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For environment, farming and society.

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Submission to the Environment and Communications Legislation Committee

Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]

The Mulloon Institute welcomes the opportunity to provide a submission on the above bill and amendments. This submission provides a short introduction to the Mulloon Institute (TMI) and a summary of the challenges and opportunities for the Nature Repair Market Bill along with some specific recommendations to be considered in finalising the bill.

Introduction

TMI welcomes the premise of the bill as outlined in the Nature Repair Market Bill factsheet.

The Australian Government is developing a nature repair market to make it easier for businesses, organisations, governments and individuals to invest in projects to protect, manage and restore nature.

- TMI works with farmers and natural resource managers to deliver on ground projects and capacity building to protect, manage and restore nature across the country.

The Mulloon Institute (TMI) is Australia's premier scientific organisation in Landscape Rehydration and regeneration. Its work focuses on capturing and retaining water in the landscape, through identifying and restoring hydrological processes using physical interventions and regenerative land management approaches. As a not-for-profit organisation, TMI carries out landscape repair and rehydration of catchments, by sharing regenerative land management practices, monitoring the outcomes and educating farmers and land managers on these practices. TMI has its own commercial farm comprising 2,500 hectares that acts as a demonstrator, located on the southern tablelands of NSW near Bungendore, around 40 minutes east of Canberra. TMI has also established demonstrations in the reef catchments in Nth Queensland, in SW Western Australia, in the Northern Territory and on the Northern tablelands of NSW.

Landscape Rehydration projects, also known as 'natural infrastructure', 'conservation earthworks' and 'nature-based solutions,' can transform vast areas in just a few years. These projects use soil, rocks, logs, vegetation and adapted management to slow the flow of water and repair 'landscape function': the patterns and processes by which a landscape retains and uses its vital resources as a biophysical system. Compelling scientific evidence is building global momentum for these solutions. Their multiple benefits truly stack up: they mitigate flood risk, foster drought tolerance, sequester carbon, control erosion, drive habitat recovery and filter pollutants from our drinking water. They are low-cost, low-tech and have negligible greenhouse gas emissions. They can also be scaled from a single erosion gully to the landscapes of an entire catchment.

This submission is informed by TMI's experience in delivering projects on the ground across Australia that help farmers restore and build their natural capital and biodiversity. Challenges and opportunities for the Nature Repair Market Bill (the Bill) are outlined below.

Opportunities

Integrity

Integrity of a biodiversity market scheme will be critical to its success. We have a greater understanding of the opportunities for nature based markets through the Chubb review into the Australian Carbon Credit Unit (ACCU) scheme. Key among recommendations to improve the scheme that may have real relevance to the Bill include:

- clearly identify (and separate) the key roles of integrity assurance, regulation and administration
- proponent lead method development
- to remove unnecessary restrictions on data sharing
- to improve information and incentives, including in relation to non-carbon benefits and attributes
- ensure adequate resourcing

The keys for market success:

- confidence,
- transparency,
- simple measures of success and
- easy entry.

These reflect Minister Plibersek's platforms of trust integrity and efficiency. Recommendations from the Chubb review highlight the importance of integrity and confidence in the market. These guiding principles may assist in finalisation of the Bill.

Links to Policy

It is encouraging to see the objects of the bill linked to satisfying Australia's international obligations in relation to biodiversity.

In order to assess if the bill is meeting those obligations it would be ideal to link assessment of projects to [Australia's Strategy for Nature 2019-2030](#).

Links to the EPBC Act

The Nature Positive Plan (DEECCW 2022) sets out a response to the Samuel review of the EPBC Act 1999. The plan is a welcome development and sets the scene for new National Environmental Standards that will: *set out the environmental outcomes that our laws are seeking to achieve. The establishment of standards will underpin our environmental law reforms*

The link and interaction between the revised EPBC Act and the Bill are currently unclear. As a result, the relationship between offsets and certified projects in the Bill has not been made explicit (transparency).

A key opportunity here is to separate:

- biodiversity offsets (compensatory mechanism) that would sit under the EPBC Act and
- biodiversity projects focussed on nature repair (stewardship that focusses on gains for biodiversity) that would sit under the Bill.

It maybe that explanation of these links and interactions are not possible until the revised EPBC Act is available.

Caution required

There is the danger that this Bill may pre-empt the EPBCA reforms, processes within the CER triggered by the Chubb Review, and the functions of the new EPA.

Link to mitigation of climate change

The Nature Positive plan also sets out the interrelated nature of outcomes we are hoping to achieve with regulatory reform and National Environmental Standards, including climate considerations.

There is an opportunity to link the bill to outcomes for the mitigation of climate change that is currently not explicit in the objects or content of the bill.

Co-benefits for Climate Change Adaptation

Biodiversity projects can have **co-benefits** for restoring climate resilient landscapes that are more productive and are resilient to drought to bushfire and to flood. The repair of landscape function can see environmental and agricultural outcomes achieved together on farm for the benefit of farmers the agricultural industry, the environment, traditional owners and rural communities. Restoration of landscape function through landscape rehydration is an **adaptation to climate change** a key co-benefit (and outcome) of this approach.

Currently the Bill has not made the link to these **integrated benefits** that can and should form part of the positive climate change outcomes of any biodiversity project as defined under the bill.

Funding

There is potential for a nature repair market to **fund** large scale biodiversity repair and restoration projects across the country. However, as TMI has seen with the carbon market the potential has yet to be realised. This opportunity may need to be explored further and support offered around aggregation and the delivery of projects.

Method Development

It will be critical in the development of methods for biodiversity projects that proponents – farmers and natural resource managers (including not for profits like TMI and businesses who work directly with farmers) are stakeholders. It makes sense to have those whose core business is the management of biodiversity involved in the development of methods for protection management and restoration. This also reflects the proponent led method development recommendation from the Chubb review.

A number of accreditation schemes for methodologies to measure biodiversity already exist and are active in Australia and Internationally (see methods accredited by Accounting for Nature), careful consideration of how these might be adopted or incorporated into the bill will be of benefit.

Challenges

Funding

Lessons from the ACCU scheme reveal the high cost of entry is a disincentive for involvement. TMI had hoped that those seeking carbon credits may be willing to provide up front costs of carbon projects including landscape restoration. This has not been the case and indeed agreements with farmers favour project developers adding a further disincentive to market entry. The need for integrity so everyone can prosper is important and basic standards around agreements between landholders and biodiversity project developers could assist.

Offsets

It is unclear if the offset mechanism will be used in this legislation, this is of concern particularly before the new EPBCA is published. It is recommended the use of the offset mechanism is not used in this legislation but that should be made clear either way.

Biodiversity Integrity Standards

The language in the Bill around the Ministers compliance with Biodiversity integrity standards needs to be strengthened.

As per the recommendations of the Chubb review into the Australian Carbon Credits (ACCU) scheme there needs to be separation of the key roles of integrity assurance, regulation and administration. It would be preferable to have the new Federal EPA undertake integrity checks rather than the Clean Energy Regulator.

Appropriately qualified auditors

Part 11 of the Bill proposes the use of auditors registered under the National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Act) and associated Regulations. This is a different skill set to that required to assess Biodiversity projects. Auditors used under the proposed nature repair market scheme should be required to have relevant expertise (degree qualifications and experience) in landscape restoration, environmental restoration, ecology and/or biodiversity.

Appropriate standards

Biodiversity integrity standards are critical to the success of the scheme. The bar must be set high for Biodiversity projects under the scheme. Standards based on 'no net loss' are bound to fail - projects should only be certified if they contribute to maintenance, protection and enhancement of biodiversity values.

Many Moving Parts: State based regulations

s 17, which requires State and Territory regulatory approvals for planning, environment and water to have been obtained before a project can be registered.

In our experience state based regulations can derail nature positive projects due to costs and time requirements. The need for a myriad of expert reports to satisfy regulators are costly and time consuming and beyond the reach of most farmers. These reports can for example trigger in NSW the biodiversity offset scheme and result in the need for credits to offset actions that are aiming to improve the habitat for the very species that end up requiring credits. This is a perverse outcome of the regulations that requires a new approach to ensure state based regulations can be acknowledged and addressed but not applied to projects that seek only to restore and repair landscapes and habitats.

The Mulloon Institute has identified a way forward to address the avalanche of state based regulations that could stop biodiversity projects in their tracks.

A 'Code of Practice' is a tried-and-tested way of integrating standards into a coherent compliance framework. Such codes are common in many sectors, e.g. National Construction Code, and Safe Work Australia's Code of Practice. A 'National Code of Practice for Landscape Rehydration and Regeneration' could incorporate regulatory safeguards around biodiversity, water quality and Aboriginal cultural heritage into a single governing instrument.

A single agency such as the Natural Resource Access Regulator (NSW) or Clean Energy Regulator could be responsible for ensuring compliance. This would relieve other agencies of costly administration, freeing them



to work proactively with communities on code-compliant projects. Furthermore, an integrated national code with standards would align with the paradigm of 'adaptive management' that is now widely embraced as a strategic way to govern in the face of climate risk and uncertainty. Under a National Code of Practice, landholders who conduct Landscape Rehydration and Regeneration in accordance with the Code should be excused from the need to seek consent for the work from State- based regulatory bodies.

Yours sincerely,



Carolyn Hall
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The Mulloon Institute