



AUSTRALIAN CLIMATE AND
BIODIVERSITY FOUNDATION

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

1st of June 2023

Dear Secretary,

On behalf of the Australian Climate and Biodiversity Foundation (ACBF), we provide this submission to help inform the Committee in its Inquiry into the *Nature Repair Market Bill 2023* and *Nature Repair Market Bill (Consequential Amendments) 2023 (the Bill)*.

The ACBF was founded in 2021 to advocate for the protection and restoration of Australia's native forests from key threats such as logging and land clearing.

This mission is in recognition of the leading role of native forest protection, improved management, and restoration in the protection of biodiversity and the storage of carbon. Our mission is also in recognition of the extent of forest loss since colonisation with 104 million hectares of forests completely cleared.

We are a not-for-profit that brings together leaders from the business and finance community, the public sector, academia, the agricultural sector, philanthropy and from the environment movement.

Our board is chaired by Dr Ken Henry. Other board members include Tim Reed, who is also the President of the BCA, David Mackenzie, Lyndon Schneiders, who is also our Executive Director, and Elizabeth O'Leary who is the Head of Agriculture and Natural Assets with the Macquarie Group.

We work to support governments and private sector leaders by building broad based and unique coalitions to develop innovative policy and economic solutions, to support the development and implementation of strong and effective environment laws, to encourage private sector investment into nature repair and to support new economic opportunities through the protection, restoration, and better management of Australia's native forests.

In concert with well-designed and effective regulatory systems required to protect and restore the natural environment, we also support the establishment, operation and expansion of high integrity carbon and biodiversity markets to generate the funding and innovation required to protect and restore biodiversity consistent with Nature Positive goals and the Global Biodiversity Framework and to reduce and drawdown greenhouse gas emissions consistent with goals of the Paris Climate Change Treaty goals.

Yours Sincerely

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Lyndon Schneiders
Executive Director

A black rectangular box redacting the signature of Dr Ken Henry.

Dr Ken Henry
Chair



SUBMISSION

Overview of Bill

The ACBF is pleased to provide this submission to Senate Standing Committees on Environment and Communications review of the Nature Repair Bill 2023 and the Nature Repair Bill (Consequential Amendments) 2023 Bill.

The ACBF understands the purpose of the Bill is enable the creation and certification of tradable Biodiversity Certificates with the goal of protecting and enhancing biodiversity of native species.

The Bill creates a process framework which allocates specific roles and responsibilities between the Minister, the Regulator (the Clean Energy Regulator) and an expert advisory group (the Nature Repair Market Committee).

The Bill outlines the process to develop and approve appropriate methodologies against a proposed set of 'Biodiversity Integrity Standards', supported by biodiversity assessment instruments which would ultimately enable the Regulator to issue Biodiversity Certificates.

The Bill also specifies what type of landowners are eligible to generate Biodiversity Certificates and the rules governing the purchase of Certificates by the Commonwealth Government.

Finally, the Bill outlines a series of auditing, enforcement, revocation, and registration processes.

ACBF response

The ACBF recognises the positive role that high integrity markets can play in the generation of private sector investment to protect and restore Australia's native forests through financially rewarding those land managers who prioritise the protection of biodiversity and storage of carbon in land management decision making.

However, markets alone should not be seen as a replacement or alternative to ongoing public investment in biodiversity protection and restoration and the need for well-designed and effective environmental protection regulation and policy. An effective market must be a well-regulated market with clear goals and transparent processes.

In critically assessing the proposed components of this Nature Repair Bill, it is our view that the success of this proposed legislation will depend upon whether it:

- Delivers biodiversity protection and restoration activities that produce clear and measurable outcomes a consistent with the Australian Government's recent adoption of the Nature Positive Global Biodiversity framework to address and reverse systemic environmental decline.
- Is transparent, simple in design and trusted by landowners and land managers, industry, and the community.
- Is well integrated with complementary laws and processes at all levels of Government, particularly reformed national environment laws.

[REDACTED] data and measurement.
[REDACTED] the higher [REDACTED] transparency and independent
[REDACTED] for as many [REDACTED] as possible, including First
[REDACTED] Government [REDACTED] owners at all scales.

- Protects First Nations people's rights and interests.
- Is supported by a respected and transparent methodology development process that delivers genuine additionality, outcomes, and promotes innovation.
- Promotes close integration with the carbon market and enables the delivery of core benefits and provides a mirror to the post Chubb reforms to the carbon credits system.

After assessing the Bill against these criteria, the ACBF provides the following comments and recommendations. The ACBF believes that adoption of these recommendation will strengthen the Bill and promote greater consistency with the related environmental protection and restoration objectives contained within the Australian Government's 'Nature Positive Plan: better for the environment, better for business' released in December 2022.



NATURE POSITIVE OUTCOMES

In December 2022, the Australian Government announced its Nature Positive Plan to reform national environment laws.

One of the stated goals of the Plan is to make Australia 'nature positive'.

The Minister's forward to the Nature Positive Plan stated that "Australia's natural environment is deteriorating and it's not resilient enough to withstand current or emerging threats. Native species extinction, habitat loss and cultural heritage destruction are all accelerating, and reform is urgently needed."

As outlined in the Plan, key, interrelated reforms included a comprehensive remaking of national environmental law, including legislated National Environmental Standards that will set out the environmental outcomes and a commitment "to protect 30% of Australia's land and seas by 2030, create a nature repair market, establish an independent Environment Protection Agency (EPA) and work in partnership with First Nations people, including to develop standalone cultural heritage legislation. We are working towards zero new extinctions."

The Nature Positive Plan which included reference to an explicit policy goal to reverse ongoing environmental decline, was a significant moment in environmental policy direction for Australia. It makes a change of direction in national policy which has historically sought to protect what is left rather than promote large scale restoration and reversal of ongoing decline. The goal is consistent with the Australian Government's adoption of the goals and targets of the Global Biodiversity Framework at the 15th meeting of the Conference of Parties to the UN Convention on Biological Diversity in December 2022.

To ensure the Nature Repair market can support this ambition, the goal to arrest and reverse environmental decline should be the ultimate test of the effectiveness of the Bill and should be hard wired into the Objects of the Bill.

The Nature Positive Plan included a working definition of nature positive which stated, 'Nature Positive is a term used to describe circumstances where nature – species and ecosystems – is being repaired and is regenerating rather than being in decline.'

As one key enabler of the Nature Positive Plan, the goals and provisions of the Nature Repair Market Bill must be assessed as part of a suite of interrelated reforms intended to move from systemic environmental decline towards a new goal of 'nature positive'.

RECOMMENDATIONS

In its present form, the Bill does not explicitly seek to achieve 'nature positive' outcomes. Nature Positive is not referenced anywhere in the Bill.

Reference is made to need "to promote the enhancement or protection of biodiversity in native species in Australia" and "to contribute to meeting Australia's international obligations in relation to biodiversity" but these goals are ambiguous and would benefit from further refinement through reference to nature positive outcomes.

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[REDACTED] g outcor [REDACTED] formation.

This new object should be supported through the inclusion within the relevant section, a definition of Nature Positive, which includes the following key components to ensure the operation of the Nature Repair Market will deliver outcomes so that "that nature loss is halted and reversed, through increasing the health, abundance, diversity and resilience of species, populations and ecosystems so that nature is visibly and measurably on the path of recovery."

To ensure that Nature Positive outcomes are embedded in the architecture of the Bill, this goal and definition should also be inserted as a goal within the proposed Biodiversity Integrity Standard outlined in Part 4, Division 3 of the Bill to enable Nature Positive outcomes to be assessed by the Nature Repair Market Committee and the Minister against proposed methodologies, including proposed biodiversity assessment instruments, which will underpin the generation of 'biodiversity certificates'.



CONSISTENCY WITH EPBC REFORMS

The effectiveness or failure of the Nature Repair Market initiative to generate Nature Positive outcomes will ultimately be determined by the shape and strength of enabling reforms to the existing National Environment laws, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Of particular importance will be the final form of a range of proposed, legislatively backed National Environmental Standards.

The creation of outcomes based National Environmental Standards was a central recommendation of the Independent Review of the EPBC Act (the Samuel Review).

Standards that have been identified as a priority include:

- Matters of National Environmental Significance (MNES)
- First Nations engagement and participation in decision-making
- Community engagement and consultation
- Regional planning &
- Environmental offsets

The final form of these standards should provide clear rules around which the Nature Repair Market will operate and should be referenced in the Bill to provide greater decision maker clarity and guidance in determining the applicability of methodologies and in the decision to issue biodiversity certificates.

The relevance of the standards to the effective operation of the Nature Repair Market are outlined below.

1. The MNES standard will detail measurable outcomes to protect and restore a range of activities that are the primary responsibility of the Australian Government, including the protection of federally listed threatened species and ecosystems. An effective MNES standard will enable the protection and restoration of habitat required to protect and restore the health of federally listed threatened species and ecosystems and should be fundamental to the operation of the Nature Repair Market where funding can be generated to protect and restore habitat for federally listed species.
2. The regional planning standard will enable a systematic process for developing regional plans across Australia. An effective regional planning standard will enable conservation planning and protection of MNES across a regional landscape, including the identification of areas and values that should not be developed and priorities for restoration. Regional Plans will be critical to informing priorities for future investment through the Nature Repair market by identifying priorities for protection and restoration at the regional scale.
3. The offsets standard will enable the reform of the existing, highly problematic, offsetting system which is not supported by any stakeholders, and which was identified as a major deficiency of the EPBC Act by the Samuel Review. If implemented effectively, the new environmental offset standard will ensure clarity in terms of environmental approval decision making by clearly identifying those areas or values which cannot be developed or offset. This foundational reform would enable the operation of the so called 'offsets hierarchy' in which developers need to first avoid impacts on MNES, then minimise impacts, and finally offset impacts if other viable options are available. A high integrity and trusted offsets standard is required to ensure confidence and demand for offsets, which will in turn enable investment in protection and restoration.

The centrality of the National Environmental Standards should be explicitly incorporated in the design of the operation of the Nature Repair market through inclusion in the Bill.

To ensure consistency between the operation of the proposed market and the legislative framework provided by national environment laws, the application of relevant National Environmental Standards should be incorporated into the components of the Bill that guide the identified decision makers (the Minister, the Regulator, the Expert Committee and the Secretary of the Department).

For example, Part 6, Division 1 of the Bill enables the Commonwealth Government via the Secretary of the Department to enter contracts to purchase Biodiversity Certificates through a process described as a 'biodiversity conservation contract'.



The relevant section of the Bill then outlines the steps the Secretary must follow in making a contract. Except for a reference to the Secretary needing to consider how a biodiversity purchasing process would 'maximise the protection or enhancement of biodiversity that results from the process', the expected environmental outcomes of the process are entirely absent.

In this example, including a new clause that requires the Secretary 'to ensure the Biodiversity Certificate purchasing process is consistent with relevant National Environmental Standards and delivers measurable outcomes' would provide a higher level of confidence that the Secretary is making decisions based on the direction provided by these over-arching outcomes-based policy instruments and is acting in a manner consistent with national environment laws and related policies.

Likewise, a similar clause to ensure decisions are made consistent with relevant National Environmental Standards, should also be inserted in other relevant sections of the Bill which govern foundational decision making including the:

- proposed biodiversity integrity standard
- review and approval of methodologies
- granting of certificates
- auditing, cancellation and review of methodologies and certificates, etc.

OTHER RELATED ISSUES AND RECOMMENDATIONS

PERMANENCE

Part 2, Division 6 of the Bill specifies the permanence requirements that are required to be part of a biodiversity certificate. Permanence is a concept derived from the creation of carbon credits. It is intended to demonstrate that the activities and outcomes outlined in the biodiversity certificate and for which payment is received, will be delivered over the long term, usually either 25 or 100 years.

This section of the Bill proposes three permanence options, 25 years (A), 100 years (B) or other (C).

The inclusion of C negates the rationale for A and B and should be removed.

FIRST NATIONS

The Bill contains protections for First Nations interests through strengthened consent requirements before the registration of biodiversity certificates. These provisions appear consistent with the relevant recommendations (particularly 11, 14, 15) of the Independent Review of Australian Carbon Credit Units (Chubb Review).

Furthermore, ACBF supports 50% First Nations representation on the proposed Nature Repair Market Committee to reflect the role of First Nations people as managers of more than 50% of the land mass of Australia and in recognition of the need for significant First Nations expertise in the development and review of proposed methodologies.

The ACBF also recommends that proposed biodiversity assessment instruments are codesigned with First Nations persons with relevant expertise.

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METHODOLOGY DEVELOPMENT

It is unclear how relevant methodologies will be developed under the Bill. It is clear that:

- the Minister will make, vary or revoke methodologies.
- the Nature Repair Market Committee will undertake public consultation on making and varying methodologies and the biodiversity assessment instrument and provide advice to the Minister on the prioritisation of methodology determinations.



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It is less clear how methodologies will be developed for consideration by the Committee and ultimately the Minister. The Department's Nature Repair Market fact sheet states that 'the Department co-designs with First Nations groups and other stakeholders on biodiversity assessment instrument and methodologies'ⁱ, however the Bill appears to make no provision for this process.

This is an important omission as a clear recommendation of the Chubb review was explicit support for proponent-led methodologies.

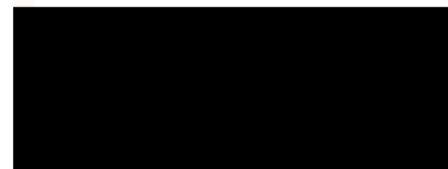
The relevant section of the Bill commences at Part 4, Subdivision D.

CONCLUSION

The creation of a well-designed and high integrity Nature Repair Market would be a world leading initiative with the potential to encourage substantial amounts of investment in the protection and restoration of degraded landscapes and could place Australia in a strong position to meet its commitments under the Global Biodiversity Framework.

However, an effective market must be governed by clear goals and regulations. ACBF believes that the inclusion of the recommendations outlined in this submission remove ambiguity and enable a clear relationship to be established between the operation of this market with complementary policy goals to deliver 'nature positive' outcomes and the implementation of effective, outcomes-based national Environmental Standards.

For further information, please contact Lyndon Schneiders, Executive Director – Australian Climate and Biodiversity Foundation at [REDACTED]



ⁱ DCCEE, Factsheet – Overview of the Nature Repair Market Bill, https://storage.googleapis.com/files-au-climate/climate-au/p/prj23a6fb56d20875fa57e91/public_assets/Factsheet%20-%20Overview%20of%20the%20Nature%20Repair%20Market%20Bill.pdf