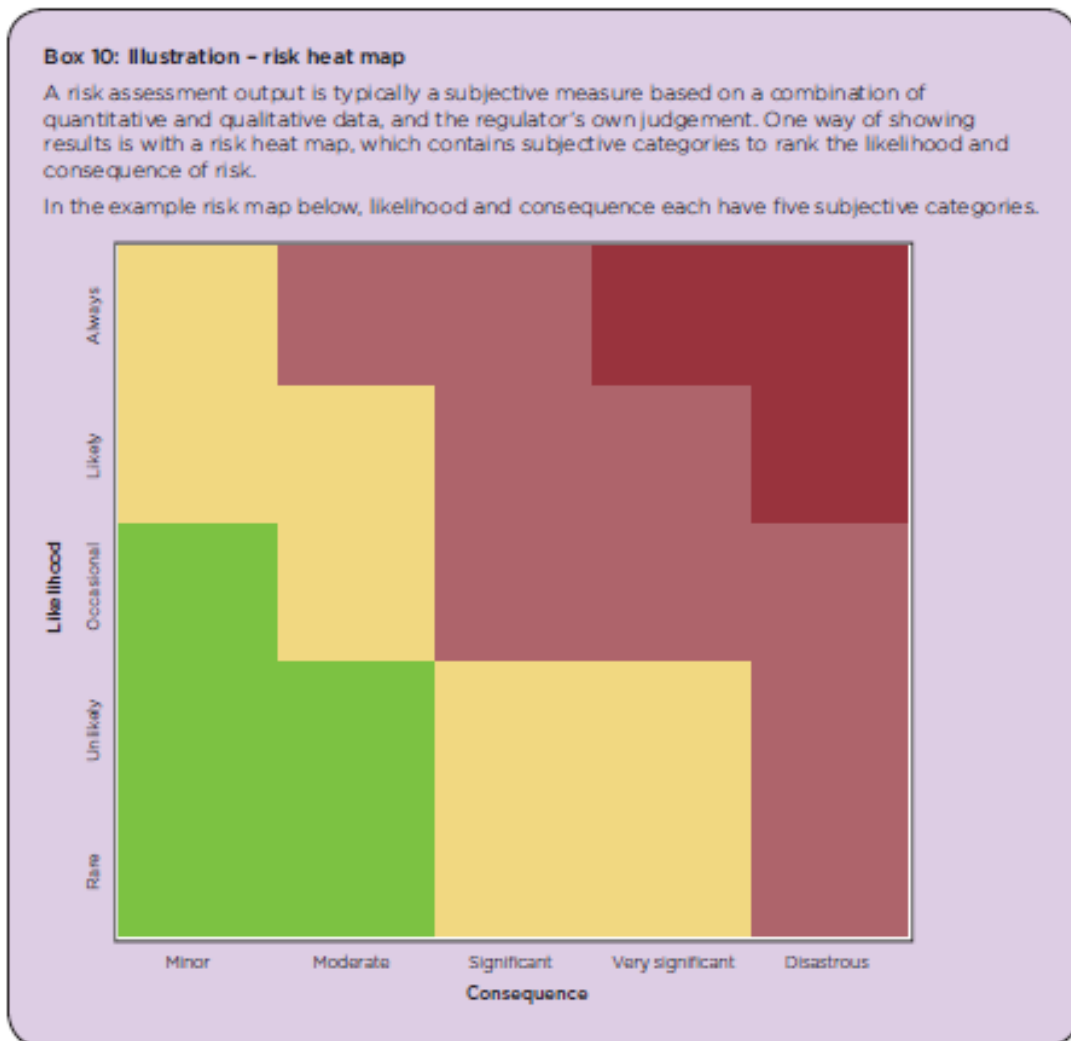
Collaborative

- We will engage with our landholders, the community and government to explain and promote our compliance approach and activities.
- We will work with and, where possible, share information with other relevant agencies, regulators and stakeholders to ensure the best compliance outcomes.

5. Compliance risk assessment

In accordance with the NSW government’s Quality Regulatory Services (QRS) Initiative 2014 and associated guidelines, the BCT will conduct compliance risk assessments to prioritise and shape its compliance activities.

This will follow conventional approaches to risk assessment that assess the likelihood and consequences of risks, such as the below risk heat map outlined in the NSW Government’s *Guidance for regulators to implement outcomes and risk based regulation*.

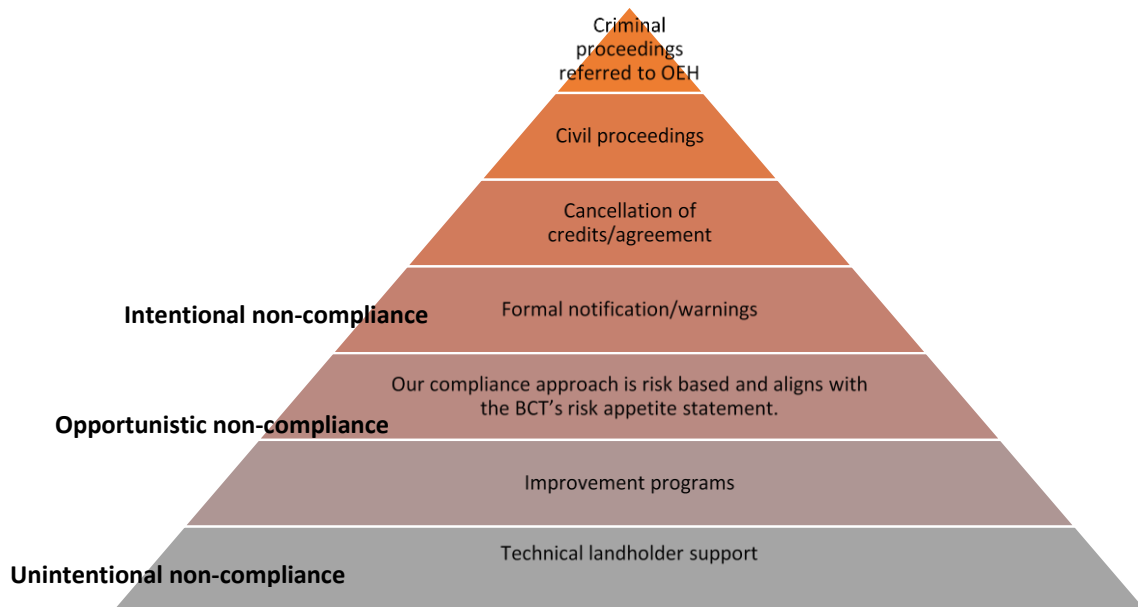


This will be an iterative process as more information becomes available to the BCT over time. Risk assessments will also guide the BCT in prioritising its efforts in landowner engagement and support, site inspections, monitoring and auditing activities.

The BCT will respond to alleged non-compliance in accordance with its compliance risk assessment process. Based on the risk rating, the BCT will develop proportionate and outcome-focused responses to alleged non-compliance.

The BCT recognises that compliance activities are most effective when we raise awareness and encourage behavioural change. The use of different compliance tools should be proportional to the risk and seriousness of the non-compliant behaviour.

Matching compliance activities with attitudes and behaviours:



6. Fit and proper persons

The BCT can aim to guarantee future compliance by ensuring it enters agreements with fit and proper persons. Considering such matters as a person's compliance record, repute, competence and financial capacity can reduce the risk of prospective agreement holders failing to comply with agreement provisions.

Section 5.8 of the BC Act provides that the Minister for the Environment (or BCT as delegate) may decline a request from an owner of a site to enter into a biodiversity stewardship agreement if the Minister (or BCT) considers that any owner of the site is not a fit and proper person to enter into, and fulfil the obligations imposed by, the agreement. The BCT will consider if a person is fit and proper in accordance with clause 5.3 of the BC Regulation.

The BCT has a discretion to enter conservation agreements. The BCT Board has agreed that the BCT will also assess whether a person is fit and proper to enter a funded conservation agreement. The BCT considers this is appropriate given the significant amounts of public funds being invested in such agreements.

The BCT will generally not conduct a fit and proper person assessment for unfunded conservation or wildlife refuge agreements unless it has evidence immediately to hand (i.e. without any additional inquiries) that this may be in question.

Agreements will stipulate the need for the BCT to be informed of a change in ownership and the BCT will liaise with the new owner to ensure they are aware of their obligations.

7. Supporting voluntary compliance

The BCT's experience is that a clear majority of landholders who participate in private land conservation wish to do the right thing in implementing their agreement. Landholder support will always be the priority to ensure agreement compliance across BCT programs.

Where a landholder is in the process of entering a new agreement, the BCT's ecologists and landholder support officers will work closely with the landholder to ensure they understand their management obligations and the best methods to use. BCT staff will provide opportunities for landowners to seek advice, ask questions and to clarify understandings and expectations.

On an ongoing basis, the BCT will seek to support and promote voluntary compliance through the BCT's Landholder Technical Support Package. Agreement holders can seek support at any time via the BCT's email or telephone inquiry channels. The BCT will also seek to promote voluntary compliance at other critical points in the life of a conservation agreement such as when a new person purchases a property with an existing agreement.

Landowner support will include activities such as:

- providing published support and guidance materials, such as information brochures, fact sheets and guidance material to help landowners understand their agreements and obligations
- facilitating and sharing knowledge and experience by holding workshops and establishing forums designed to encourage the transfer of knowledge and experiences between landowners
- conducting site inspections as part of agreement monitoring, ecological monitoring and the annual review processes for biodiversity stewardship agreements
- providing reliable and credible staff in regional centres across NSW to assist and respond to enquiries and the needs of the landowners with private land conservation agreements.

The BCT will encourage all landholders to voluntarily report non-compliances. Often, non-compliances can be relatively minor and the BCT's approach will be to support the landholder to move back into compliance with their agreement. Formal compliance action can often be avoided in such situations.

The BCT will also implement communication and education programs aimed more generally at raising awareness about the objectives and requirements of the BC Act. The BCT may do this jointly with other agencies such as DPIE and Local Land Services.

8. Agreement monitoring

8.1 Desktop monitoring

The BCT will conduct desktop monitoring. This can be a cost and time-effective tool which complements and integrates with the other monitoring mechanisms. Desktop monitoring can include:

- reviewing any changes in land ownership details
- reviewing fit and proper person assessments
- reviewing data updates in relation to such things as biodiversity values, planning rules, registered Aboriginal cultural heritage places, and private native forest agreements issued under *the Forestry Act 2012*.

The BCT can use the NSW Land Registry Service to access information such as land title, ownership, date of purchase, names of previous landowners, etc. The BCT also has access to spatial data from other government agencies.

The BCT will use desktop assessments to inform the ongoing compliance risk assessment process to prioritise any necessary compliance action.

8.2 Annual reporting

Landholders with biodiversity stewardship agreements, conservation agreements used for offsets, or funded conservation agreements, and recipients of conservation partners grants, are required to submit annual reports to the BCT.

Such reports will be assessed as part of the BCT's ongoing compliance risk assessment process to prioritise any necessary compliance action.

8.3 Notifications of alleged non-compliance

The BCT may receive advice or complaints from neighbours, members of the public, councils, or other government agencies alleging that an agreement holder is or may be failing to comply with their agreement.

In response to complaints or notifications received, the BCT will conduct initial enquiries to clarify information and to obtain a clear understanding about the possible non-compliance.

The BCT will assess any such reports as part of the BCT's ongoing compliance risk assessment process to determine the appropriate action in response to any such notification.

8.4 On-site landholder support and agreement monitoring

Site visits are an important part of the BCTs landholder support package and may be used by the BCT for a range of purposes, such as ecological monitoring, landholder support, education and/or agreement monitoring.

On-site agreement monitoring will occur annually for BSAs.

On-site agreement monitoring for other private land conservation agreements will occur at frequencies proportionate to the BCT's assessment of the level of risk of non-compliance.

On-site agreement monitoring will typically involve a BCT landholder technical support officer or ecologist assessing the extent to which the agreement holder is complying with the agreement provisions, and verification that any information provided to BCT is accurate; and aim to identify and address any emerging challenges or issues.

8.5 Auditing

Auditing is an independent, systematic and documented verification process that can be used to assess and evaluate compliance. Audits can assist in verifying and ensuring management actions are being delivered in accordance with requirements.

Audits are like site inspections but typically go into greater depth and may also:

- provide an opportunity to review and evaluate the performance of management actions
- identify opportunities for ongoing improvements
- provide opportunities for education and awareness raising
- identify and address any emerging or potential issues and opportunities for improvements or measures to avoid risks.

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The BCT may commission its own staff or independent contractors to conduct audits of any agreements assessed as having a high risk of non-compliance.

9. Statutory compliance mechanisms

9.1 Suspension or cancellation of biodiversity credits

Sections 6.23 to 6.26 of the BC Act empower the Environment Agency Head to suspend or cancel biodiversity credit. Credits can be cancelled if the Environment Agency Head believes any management action in respect of which the biodiversity credit was created has not been, or is not being, carried out in accordance with the biodiversity stewardship agreement. The BCT may recommend the use of these mechanisms in appropriate circumstances.

9.2 Biodiversity Credits Enforcement Orders

Under Sections 11.25 and 11.26 of the BC Act, the Minister can make a biodiversity credits enforcement order to direct a person to retire biodiversity credits if the Minister forms a view that the holder of a biodiversity stewardship agreement is not carrying out management actions.

Alternatively, the Minister may direct a biodiversity stewardship agreement holder to carry out work or other actions to rectify any breach of the agreement.

If the BCT forms a view that a BSA holder is failing to carry out management actions, the BCT may refer this to the Minister (or DPIE as the Minister's delegate) for appropriate action.

9.3 Civil proceedings

Section 13.15 of the BC Act empowers any person to bring civil proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biodiversity stewardship agreement. The Minister, or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of any private land conservation agreement.

If the BCT forms a view that an agreement holder is in breach of their agreement, the BCT may initiate, or seek the Minister's consent to initiate, civil proceedings. BCT will consult with other relevant government agencies to ensure there are no current proceedings underway.

9.4 Criminal proceedings

Under Division 1 of Part 13 of the BC Act, the police or the Environment Agency Head may commence criminal proceedings for an offence against the BC Act or the regulations, or for a native vegetation offence.

The BCT has no powers to instigate criminal proceedings for instances of agreement non-compliance or any other offences under the BC Act. If the BCT forms a reasonable view that an agreement holder is likely to have committed an offence against the BC Act, the BCT will refer the matter to DPIE for

consideration. DPIE may instigate an investigation and may commence criminal proceedings in accordance with DPIE's compliance and enforcement policies.

9.5 Investigations

Part 12 of the BC Act empowers the Environment Agency Head and authorised officers to conduct investigations. This includes powers to require information, enter and search premises, and conduct interviews. Such powers would generally be used to investigate alleged breaches and to inform any civil or criminal proceedings.

The BCT does not propose to seek appointment of any of its staff as authorised officers. If such powers needed to be exercised to support civil action to be initiated by the BCT, the BCT would generally commission authorised officers in DPIE to take any such necessary action.

9.6 Referrals to other regulatory authorities

If the BCT becomes aware that an agreement holder may have committed an offence under any law other than the BC Act, including Commonwealth laws, the BCT would (as generally bound by the law) refer the matter to the appropriate regulatory authority.



10. Evaluation and accountability

The BCT will develop a system to record and manage all data and information relating to alleged non-compliance and the BCT's responses to such matters.

The BCT will also periodically analyse this information and data to determine if there are trends, themes or risks in non-compliance that may be able to be addressed through preventative measures such as additional agreement conditions or updated technical support. This will support continuous improvement of the policy and appropriate design of strategic compliance programs to ensure its compliance approach is effective and credible.

The BCT Board will monitor and evaluate the performance of the BCT implementing this policy on an ongoing basis via its Audit and Risk Committee. The BCT Board will commission independent reviews of the BCT's performance and effectiveness under this policy every three years. The BCT will report on compliance activities and its performance against this policy in its annual report.