

Biodiversity Market Policy and Design Team
Department of Climate Change, Energy, the Environment and Water
Online submission, cc: biodiversitymarket@DCCEEW.gov.au

3 March 2023

Dear Biodiversity Market Team,

RE: Submission to consultation on the Nature repair market - exposure draft of legislation

Greening Australia welcomes the opportunity to take part in the Australian Government's Department of Climate Change, Energy, the Environment and Water consultation on the Nature Market Exposure Draft of legislation. This is a key piece of legislation to establish a new market that has the potential to attract significant and much needed investment into biodiversity across Australia.

Greening Australia agrees to this submission being published.

About Greening Australia

Greening Australia has a vision for *'healthy and productive landscapes where people and nature thrive'* and has been leading ecological restoration and land rehabilitation for 40 years. A key focus of our work is to protect and restore Australia's unique and remarkable biodiversity. Our core strategy for achieving this is by restoring native vegetation at scale across Australia's cleared landscapes. We believe that together, in partnership with government, the private sector, traditional owners, science institutions and the community we can reverse the twin crises of biodiversity loss and climate change.

Greening Australia is an active participant in environmental markets for carbon, biodiversity and water quality and is the largest restorer of native habitat to deliver biodiversity outcomes in Australia.

Greening Australia is a member of the Australian Land Conservation Alliance (ALCA), and both draws on and supports ALCA's submission provided under this consultation.

Introductory comments and recommendation

Greening Australia continues to welcome a national biodiversity market that can deliver high-quality, high-integrity, and positive outcomes for biodiversity.

With further strengthening, the Bill has the potential to deliver a successful Nature Repair Market.

The feedback provided in this submission is both in response to the proposed legislation and to associated issues not directly covered by this draft legislation and needed ensure that the biodiversity market has the greatest chance of success. This submission builds on Greening Australia's submission to the previous consultation of 16 September 2022.

The Nature Repair Market is intended to be established in part responding to the findings of the 2021 State of the Environment Report, which confirmed that significant investment in conservation and restoration is required to reverse Australia's declining environment. The Nature Repair Market is also intended to contribute towards the Australian Government's commitment to protecting 30% of Australia's land and seas by 2030 and could make a significant contribution towards targets adopted at COP15 including to ensure at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration. To make effective contribution the market needs to generate substantial investment in conservation.

The legislation leaves a significant level of detail still to be developed in delegated legislation (i.e. rules, guidelines, methodologies, etc.). Further consultation is needed on this important detail.

The establishment of a new Nature Repair Market is supported as it has the potential to attract much needed investment into the biodiversity sector. The legislation is broadly based on the *Carbon Credits (Carbon Farming Initiative) Act 2011* and aligns with much of the former government's proposed *Agriculture Biodiversity Stewardship Market Bill 2022*. However, unlike the carbon market there are no statutory drivers to participate in the market and there is no government modelling available to identify the size and scale of the market.

This demand issue extends to both investment into the market and to suppliers of land to undertake activities and generate certificates. Without sufficient demand and supply there will be no effective market. With that in mind the market regulator should also be given the function of encouraging participation in the market.

Noting that under the legislation the Commonwealth may purchase certificates through tender, reverse auction or other process. With that in mind the Australian Government needs to commit to investment to provide confidence in the market and to leverage other investment. Such action will reduce the risk of market failure and hesitancy to investment into the market.

The Australian Government should commit investment over the first three years of market as a cornerstone investor and to ensure market confidence builds quickly and to avoid the risks of market hesitancy.

Recommendations from the Independent Review of ACCUs

Greening Australia welcomed the recommendations from the Independent Review of ACCUs. Three areas from that review – methodology compliance with integrity standards, co-benefits, and market participation – are particularly relevant to the *Nature Repair Market Bill* and should be addressed in the next revision version of the Bill.

Specifically, the Government should ensure that the Bill fully adopts and transposes Recommendation 5 (especially 5.2 through 5.4) for biodiversity integrity standards; that there is clear articulation – and where relevant, clear separation – of the regulation co-benefits between the *Carbon Credits (Carbon Farming Initiative) Act 2011* and the eventual *Nature Repair Market Act*; and that the regulator is given clear powers to encourage participation, including for First Nations peoples.

Regarding co-benefits (Recommendation 13), one approach is the *Carbon Credits (Carbon Farming Initiative) Act 2011* could be amended to allow for delegated legislation that would regulate the verification framework for co-benefits, including environmental co-benefits.

As articulated in the Independent Review, that verification framework would focus upon ensuring transparency regarding proponents' methods, co-benefit claims, and any supporting evidence, but would not go so far as to design or formally detail co-benefit methodologies, nor provide any explicit or implicit Government guarantee of the claimed outcomes, thus letting the market decide based on the evidence these transparency requirements would provide.

Biodiversity certificates under the nature repair market could be a recognised tool for delivering transparency for environmental co-benefits under a verification framework. The Government needs to consider whether biodiversity certificates should be formally linked to ACCUs (such as through their registries), noting the practical difficulties of managing two interdependent registers with separate real property. Another issue for the Government to closely contemplate in this space is the difference between stacking and bundling, where activities to deliver carbon and biodiversity claims may overlap rather than be easily separable.

Delays to articulating how carbon and biodiversity markets operate together is likely to result in uncertainty in the market and delays in investment.

In relation to the advice of the Nature Repair Market Committee and how the Minister acts on that advice, the Bill adopts a different construction to the *Carbon Credits (Carbon Farming Initiative) Act 2011*. In particular, the Minister's decision has been constructed to be less legally proximate to the Committee's advice than is recommended by the Independent Review on ACCUs under Recommendation 5 (i.e. the Committee must be satisfied and the Minister must not make or vary unless the Committee is satisfied, as opposed to *the Minister must be satisfied* that it complies with the Integrity Standards).

The approach in the Bill on the Minister's compliance with integrity standards – and the role of the Committee in that process needs to be rewritten to properly accord with the recommendations of the Independent Review of ACCUs. (Further feedback on the Nature Repair market Committee is provided below).

Further consultation is required into the implementation of recommendations from the Independent Review of ACCUs into the Nature Repair Market legislation.

Offsets

Environmental offsets are 'measures that compensate for the residual adverse impacts of an action on the environment' and are typically used to facilitate land clearance and removal of native vegetation and habitat. They are fundamentally inconsistent with Objects of the Act, and with the assumed intent of a market focused on 'nature repair' (i.e. net gain rather than no net loss).

Greening Australia notes that the Government has not issued a clear statement of intent regarding the proposed interplay between the nature repair market and environmental offsets markets.

The apparent intention to allow – at minimum – Commonwealth (and potentially those administered by state governments) environmental offsets within the Nature Repair Market is a cause of concern.

The purpose of the Nature Repair Market is to generate private sector investment in restoration of, or a clear net positive contribution to, biodiversity values in acknowledgement of the poor and deteriorating state of the environment of Australia (SoE 2021).

Therefore, and consistent with our previous submission of 16 September 2022, it is **recommended** that the Act should not have an offset function that would not deliver substantial net positive outcomes for Nature.

If offsets are allowable then any certificates issued must meet the following conditions:

- clear and legislated guidance on the intended interaction between the Market, the EPBC Act, and (expected) environmental offsets standards – it would be opaque and misleading for the final Bill to remain wholly silent on offsets;
- Ensuring that where a biodiversity certificate is being used as an environmental offset it is listed on the Biodiversity Market register, including the jurisdiction of that offset, and when the offset was retired;
- The means to retire a biodiversity certificate being used for a biodiversity offset;
- The means to prevent the on-selling of offsets where it is required to maintain the integrity of the scheme;

- The inclusion of ‘landholder sovereignty’ on offsets, namely, the ability of a landholder of the land upon which a biodiversity project is occurring to choose to prevent (or allow) biodiversity certificates related to their land being used for biodiversity offsets; this is especially important of enterprises and NGOs that are seeking to ensure the highest level of integrity for certificates they sell and also to safeguard their reputations;
- Further, the Government should consider how to regulate secondary markets in the context of offsets.

If offsets are allowed to dominate the Nature Repair market, there is the potential for them to significantly skew the purpose as well as biodiversity outcomes that the market delivers.

Assuming that the Government decides to proceed with allowing environmental offsets within the Market, Greening Australia then **recommends**:

- that the name of the Bill (and the relevant terms within it) be revised to the National Biodiversity Market Bill to more accurately reflect the market that this would create;
- a delay in their implementation for at least 3 years to enable the Nature Repair Market to establish prior to the introduction of offsets;
- Public consultation on exposure draft environmental offsets standards before they are promoted; and
- A premium requirement for offsets to ensure that the Nature Repair Market ensures a net positive outcome for nature.

Objects of the Act

The Objects of the Act require tightening to ensure the Act delivers improvements in biodiversity. This is dealt with below under **Specific changes recommended to the wording in the Exposure Bill**.

The Act should be amended with inclusion of ‘restore/restoration’ alongside instances of ‘enhance/enhancement’ including in the Objects of the Act which should be amended as follows:

“to enhance, restore or conserve biodiversity in native species in Australia;”

This is **recommended** because:

- ‘restore’ and ‘restoration’ are terms are much more familiar and meaningful to environmental managers than ‘enhance’;
- it creates greater scope for policy alignment with Australia’s recent commitment to the Montreal-Kunming Global Biodiversity Framework, specifically, to the restoration of 30% of degraded lands by 2030¹;
- it helps highlight the value of returning or repairing biodiversity – where possible – back to its condition before entering a state of disrepair; and
- it aligns more closely with the emphasis upon ‘repair’ within the name the Government has given to the market, as well as the short title of the Bill itself.

See: **Specific changes recommended to the wording in the Exposure Bill** (below)

¹ See: Target 2, “Ensure that by 2030 at least 30 per cent of areas of degraded terrestrial, inland water, and coastal and marine ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity.”;

<https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf>

Core Principles for Delivering Objectives of the Bill

The policy intent of the Bill, and the Nature Repair Market in general, is not clearly articulated. Whilst the Bill clearly seeks to establish a market mechanism that can help finance Australian biodiversity projects and Australia's international environmental commitments, it is unclear what specific policy intentions or priorities the Government intends for the market to deliver on.

It is also unclear if the Government intends to use the Nature Repair Market to augment its other policy aims and portfolio funding, or to substitute them with private financial flows.

Greening Australia believes that the Nature Repair Market will be good for biodiversity, but there needs to be a clear signal or statement as to specifically what good outcomes for biodiversity it will leverage and deliver in practice.

It is not clear how the core principles of integrity, governance and participation will be applied. The principles should be further developed to explain how they will be applied similarly to those for the Australian Government's Environmental offsets policy. It should be clear how these principles will be applied, for example, under the participation principle how will First Nations people be engaged through a Free, Prior and Informed Consent (FPIC) process, secure better outcomes overall?

An appropriate plan for working with First Nations People to support participation in this new market should be developed in partnership with First Nations peoples and implemented. This should also link to methodology determinations under Part 4 of the Act.

Restoration, repair and native seed supply

Restoration and repair of damaged landscapes and ecosystems should be a central area of focus of the National Repair market to reverse the losses of previous decades.

Restoration should be strategically prioritised under a national restoration plan (commissioned by the Commonwealth Government) which would be used to identify priority landscapes and habitats and guide restoration under the voluntary biodiversity market.

Consideration should also be given to the supply of indigenous native seed that will ensure high quality restoration and the appropriateness of state-based licencing for seed collection that will enable the Nature Repair market to grow and not constrain it. In support of this legislation, it is recommended that the Australian Government collaborate with the states and territories to undertake a review of state/territory legislation across all jurisdictions to improve seed collection permits/licensing, as recommended in the Action prospectus for Implementing the [Strategy for the Australian Native Seed Sector](#).

Duration of Permanence Period

The default "duration or permanence period" for a project is 25 years but can be different as determined under a methodology. Biodiversity outcomes can take significant time to be achieved, for example nesting hollows in mature trees. Whatever permanence period needs to be appropriate for the activities undertaken and the outcomes achieved and based on when those outcomes will be achieved.

Integrity Standards

In line with the Independent Review of ACCUs findings, the scheme must have integrity. Therefore, it must be carefully designed, rigorous, independently appraised, monitored, transparent, continuously improved, and fair to all parties.

Integrity Standards in Section 57 should be strengthened to improve the likelihood of outcomes being achieved. Suggested changes include those provided below.

Consideration should be given to the role of the Nature Repair Market Committee in assessing and ensuring integrity.

Biodiversity Assessment Instruments

These are described as providing requirements relating to the measurement or assessment of biodiversity. As such, the scope and content of the Biodiversity Assessment Instrument is crucial and should be provided for consultation to determine their adequacy and appropriateness.

Early consultation should be undertaken on Biodiversity Assessment Instruments to be developed and on the contents of those Instruments.

Biodiversity Certificates

How Biodiversity certificates are defined and valued must be consistent, transparent etc and operate in a way that ensures ecosystem repair.

Rather than a single certificate per project there should be the option to separate or unitise certificates across an individual project to facilitate interest in certificates and provide improved flexibility and market access.

Flexibility is also needed to enable different certificates from same proponents which could be undertaken under different methodologies on the same/adjoining areas.

To commercialise a nature repair project, we need a way that the values it represents will reliably persist to provide certainty and permanence. We have seen examples in carbon and biodiversity offsets that this is not always the case and so:

- Buyers can be sold gains that don't exist.
- Environmental loss can be locked in.

Timing of the issuance of a certificate is included under s70(2)(e) plus any early issuance under the methodology – It is recommended that the wording under s70(2)(e) from 'likely to result in' to 'expected to result in' to increase the integrity.

Methodology determinations

It is essential that the **Methodology determinations** deliver improved biodiversity outcomes and it is not clear that this will be the case.

Since the methodology determinations setting out the requirements for biodiversity projects have not yet been released there is a significant gap in understanding what the requirements are. The methodologies are one of the key components to this market and to comment effectively draft copies of these should be made available for consultation. This also applies to **biodiversity Assessment Instruments** that **methodology determinations** must meet.

Methodologies should be designed set up in a way that can recognise and value the restoration of biodiversity to high levels such as for Threatened Ecological Communities or threatened species.

In line with the recommendations from the Independent Review of ACCUs consideration should be given to proponent lead methodology development.

In making or Varying a Methodology (s44) The Minister should also *have regard to requirements relating to Matters of National Environmental Significance*.

Early consultation should be undertaken on methodology determinations to be developed and on the contents of those methodologies.

Nature Repair Market Committee

In addition to the advice provided above, the list of experience or knowledge for Committee Members should also include “restoration”.

Indigenous representation should be a requirement for Committee members should be required.

Regulator

The Government should consider whether the planned independent Environment Protection Agency is a more appropriate regulator of the market rather than the Clean Energy Regulator.

To ensure and clarify that there will be active encouragement of participation in the market, especially for smaller operators and for First Nations peoples, a ‘participation function’ should be added to the functions of the regulator.

Scheme-level audits

The Government needs to introduce provisions to the Bill that allow the regulator to undertake scheme level auditing, namely, systematic monitoring of biodiversity projects and their outcomes.

A review of the Biodiversity Conservation Trust NSW’s Ecological Monitoring Module and Monitoring, Evaluation, Reporting (MER) Framework would provide useful guidance to the Government on how scheme-level monitoring can be undertaken.

This would greatly aid the Nature Repair Market Committee’s periodic review of methodology determinations (and, as recommended in the ‘Detailed legislative amendments’ below, biodiversity assessment instruments) and help to avoid some of the challenges that have historically faced Australia’s carbon market.

Auditing

Under Part 11, Division 2 The Act should require a standalone registered **biodiversity** auditor scheme rather than adopting the greenhouse gas auditor scheme under the carbon markets legislation.

Specific changes recommended to the wording in the Exposure Bill

1. Preliminaries

Under the Objects of the Act (s3):

(a) to facilitate the enhancement or protection of biodiversity in native species in Australia; and

Recommendation: the use of “facilitate” in s3(a) dilutes the value of this Object and could be removed or amended to “to achieve enhancement, restoration or protection of biodiversity in native species in Australia;

(b) to contribute to meeting Australia’s international obligations in relation to biodiversity; and

(c) to promote engagement and co-operation of market participants (including First Nations people, governments, the community, landholders and private enterprise) in the enhancement or protection of biodiversity in native species in Australia; and

Recommendation: “non-government organisations” should be added to this list

(d) to contribute to the reporting and dissemination of information related to the enhancement or protection of biodiversity in native species in Australia.

Integrity Standards

S 57 Biodiversity integrity standards

- (1) For the purposes of this Act, a methodology determination complies with the ***biodiversity integrity standards*** if:
- (a) a biodiversity project carried out in accordance with the methodology determination ~~should~~ result in enhancement, **restoration** or **conservation** of biodiversity in native species (whether the effect on biodiversity occurs within or outside the project area) that would be unlikely to occur if the project was not carried out; and
 - (b) a biodiversity project carried out in accordance with the methodology determination ~~should be designed to prevent the project from having~~ **would not have** a significant adverse impact on biodiversity in a native species that is protected under:
 - (i) a law of the Commonwealth; or
 - (ii) a law of a State or a Territory in which the project area is wholly or partly situated; and
 - (c) a biodiversity project carried out in accordance with the methodology determination ~~should be designed to~~ **would** achieve enhancement, **restoration** or protection of biodiversity in native species that is appropriate to the project area; and
 - (d) a biodiversity project carried out in accordance with the methodology determination would achieve enhancement, restoration or protection:
 - (i) that is of biodiversity in native species; and
 - (ii) that can be measured, assessed and verified; and

- (e) any condition set out in, or requirement imposed by, the methodology determination in accordance with subsection 45(4) or (5):
 - (i) is supported by clear and convincing evidence;

Thank you again for the opportunity to contribute to the Australian Government's ***Nature repair market - exposure draft of legislation***.

Greening Australia looks forward to ongoing engagement with the Australian Government to ensure that the Nature Repair Market delivers the investment in biodiversity conservation that is so desperately needed.

If you have questions regarding the submission, please do not hesitate to contact Greening Australia via hwareham@greeningaustralia.org.au (Hugh Wareham).

On behalf of,

Greening Australia