



25 May 2023

Committee Secretary
Senate Standing Committees on Environment and
Communications
PO Box 6100
Parliament House
By email: ec.sen@aph.gov.au

Nature Repair Market Bill inquiry – Climate Friendly submission

Dear Senate Standing Committee on Environment and Communications,

Climate Friendly supports the development of a high integrity nature repair market as a key contributor to solving Australia's biodiversity crisis.

Alignment of the nature repair and carbon markets will be mutually beneficial, as delivering both together will help lower costs and enable scale to tackle both the biodiversity and climate crisis in Australia. Climate Friendly support the primary purpose of the legislation to provide a framework for a voluntary national market that delivers improved biodiversity outcomes. We will continue to engage in the consultation and legislative development process to improve outcomes.

Climate Friendly has partnerships with Australian land managers to deliver over 150 carbon farming projects over more than 10 million hectares of land that also achieve nature repair. We are developing koala focused environmental plantings projects in NSW in a partnership with WWF-Australia. As well as working with Bush Heritage Australia to deliver a QLD Land Restoration Fund project that is seeking to deliver lower cost and higher integrity monitoring of nature repair. Our carbon projects also protect and improve millions of hectares of rangelands habitat that is core for the survival of the recently endangered Major Mitchell's Cockatoo.

Our deep knowledge and experience of carbon farming, informing method development and restoring the environment enables us to provide informed insights on the proposed Nature Repair Market Bill and potential improvements. Our on the ground knowledge of land managers and nature repair projects and associated environmental markets enable us to provide unique insight into the likely uptake and potential improvements to the Nature Repair Market Bill 2023.

We welcome any opportunity to more directly engage in the Senate inquiry in the coming months.

Purpose of the legislation

It is important to first consider the intended end use of certificates under the legislation as it will impact the required features of the legislation and influence market supply and demand. A voluntary nature positive market and an offsets compliance market have potential key differences in required integrity, supply and demand.

Climate Friendly understands that the legislation intends to deliver three end uses:

1. Voluntary nature repair from corporates.
2. *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) offsets
3. A better mechanism to deliver nature restoration focused grants

While Climate Friendly understands the need to have robust rules for offsets under the EPBC Act, we do not believe the Nature Repair Market Bill should initially enable use of certificates as a source of offsets as it is likely to undermine the primary purpose of the Bill which is to deliver voluntary nature repair. In regard to the secondary purposes for EPBC Act offsets and improved grant management:

- The Nature Repair Market Bill would provide a step improvement to the status quo of offsetting under the EPBC Act. The current offsetting arrangements under the EPBC Act and associated transparency, integrity and compliance and enforcement were identified by the Samuel's Review as requiring substantial change. The Nature Repair Market Bill would provide more clear rules for regulation of EPBC Act offsets as well as greater transparency and ability to operate compliance and enforcement. If the subordinate rules for methodologies are under the Nature Repair Market are designed well, this would further improve integrity of offsetting under the EPBC Act.
- Current allocation of Federal environmental grants for nature repair often do not include clear long-term monitoring of outcomes for nature. The application of the Nature Repair Market could improve measurement, long-term outcome monitoring and transparency for Federal grant funding.

While Climate Friendly can see the potential improvement for offsetting and grant allocations, we see opportunity to improve the legislation for the primary legislative purpose of encouraging voluntary nature repair by corporates. The inclusion of offsets initially, without at least additional legislative changes is our key area of concern.

- Some land managers state they would be unwilling to engage in the market if certificates could be used for EPBC Act and State offset markets, as they understand that it facilitates nature degradation elsewhere. This perception of offsetting enabling nature degradation will potentially impact participation and supply of certificates to the nature repair market. Similar concerns are likely to arise for environmental conservation organisations and Traditional Owners.
- Noting the use of contracts between buyers and sellers has been proposed as a way for land managers to restrict the use of nature repair projects for offsets. The use of contracts would require the land manager to monitor any transfer of certificates for the lifetime of the project, which can be over 100 years or in perpetuity. This appears unfeasible and puts an unfair burden on land managers.
- Noting the use of separate methods has also been proposed as a potential way to separate and restrict the use of conservation focused nature repair projects from offsets. Methods are subject to variation over time and often new methods enable transition of older projects. As a result, methods are unlikely to address concerns that in the future, once a certification is traded, that it may end up being used as an offset.
- The voluntary nature repair market buyers may be less willing to invest in a market that is also linked to offsets. It may be beneficial to consult with the range of demand side buyers to better understand their requirements and propensity to invest.
- There are remaining issues with the EPBC Act offsetting framework as outlined in the Samuels' Review. Changes to the EPBC Act and adoption of a clear standard for EPBC Act offsets that delivers true nature repair could build trust that 'offsetting' activities under the EPBC Act are nature positive. Legislative change and implementation in relation to the EPBC Act are likely to take considerable time.

Given the above concerns, Climate Friendly recommends:

1. **The Nature Repair Market Bill should explicitly exclude offsetting at commencement. A review of the suitability of expanding the scheme into offsets should occur once the reforms to the EPBC Act are implemented, including releasing a truly nature positive offsetting standard.**
2. **If offsetting is initially included, then the legislation should at a minimum enable participants to decide if their**

nature repair certificate can be used for only voluntary nature repair, or also for offsetting. While contracts and methods have been proposed as potential solutions, Climate Friendly believe that separate certification types legislated in the Act for voluntary conservation focused nature repair and offset focused nature repair would provide the greatest certainty to landholders and improve market participation.

Single project certificates or unitised products

The Nature Repair Market Bill proposes that one certificate will be provided and maintained for each project. This contrasts the carbon market, and some state and voluntary biodiversity markets, where multiple units are provided over time to each project that can be separately traded. Climate Friendly understands there are a broad range of views on whether the Nature Repair Market Bill should be based on single project certificates, or unitised products for biodiversity elements.

Climate Friendly can see benefits in both enabling single certificates for individual projects and more fungible unitised certificates that are issued when project outcomes are achieved. It may be prudent to include clear legislative drafting that enables both unitised certificates and single project certificates as there are strengths and weaknesses and demand for each.

Climate Friendly recommends:

3. **The Nature Repair Market Bill be amended to explicitly include options for both single project certificates and unitised certificates.**

Risk of double counting and greenwashing

The Nature Repair Market Bill does not adequately address the risk of double counting nature benefits in projects that deliver both carbon credits with a nature price premium, and the sale of a nature repair certificates for the same nature outcome.

Without adequate cross labelling of units across carbon and nature repair markets, there is likely to be double counting of nature benefits by buyers of nature repair certificates and premium Australian Carbon Credit Units (ACCUs). Without adequate labelling in both the carbon and nature public registries, it will not be possible for buyers to ascertain if they are accidentally claiming nature improvements that have been sold to another party. This is particularly true if carbon and nature transactions occur through

brokers who are not directly involved in the on-ground activities of the project. Addressing this risk is important to stem potential future greenwashing. While the Bill does suggest some degree of labelling, it would require changes under the carbon legislation also to ensure the risk is adequately mitigated.

In resolving double counting through labelling in public registries, it may actually deliver a form of unitised certificates. Including a hectare equivalence of restoration and habitat type to the ACCUs issued, when combined with the ability to 'Deposit' certificates into a Commonwealth account, could deliver fungibility and a standard metric for habitat restoration through the ACCU market (e.g. 1000 ACCU is = ~1hectares of rainforest restoration).

As this is not a perfect measure of biodiversity outcomes, it is likely to be more suited to the voluntary market, and less suited to environmental offsetting. Delivering this outcome would require ACCUs to be issued at the Carbon Estimation Area (CEA) level, to enable different habitats to be separated in the carbon registry.

Climate Friendly recommends:

4. **Mandatory labelling of Australian Carbon Credit Units (ACCUs) and nature repair certificates in the relevant public registries as follows:**
 - **ACCUs without an associated nature repair certificate.**
 - **ACCUs associated with a nature repair certificate that has not been deposited with the Regulator.**
 - **ACCUs with a deposited nature repair certificate (so nature repair is stapled to the ACCU). This could also benefit from including a hectare equivalence of restoration in the ACCU registry (e.g. if 1000 ACCUs are equivalent to 1 ha of restoration of the vegetation type).**
 - **Nature repair certificates that include ACCU generation.**
 - **Nature repair certificates that do not include ACCU generation.**
5. **A move towards issuing ACCUs at the CEA level, rather than project level issuances. This will enable separate habitat types to be issued units with adequate labelling.**

Alignment with carbon regulation

The proposed Nature Repair Market Bill and the Carbon Farming Initiative Act (CFI Act) have been developed from the same base legislation and seek to achieve similar outcomes on the ground. This has resulted in similar legislation and steps in delivering projects. The Nature Repair Market intends to leverage the financial benefits of carbon farming to drive nature repair. To efficiently achieve this, it is critical that the two laws are not just similar, but are developed with detailed consideration of regulatory efficiency for market participants. As the draft Nature Repair Market Bill stands, it is not sufficiently aligned with the CFI Act, and will result in inefficient regulation that will drive higher costs in delivering nature repair.

Mutual recognition and mirroring of tasks

The Nature Repair Market Bill and CFI Act have nuanced differences in key legislative tasks that have similar or largely the same intent. What may appear to be relatively minor divergence in requirements will result in duplication of tasks in project registration, consents, Fit and Proper Person assessments, reporting and auditing.

Timing of tasks

The Nature Repair Market Bill has no clear way to align the timing of project registration, consents, Fit and Proper Person assessments, reporting and auditing with CFI Act steps. Without aligned timing of key steps in nature repair projects that include carbon farming projects, there will need to be duplicative reporting and auditing throughout the life of the project. However, this does not have to be the case. Climate Friendly recommends that a review of the legislative drafting of both the Nature Repair Market Bill and CFI Act occurs to ensure timing is aligned wherever possible.

Native Title alignment

The Bill includes Native Title elements that are not in alignment with the CFI Act. Given the Chubb Review of the CFI Act has also recommended changes to Native Title elements of the law, it would appear timely to work on an aligned best practice system for gaining consents. Development of mis-aligned Native Title elements across the two laws would result in delay and additional impost on Traditional Owners and land managers.

Climate Friendly recommends:

6. **The CFI Act and Nature Repair Market Bill could be compressed into a combined Nature Repair and Carbon Farming Act.**
7. **Or a detailed review is required to consider where legislative elements can be mirrored, tasks mutually recognised and timing aligned. Areas to consider include Fit and Proper Person requirements, consents, registration timing, reporting timing, auditor requirements and audit scope.**

Audits

The Nature Repair Bill proposes that audits are an option for inclusion within specific methods, rather than required for all projects. Independent audits are aimed at ensuring integrity and trust in environmental markets. Without trust in the environmental outcomes of nature repair certificates, they will have limited value to the market. An alternative to individual project audits may be process-based audits of systems that are applied to groups of projects. Project based audits are relatively expensive as they are applied to each individual project. Process based audits are lower cost as the audit of systems can cover multiple projects at once. The Clean Energy Regulator could be provided the power to determine whether individual audits or process-based audits are most suitable to address the level of compliance risks.

Climate Friendly recommends:

8. **Third party independent project-specific audits or process-based audits should be a mandatory requirement across the entire scheme at its inception, rather than left to a decision during method development.**
9. **The Clean Energy Regulator should be empowered to deliver integrity through either project specific audits or process-based audits where appropriate.**

Compliance and enforcement powers

The NRM Bill has effectively lifted the compliance and enforcement powers from the CFI Act. These compliance and enforcement tools are designed for a market of fungible units that are issued at regular intervals over a projects life, rather than project level certificates that are issued once at the start. This has resulted in the compliance and enforcement tools being suited to unitised certificates, but not being fit for purpose for single project certificates.

For example, it is unclear how a cancellation of a certificate can be easily assigned to a single unique certificate that may have already been on sold several times. How would the project proponent be penalised, rather than the current holder of the certificate? If the project proponent had to 'make good' to a buyer who had their certificate cancelled, how would the project proponent be able to source an equivalent certificate to make good, noting they are all unique? Who would decide if they are equivalent? These situations are likely to arise, but do not appear easily reconcilable under the current legislation. The proposed compliance and enforcement tools appear less problematic if the legislation was to focus on creating fungible unitised certificates that are issued over time.

Climate Friendly recommends:

10. **That a review of compliance and enforcement powers be undertaken that considers worked examples of how powers would be successfully applied to single project certificates, unitised certificates and ACCU stapled certificates.**

Enabling method innovation and co-design

The Nature Repair Market Bill does not appear to include a clear path for third parties to be accredited through process-based auditing to undertake assurance roles. Given the Nature Repair Market Bill is being formed after a range of other biodiversity schemes and systems have formed outside the Federal Government, it would appear beneficial to consider better ways to utilise the existing expertise outside of the Federal Government. For example, it would appear possible for organisations such as Accounting for Nature or State and Territory biodiversity schemes to continue their role of assurance monitoring of nature projects with the Federal Government having oversight of endorsing their processes and outcomes.

Climate Friendly recommends:

11. **The Nature Repair Market Bill include powers for the Clean Energy Regulator to endorse third parties to undertake assurance roles through a system of process-based audits.**

Ability for third party method proposals

The Chubb Review has proposed 'proponent led' method development under the CFI Act. Climate Friendly understands the intent of the Chubb Review to be 'third party proposed', rather than

'proponent led' method development, with the Federal Government still having the central role in drafting and consultation on proposed methods. The intent of this change is to help guide method development to areas of interest in the private sector, and to ensure methods can be practically applied once finalised. This approach is supported by the large number of government led carbon methods that have rarely delivered the expected volume of carbon projects.

The Nature Repair Market Bill and the CFI Act presently do not include clear requirements for each schemes method development processes to align measurement and reporting requirements where possible. It may be possible to include a principle within the Nature Repair Market Bill that require consideration of alignment with carbon methods wherever practicable.

Climate Friendly recommends:

12. **The Nature Repair Market Bill should consider alignment of method prioritisation and development processes with that recommended by the Chubb Review. The process should clearly outline how both industry, and scientific knowledge and other expertise are incorporated into the method development process to ensure methods are both supported by science, and able to deliver actual projects on the ground.**
13. **The Nature Repair Market Bill should include a principle for method development to consider alignment with associated carbon project methods where practicable.**

Australian Bureau of Statistics (ABS) should house a single national carbon, environment and agricultural database

Transparency of information is key to trust and integrity in both the carbon and future nature repair market. There would also be greater value in the information collected under both schemes, and agricultural production, being stored and made available within a single system. The integration of agriculture, carbon and nature information in one trusted and independent system is key to understand the relationships and causes of nature improvement and decline. The 2023-24 Federal Budget include substantial separate financial allocations for data collection and systems within water monitoring, ABARES, Environment Information Australia and the Greenhouse gas inventory. These budget allocations would provide more powerful outcomes if these systems and data collections were developed in a coordinated way and stored in an integrated information system. The ABS is well placed given its independence and current data collection systems in agriculture.

Climate Friendly recommends:

14. **Data and transparency requirements proposed by the Chubb Review are considered when developing the systems for the Nature Repair Market.**
15. **A single data sharing system be developed by the ABS for carbon, and nature repair, water and agriculture. This integrated information system could be funded through the multiple relevant funding allocations within the 2023-24 Federal Budget.**