



AUSTRALIAN CLIMATE AND
BIODIVERSITY FOUNDATION

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

9 September 2023

Dear Secretary,

The Australian Climate and Biodiversity Foundation (ACBF) provide this additional 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)*.

This submission is a supplement to our previous submission (dated 1st June 2023). This new submission includes expert feedback and advice provided to the ACBF prior to and during an online roundtable convened by the ACBF on the 5th of September 2023 to workshop and discuss recommendations to further strengthen the effectiveness of the Bill.

Attendees to the roundtable received a brief summarising key issues for further discussion and participants completed a survey to draw out priority concerns and solutions. These were written up as propositions to be further explored and refined on the day.

Roundtable participants included representatives from a range of environmental organisations; large private land holders; agribusiness groups and land managers; carbon, and biodiversity market industry participants; First Nations groups; former public servants, and leading academic experts and scientists.

Yours Sincerely

Lyndon Schneiders
Executive Director

Dr Ken Henry
Chair



SUPPLEMENTARY SUBMISSION

Background

The ACBF is pleased to provide this supplementary submission to the Senate Standing Committee on Environment and Communications Inquiry into the *Nature Repair Market Bill 2023* and the *Nature Repair Market Bill (Consequential Amendments) 2023 Bill*.

This submission is in addition to our original submission dated 1st June 2023.

In our previous submission we indicated our support for the Bill but observed that *"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 consistent with the Australian Government's recent adoption of the 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.*
- *Is based upon the most reliable data and measurement.*
- *Is well governed, promoting the highest standards of accountability, transparency and independent regulation and oversight.*
- *Promotes access to the market for as many landowners and land managers as possible, including First Nations peoples, relevant Government land managers and private landowners 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."*

We made several recommendations with the above 'success criteria' in mind. These included:

- Inserting a new Object in the Bill *"to achieve nature positive outcomes."* We recommended incorporating a definition of *"nature positive"* as well, reflecting the commitments in the government's Nature Positive Plan which was released in December 2022.
- Ensuring consistency with EPBC (*Environment Protection and Biodiversity Conservation Act 1999*) reforms. Our recommendations included ensuring consistency with proposed National Environmental Standards including Matters of National Environmental Significance (MNES); First Nations engagement and participation in decision-making; community engagement and consultation; regional planning; and environmental offsets.

We also made recommendations around permanence (removing "other" as an option), method development (seeking clarity on how methods will be developed and co-designed) and on First Nations representation (re-stated below).

Following further engagement with peers and experts, including through our recent online roundtable, we would now like to make some additional, supplementary recommendations we believe would further enhance and strengthen the Bill.

Recommendation 1 - Mandate nature positive outcomes

We recommend that a new object to the Bill be inserted to mandate that the Bill's overall 'nature positive' purpose is to demonstrably arrest and reverse environmental decline and improve environmental outcomes year-on-year.



This recommendation represents a strengthening of our recommendation in our first submission. This recommendation highlights a clear requirement that 'nature positive' outcomes be set and measured against for **every** project approved under the process set up by the Bill.

We note that the achievement of 'nature positive' outcomes is a central tenant underpinning the Australian Government's environmental reform agenda.

For context, in December 2022, the Australian Government announced a suite of wide ranging reforms under the banner of a 'Nature Positive Plan, better for the environment, better for business' which included a number of interrelated reforms including the wholesale rewrite of the *Environmental Protection and Biodiversity Conservation Act 1999* in response to the Samuel Review; the establishment of the Environment Information Agency and an independent National Environment Protection Agency, and the introduction of legislation to provide for the operation of a Nature Repair Market.

Australian Government support for the 'nature positive' agenda were further reinforced by the Government's adoption of the goals and targets of the Global Biodiversity Framework at the 15th meeting of the Conference of Parties to the United Nations Convention on Biological Diversity in late December 2022.

Given the clear role of the Nature Repair Market Bill in delivering 'nature positive' outcomes, it is our recommendation that the Bill therefore needs to explicitly mandate and define what constitutes 'nature positive' outcomes.

Central to this recommendation is the need for the Bill to contain a rigorous definition of 'nature positive' that establishes a clear, time bound baseline and clear measures that enable improvement based upon existing international definitions.

Referencing our original submission, *"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."*

Importantly, the Bill should require methods and projects to provide clarity on the 'nature positive' outcomes being sought and how progress towards achieving them will be measured over time.

Recommendation 2 - Primacy of the EPBC reforms

We recommend that the NRM (Nature Repair Market) Bill be delayed until Parliament has been presented with key EPBC reforms, including proposed National Environmental Standards for environmental offsets, regional planning, and threatened species protection, to demonstrate that a rigorous and high integrity regulatory system will support the operation of a Nature Repair Market.

As we discussed in our original submission: *"[t]he 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)."*

A constant theme in the feedback received by the ACBF over the past several weeks is the deep concern that the Nature Repair Market is being established without the regulatory backing of strong and legally binding national environmental standards as proposed by the Australian Government in its response to the Samuel Review, particularly those regarding the future use of biodiversity offsets, and the role of these offsets in the Nature Repair Market.

In response, it is the ACBF view that it would be better to delay the passage of the NRM Bill to enable the Parliament, stakeholders, and the wider community to be satisfied that appropriate checks and balances to the operation of the market will be provided through EPBC reform.

Recommendation 3 - Strengthen the offset provisions in the Bill

We recommend that specific provisions be inserted in the Bill to tighten when environmental offset obligations can be acquitted with proposed biodiversity certificates.



- (a) *These new provisions should include separate sets of **strong integrity standards** for (1) offset project methods and (2) stewardship project methods. Conditions could include:*
- i. *Evidence that the developer, attempting to acquit their obligations with the certificate, has genuinely applied the offset hierarchy of “avoid – minimise – offset.”*
 - ii. *The biodiversity project underpinning the certificate generates demonstrable and measurable “nature positive” outcomes against a conservative baseline projection. One option could be to require the application of percentage ‘loadings’ where outcomes delivered needed to more than make up for the damage done by X%.*
 - iii. *The offset is genuinely ‘like for like.’*
 - iv. *The offset is permanent – in other words the ‘nature positive’ outcome of the biodiversity project is assured to last as long as the destruction caused by the developer who is attempting to acquit their environmental obligations.*
 - v. *Offsets cannot be used to acquit developments in any “no go zones” and that an evidence-based list of allowable offset matters where evidence shows that recovery is possible, is needed to guide what is allowed in the interim (if the NRM proceeds ahead of the EPBC Act reforms being passed).*
 - vi. *Integrity standards that guide and restrict how baselines are set to minimise the risk of projects only slowing decline rather than delivering improved environmental outcomes year-on-year.*
- (b) *Requirements to ensure **transparency** of outcomes of the biodiversity project. The data for every biodiversity project should be publicly available in a form that allows independent assessment of the claimed outcomes.*
- (c) *A provision to allow for ‘**open standing**’ with respect to these biodiversity projects.*

The roundtable expressed a range of views on the issue of offsets. Some participants were clear in not wanting offsets to ever be allowable, however ACBF recognises that offsetting will be necessary in the future and with rigorous reform could be a source of future demand for biodiversity certificates.

However, offsets need to need to be seen as a last resort. The adoption of the proposed offsets integrity standard in the Bill would provide greater confidence that this would be the case.

Recommendation 4 - National Nature Positive Investment Strategy

We recommend that, as an immediate priority, the Australian Government produce and publish a science-based national nature positive investment strategy to identify priority goals, regions, and funding for investment (public and private) consistent with the achievement of nature positive goals.

This strategy should define and contextualise the ‘nature positive’ concept as it needs to apply in Australia and the Government’s ‘no more extinctions’ commitment and how these goals can be supported by the Nature Repair Market.

Other important aspects of such a strategy are:

- It would need to be highly regionalised and linked to regional planning as proposed by the Samuel review.
- It would need to recognise the extent of the indigenous estate in this country and create the conditions to support First Nations direct management and participation in the market.
- The strategy would need to outline the process for setting key baselines of relevance to the delivery of ‘nature positive’ goals.

In this way the strategy will be able to be used to inform, and reflect, public policy and funding objectives.

Recommendation 5 - National Fund

We recommend that, consistent with the National Investment Strategy, the Australian Government establish a fund to enable Government investment in the voluntary purchase of certificates consistent with ‘nature positive’ goals and targets as outlined by the proposed National Investment Strategy and to provide funding support to enable the development of innovative projects, financing, and initiatives.



The fund would draw on the experiences of the Emissions Reduction Fund which, following the abolition of the carbon tax, at least enabled ongoing investment in the emerging carbon market and the development of carbon projects. This will be important in building the market whilst private funding sources are developed.

The fund would also provide demand for biodiversity certificates to complement philanthropic and ESG generated investment in the purchase of biodiversity certificates.

Finally, the fund would also enable less reliance on policy mechanisms such as biodiversity offsetting and would provide the Australian Government with a clear lever to prioritise investments consistent with the proposed Investment strategy outlined above.

Recommendation 6 - Harmonisation with carbon market

We recommend that the Bill be amended to ensure consistency with post Chubb review reforms to the carbon market including consistency in data gathering and transparency; monitoring, auditing, and compliance; rules making; support of proponent led method development; and to ensure appropriate separation of roles and responsibilities. As a result, we also recommend that any government-funded purchases of NRM certificates should be undertaken by a separate entity to that which is tasked with regulating the NRM.

The above points would bring the Nature Repair Market framework into line with the carbon market. Key points to note here include:

- Rules making should be open to public consultation where the rules in question are material to the market.
- A process of rule harmonisation should be initiated to ensure consistency across definitions, processes, and timeframes to minimise administrative burdens on method proponents and project developers.

Proponent led method development is the subject of the next recommendation.

Recommendation 7- Proponent-led development of methods

We recommend that, in line with the Chubb reforms to the carbon market, method development for biodiversity should be able to be undertaken by third party "proponents." Further, greater detail is needed on how methodologies will be developed for consideration by the Nature Repair Market Committee and the Minister.

As noted in our first submission, 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', however the Bill makes no provision for this process.

Recommendation 8 - First Nations representation on technical committees

We recommend that First Nations representatives comprise 50% of the Nature Repair Market Committee and other technical committees as required.

In our first submission we made the following points:

"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."

CONCLUSION



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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.

ⁱ DCCEEW, 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

