



HUMANE SOCIETY INTERNATIONAL

AUSTRALIA

Humane Society International Ltd

ABN 63 510 927 032

PO Box 439, Avalon NSW 2107, Australia

Telephone +61 2 9973 1728

Facsimile +61 2 9973 1729

Email admin@hsi.org.au

www.hsi.org.au

Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions] 26 May 2023

About Humane Society International

Humane Society International (HSI) is the world's largest animal protection organisation and HSI Australia established our office in 1994. We work to create a humane and sustainable world for animals advocating across wildlife conservation and animal welfare policy areas. HSI Australia also coordinates a national network of 800+ wildlife carers and sanctuaries on private land called the Wildlife Land Trust.

Our vision is for a world where people treat animals and nature with respect and compassion.

Submitted to:

Committee Secretary

Senate Standing Committees on Environment and Communications

PO Box 6100

Parliament House

Canberra ACT 2600

By email: ec.sen@aph.gov.au

For further information on this submission, please contact:



US Office Washington DC

Regional Offices Africa • Canada • Europe • India • Latin America • Mexico • United Kingdom



Executive Summary

Humane Society International Australia (**HSI Australia**) believes that encouraging private investment into nature conservation is needed if we are to reverse the current extinction crisis. However, corporate and private investment should not be seen as a substitute for greatly increased public funding of environmental protection and restoration.

In that context, HSI Australia welcomes the intention of the *Nature Repair Market Bill 2023* and *Nature Repair Market (Consequential Amendments) Bill 2023* [Provisions] (**NR Market Bills**) to facilitate private investment in nature, however we have significant concerns about the priority being given to the NR Market Bills in light of the current status of *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) reform, potential linkages between the Nature Repair Market (**Market**) and offsets systems, and the risk that the Market will fail to deliver meaningful environmental outcomes as a consequence of the limitations in the NR Market Bills.

HSI Australia makes the following recommendations in relation to the NR Market Bills:

Recommendation 1: The NR Market Bills must explicitly exclude the possibility of the Market being used to fund offsets. This could be implemented by prohibiting offsets through the Biodiversity Integrity Standards.

Recommendation 2: The NR Market Bills must include a requirement for the development of an overarching biodiversity restoration strategy to help guide private investment in nature.

Recommendation 3: Environment Protection Australia (EPA) should be the Regulator for the Market. If it is not the Regulator, the EPA must be given an integrity assurance function.

Recommendation 4: When rules are developed that will influence the integrity of the Market or guide the environmental outcomes to be achieved by the Market, these rules must be subject to review by Nature Repair Market Committee and to public consultation.

Recommendation 5: Object a) should be amended to “to promote the enhancement, restoration or protection of native biodiversity in Australia”.

Recommendation 6: In-perpetuity protection should be the main ‘permanence period’ required under the Act and there should be no ‘permanence periods’ shorter than 100 years.

Recommendation 7: The term ‘permanence period’ should be replaced by ‘certificate period’ and clear rules must be established for when a particular ‘certificate period’ will be applied.

Recommendation 8: The definition of ‘project’ should include the environmental outcome intended to be delivered by the project.

Recommendation 9: Projects must be required to undertake any necessary maintenance activities for the full duration of the ‘permanence period’.

Recommendation 10: Where it is necessary for the Regulator to implement a biodiversity maintenance declaration, the declaration must not be removed until the biodiversity outcomes have been secured.

Recommendation 11: An application must be required to include the biodiversity outcome that is intended to be achieved by the project.

Recommendation 12: An application must be required to be accompanied by a project plan.

Recommendation 13: An unqualified matter of ‘land access for agricultural production’ should not be included as a matter that must be considered when making rules on whether a project will have a material adverse impact. If this provision is maintained, there should be additional clarity around the scale at which the assumed risk may materialise.

Recommendation 14: Projects that rely on the concept of ‘avoided loss’ to claim biodiversity outcomes should be excluded biodiversity projects.

Recommendation 15: Biodiversity certificates must be linked to biodiversity outcomes that are specified in a methodology determination, both to ensure environmental outcomes are delivered and the Market can better understand the differences between biodiversity certificates.

Recommendation 16: The Minister should not be permitted to have regard to agricultural, economic or social impacts when deciding whether to make a methodology determination.

Recommendation 17: If a methodology is varied before biodiversity credits have been issued, it should apply to all existing registered biodiversity projects.

Recommendation 18: Projects should aim to deliver resilient ecosystems. Rules for methodology determinations should include additional requirements that establish minimum standards for determining environmental baselines and associated restoration success.

Recommendation 19: Each biodiversity certificate (or carbon credit) issued for a single site must demonstrate verifiable additional environmental gains that are appropriate for the location.

Recommendation 20: Allow for all information from approved projects to be used in the review of methodology determinations.

Recommendation 21: The Minister should not be able to direct the Nature Repair Market Committee to take into account factors that are not related to biodiversity outcomes in their consideration of a methodology.

Recommendation 22: The time limit for consultation by the Nature Repair Market Committee should not be shorter than 28 days.

Recommendation 23: Biodiversity Integrity Standards should be amended to require that biodiversity projects carried out in accordance with a methodology determination result in enhancement, restoration or protection of biodiversity in native biodiversity, including both species and ecological communities.

Recommendation 24: The Biodiversity Integrity Standards should include an explicit requirement that rules developed under s. 57 can not weaken the Biodiversity Integrity Standards or require socio-economic considerations to be included in methodologies.

Recommendation 25: Biodiversity certificates should only be issued where there is demonstrated scientific knowledge on achieving the stated biodiversity outcomes with a high confidence of success in the identified timeframe, and the long-term maintenance of the project is assured.

Recommendation 26: There should be a requirement that works completed in order to obtain a biodiversity certificate will not negatively impact native biodiversity outside the project area.

Recommendation 27: The Australian Government should not engage in purchase through the Market and should instead invest directly in protecting and restoring Matters of National Environmental Significance.

Recommendation 28: At a minimum, short annual reports with more in depth reviews no more than five years apart are necessary to ensure projects are delivering environmental outcomes. There should be no exemptions to reporting requirements or alternative assurance agreements in the absence of a minimum standard for these agreements.

Recommendation 29: Market auditors must be required to have biodiversity management and auditing experience.

Recommendation 30: Auditors must be appropriately empowered to review whether project proponents are implementing project plans in line with relevant methodologies, including entering properties to view the works being undertaken.

Recommendation 31: Methodology determinations and relinquishments must avoid a situation where all of the risk of project failure is borne by the environment.

Recommendation 32: The ability to comply with a relinquishment requirement by relinquishing equivalent biodiversity certificate or certificates from another location must be removed from the Act.

Recommendation 33: Provisions allowing third parties to take enforcement action should be added to the Act.

Recommendation 34: Integrity and government should be strengthened ensuring that the Regulator holds all relevant project information, that overseas offences are a mandatory consideration in the fit and proper person test, and that penalties are larger than the potential gains from committing offences under the Act.

Introduction

HSI Australia welcomes the opportunity to provide this submission to the Senate Standing Committees on Environment and Communications inquiry into the *Nature Repair Market Bill 2023* and *Nature Repair Market (Consequential Amendments) Bill 2023* [Provisions] (**NR Market Bills**).

HSI Australia has extensive experience with private land conservation and management through its Wildlife Land Trust, a network of national sanctuaries on private lands dedicated to wildlife and habitat protection. The Wildlife Land Trust includes a system of grant based funding to conservation land managers, giving us a unique insight into the challenges faced by these land managers and the need for external support to deliver a public good – namely improved environmental protection.

HSI Australia believes that encouraging private investment into nature conservation is needed if we are to reverse the current extinction crisis. However, corporate and private investment should not be seen as a substitute for greatly increased public funding of environmental protection and restoration.

In that context, HSI Australia welcomes the intention of the NR Market Bills to facilitate private investment in nature. However, we have significant concerns about the priority being given to the NR Market Bills in light of the current status of *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) reform, and the risk that the Nature Repair Market (**Market**) will fail to deliver meaningful environmental outcomes as a consequence of the limitations in the NR Market Bills. These issues are explored in more detail below using the framework of the NR Market Bills.

Overarching comments

OFFSETS

HSI Australia believes that it is crucial that the Market is not used to generate biodiversity offsets. Offset programs are designed to compensate for the ongoing destruction of nature, wildlife and their habitats. The Market must remain focused on the delivery of proactive environmental gains, addressing historical environmental damage. This is one of the core principles expressed in the World Economic Forum (WEF) Consultation Paper *High-Level Governance and Integrity Principles for Emerging Voluntary Biodiversity Credit Markets* (**Consultation Paper**).¹ The Consultation Paper highlights the importance of this issue by beginning with the statement:

“The current biodiversity credits market has originated from two decades of practice across a range of different approaches. One lesson learned from this experimentation

¹ https://www3.weforum.org/docs/WEF_Biodiversity_Credits_Markets_Integrity_and_Governance_Principles_Consultation.pdf

is the essential need for clarity on the difference between biodiversity offsets and biodiversity credits”.

The Market must not be set up to fail by conflating it with an offset program or an offset payment program.

Recommendation 1: The NR Market Bills must explicitly exclude the possibility of the Market being used to fund offsets. This could be implemented by prohibiting offsets through the Biodiversity Integrity Standards.

BIODIVERSITY RESTORATION STRATEGY

To guide environmental outcomes and support Market development, HSI Australia recommends that the NR Market Bills should mandate the development of an overarching biodiversity restoration strategy. This strategy would identify priority areas and targets for biodiversity restoration that could be supported by the Market. It would also assist investors to understand which actions are being prioritised through the Market, such as actions required by threatened species and ecological community Recovery Plans, and whether the Market is assisting private landholders to better manage critical habitat and threatened ecological communities on their land.

Recommendation 2: The NR Market Bills must include a requirement for the development of an overarching biodiversity restoration strategy to help guide private investment in nature.

GOVERNANCE

The NR Market Bills should be amended to require stronger ecological oversight. HSI Australia does not support the Clean Energy Regulator being the Regulator for the Market. In our opinion, this role would be better placed in the new Environment Protection Australia (**EPA**). Having the key environmental regulator responsible for regulation of the Market will ensure governance of the Market is informed by appropriate expertise. This will be important for enhancing community trust in the operation of the Market.

If the Clean Energy Regular remains the Regulator, the EPA must have an integrity assurance function and the Department of Climate Change, Energy, Environment and Water (**DCCEEW**) must remain responsible for policy development. *Nature Repair Market (Consequential Amendments) Bill 2023* [Provisions] provides for the addition of agriculture and biological or ecological science expertise to the Clean Energy Regulator. However, the number of members that may be appointed to the Clean Energy Regulator has not been increased, and there is no requirement for any members of the Clean Energy Regulator to have substantial experience or knowledge and significant standing in the new fields.

Recommendation 3: Environment Protection Australia should be the Regulator for the Market. If it is not the Regulator, the EPA must be given an integrity assurance function and the Regulator must be required to have at least one member with substantial experience or knowledge and significant standing in biological or ecological science.

As explained further below, we do not support DCCEEW having a role in purchasing biodiversity certificates, as this risks Government intervention significantly distorting the Market. We further note that under the NR Market Bills, the Secretary can delegate all functions to the Regulator, including purchasing of biodiversity certificates. This creates a significant risk of conflict of interest within Government's role in the Market, and is inconsistent with the recommendations of recent independent review of Australian Carbon Credit Units,² namely that:

The respective roles of scheme assurer, scheme regulator and related policy development should be clear, undertaken by visibly separate bodies, and each function resourced sufficiently to play its role effectively in administering the scheme and supporting well-functioning carbon offset markets.

There are a number of key Market features that the NR Market Bills defer to rules that will be developed subsequent to the passing of the legislation. In some cases, these rules relate to administrative matters, which can be appropriately dealt with by the Market Regulator. However, some rules relate to matters that will substantively affect the operation of the Market and the subsequent biodiversity outcomes that can be achieved, for example rules related to methodology determination variations, relinquishment and alternative assurance agreements. Where rules will guide the environmental outcomes to be achieved by the Market, or relate to the integrity of the scheme, the development of these rules must be subject to review by Nature Repair Market Committee and to public consultation.

Recommendation 4: When rules are developed that will influence the integrity of the Market or guide the environmental outcomes to be achieved by the Market, these rules must be subject to review by Nature Repair Market Committee and to public consultation.

Objects

HSI Australia has two key concerns with the objects as expressed in the NR Market Bills.

Object a) is currently expressed as "to promote the enhancement or protection of biodiversity in native species in Australia". In our view, the Market should include an objective of **restoration** of biodiversity, not just enhancement or protection. The language of 'restoration' should also be reflected where appropriate throughout the Act, including in relation to methodologies. Enhancement should be defined in the Act to

² Chubb, I., Bennett, A., Gorring, A., Hatfield-Dodds, S., 2022, Independent Review of ACCUs, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.

ensure that it is clear that it is referring to enhancement of native ecosystems (rather than introducing new biodiversity to a region, for example). Further, the reference to native species is inappropriately limiting. The objects should be expanded to include native ecological communities and ecosystems.

Recommendation 5: Object a) should be amended to “to promote the enhancement, restoration or protection of native biodiversity in Australia”.

In HSI Australia’s view, object b) can not be achieved under the Market framework established by the NR Market Bills. The Market will only contribute to meeting Australia’s international obligations in relation to biodiversity if the environmental gains come with permanence of protection. The current proposal for 25 or 100 year or other ‘permanence periods’ does not guarantee that any environmental gains will persist into the future. Therefore those gains can not be relied on to deliver Australia’s international obligations, particularly in regards to protected areas. The lack of permanence also creates a risk for investors. A market that simply defers environmental harm to a later date, or that will fail to deliver long-term environmental outcomes, such as the creation of tree hollows, risks exposing companies that have invested in these environmental works to claims of ‘greenwashing’. Establishing a market that does not include permanence of protection may also create a perverse outcome in that people may not engage in other mechanisms for private land protection that require genuine permanence of protection. This will have a significant impact on the Government’s ability to deliver protection of 30% of ecosystems by 2030.

Recommendation 6: In-perpetuity protection should be the main ‘permanence period’ required under the Act and there should be no ‘permanence periods’ shorter than 100 years.

The Explanatory Memorandum for the *Nature Repair Market Bill 2023* claims that the Bill will “create a nationally consistent framework to describe and measure biodiversity outcomes”. However, this intention is not reflected in the Objects nor the body of the NR Market Bills. More importantly, if the NR Market Bills were designed to achieve this objective they would require a much more comprehensive process for measuring biological processes that result from the project activities than is currently envisaged by the NR Market Bills. As it currently stands, at best, the Market will provide a conduit for funding from third parties for landholders to undertake positive biodiversity related activities and measuring whether these works have been completed successfully. This is a useful goal but is substantially different from creating a nationally consistent framework to describe and measure biodiversity outcomes.

Definitions

As noted above, the current definition of ‘permanence period’ provides no certainty that the proposed biodiversity outcomes will be achieved or have any form of permanence, particularly given that methodologies are able to determine their own permanence period if they apply a Type C permanence period. HSI Australia believes that the default

permanence period should be in perpetuity and there should be clear rules for when any other permanence period is applied.

During Market consultation sessions, DCCEEW indicated that it was not possible to require in perpetuity permanence periods because this was not within the control of DCCEEW. However, this must be within the control of a project proponent if they have appropriate permission to conduct the project. The NR Market Bills already envisage applying conditions to projects that require project proponents to obtain consent for certain activities from state or territory jurisdictions or third parties. Project permanence could be one of these conditions. The failure to require in perpetuity protection creates a significant risk for buyers who have no certainty that a project will continue to be maintained, particularly in light of the fact that projects are cancelled at the end of the 'permanence period', leaving landholders free to completely reverse any biodiversity gains.

Although the methodology determinations are required to apply a Type A (25 years), Type B (100 years) or Type C (other) permanence period, the NR Market Bills provide no clarity on when to apply what type of permanence period and it appears that there will be some degree of proponent discretion for some methodology determinations. The length of the permanence period is fundamental to understanding the biodiversity outcomes that could be achieved through the Market and more up-front guidance on permanence periods should be required.

Given the concerns expressed above, the use of the 'permanence period' is potentially misleading. A term such as 'certificate period' would be more appropriate, and clear rules must be established for when a particular permanence period will be applied.

Recommendation 7: The term 'permanence period' should be replaced by 'certificate period' and clear rules must be established for when a particular 'certificate period' will be applied.

For the Market to deliver meaningful environmental outcomes, the definition of 'project' must be expanded beyond simply 'project activities' to include the biodiversity outcome that is sought by the project. While providing support for landholders to simply undertake land management activities that support native biodiversity is itself a valid goal, this is not the stated intention of the Act, nor is it the same as supporting landholders to deliver long-term environment outcomes on ground. As noted in the WEF Consultation Paper:

"... buyers need clear guidance in relation to the claims that are made to the market arising from their credit purchases, to ensure they are not subject to later claims of "greenwashing" for linking their positive support of nature (through purchasing biodiversity credits) to their negative impact, if any, on nature."

Recommendation 8: The definition of 'project' should include the environmental outcome intended to be delivered by the project.

The risks created by not identifying the environmental outcome to be delivered by the project is enhanced by the interaction of this definition with the definitions of 'activity period' and 'permanence period'. Each project must specify its 'activity period' but there is no requirement in the NR Market Bills for activity period to cover the full 'permanence period'. While it is reasonable to expect that the majority of activities will occur early in the life of a project, for the biodiversity outcomes to be maintained over the life of the 'permanence period', ongoing management and maintenance will inevitably be required. Without an obligation to maintain these activities for the life of the permanence period, it is unclear how the Market can have any certainty that the biodiversity outcomes will be maintained for the full 'permanence period'. Provisions that allow the creation of a 'biodiversity maintenance area' requiring a project proponent to undertake further works, only appear to apply where the Regulator has identified a failure on the part of a project proponent **and** the project proponent refuses to relinquish the biodiversity certificate. Even if a biodiversity maintenance declaration applied, the Regulator then has discretion to remove the declaration irrespective of whether the project has fulfilled its obligations.

Recommendation 9: Projects must be required to undertake any necessary maintenance activities for the full duration of the 'permanence period'.

Recommendation 10: Where it is necessary for the Regulator to implement a biodiversity maintenance declaration, the declaration must not be removed until the biodiversity outcomes have been secured.

Application Information

Section 12(2) on the requirements for an application does not require identification of the biodiversity outcome to be achieved. Such a requirement is important to ensure there is a strong link between the initial application and the biodiversity outcome the project is designed to ultimately deliver. This will also be important to help potential investors understand the environmental outcome that they can claim as part of their investment in the Market. If the Regulator approves the registration of the biodiversity project (s. 15(7)), the notice must also include the biodiversity outcome that the project is intending to achieve.

Recommendation 11: An application must be required to include the biodiversity outcome that is intended to be achieved by the project (s. 12(2)).

A project application must be able to demonstrate that the activities and outcomes being claimed can be achieved. This means that s. 12(3)(d) must require the inclusion of a project plan (rather than the provision of a plan being dependent on the methodology to be used). In the absence of a project plan, it is unclear how the Regulator could meet the criteria listed under s. 15(4) to determine whether the "carrying out the project is likely to result in a biodiversity certificate being issued in respect of the project".

Recommendation 12: An application must be required to be accompanied by a project plan (s. 12(3)(d)).

Excluded Biodiversity Projects

The proposal for 'land access for agricultural production' to be a matter that must be considered when making rules on whether a project will have a material adverse impact (s. 33(2)(f)) is not supported. While it is important that Australia retains a strong agricultural sector, humanely operated, there are currently a number of threatened ecological communities, and ecological communities that are significantly underrepresented in the reserve system, remaining in agricultural landscapes. It is entirely appropriate to pay landholders to manage these areas for conservation. If this provision is maintained, there should be additional clarity around the scale at which the assumed risk may materialise, i.e. projects on agricultural land would not constitute a risk unless there is a significant impact on agricultural production at a landscape scale.

Recommendation 13: An unqualified matter of 'land access for agricultural production' should not be included as a matter that must be considered when making rules on whether a project will have a material adverse impact. If this provision is maintained, there should be additional clarity around the scale at which the assumed risk may materialise.

To ensure that nature positive biodiversity outcomes are achieved, projects which constitute 'avoided loss' should not be permitted in the Market. That is, projects that seek to obtain a biodiversity certificate simply by not allowing land clearing which the proponent claims would have otherwise occurred, should be listed as an excluded biodiversity project.

Recommendation 14: Projects that rely on the concept of 'avoided loss' to claim biodiversity outcomes should be excluded biodiversity projects.

Methodologies

Methodologies must also specify the biodiversity outcomes the methodology is designed to achieve (s. 45). This will be crucial for ensuring that the Market can appropriately value the biodiversity certificates available for purchase.

The features of a successful market do not always align with the features of a successful biodiversity program, giving rise to a number of risks that must be managed through the Market. The first of these relate to cost – a market will seek the lowest cost outcome but implementing, and more importantly maintaining and restoring, biodiversity projects have minimum fixed costs. It will be necessary to ensure that the drive to make the market 'work' does not undermine the ability of landholders to deliver meaningful biodiversity outcomes over the long term. The Market must be given sufficient information to be able to support high quality work, and to understand that high quality work, which will deliver more meaningful environmental outcomes, is likely to be more

costly to deliver. The absence of this link creates a risk that the Market will focus on charismatic species or areas where the environment is already in reasonably good condition and where works to maintain biodiversity outcomes are likely to be least cost. Including the biodiversity outcomes being sought in the methodology determinations will help the Market to understand one aspect of price differentiation between biodiversity certificates.

Recommendation 15: Biodiversity certificates must be linked to biodiversity outcomes that are specified in a methodology determination, both to ensure environmental outcomes are delivered and the Market can better understand the differences between biodiversity certificates.

Agricultural, economic or social impacts are an inappropriate consideration in making a methodology determination. If the Act seeks to impose limitation around agricultural, economic or social issues associated with the Market, this should be done outside the framework for methodologies.

Recommendation 16: The Minister should not be permitted to have regard to agricultural, economic or social impacts when deciding whether to make a methodology determination.

Regular review and update of methodology determinations will be important for maintaining integrity in the Market. The recommendations of any reviews must be implemented immediately to ensure that methodologies that have been identified as problematic are not perpetuated.

Recommendation 17: If a methodology is varied before biodiversity credits have been issued, it should apply to all existing registered biodiversity projects (s. 49).

Rules for methodology determinations should specify additional key requirements including that assessment of a site baseline should be done under 'normal' conditions. This will ensure that natural responses to the end of a drought period, for example, are not sufficient to obtain a biodiversity certificate. Projects must also be appropriate to the local environment. This means that revegetation projects must target an appropriate local indigenous reference ecosystem. Where it is possible, encouraging natural regeneration should be preferred to tree planting. Projects must aim to restore a substantial proportion of the native biota found in an appropriate native reference ecosystem. Project methodology determinations must reflect the fact that equivalent environmental gains will require different management interventions and different target ecological communities, depending on the region in which the project is undertaken.

Projects should aim to deliver resilient ecosystems. This will require all ecosystem attributes to closely resemble those of a reference ecosystem and be self-replicating, without significant further intervention (although ongoing maintenance may still be required). A resilient ecosystem is also one that will be able to recover after a significant

impact such as drought or bushfire, with limited intervention. Documents such as the Society for Ecological Restoration Australasia *National standards for the practice of ecological restoration in Australia*³ should be used to inform the development of methodology determinations.

Recommendation 18: Projects should aim to deliver resilient ecosystems. Rules for methodology determinations should include additional requirements that establish minimum standards for determining environmental baselines and associated restoration success.

The ability to apply multiple methodology determinations and multiple biodiversity certificates (s. 67(2)(a)(ii)) to a single project area, and the potential to have a carbon project on the same project area, creates a significant risk of double counting environmental gains. The Market needs to ensure that each project creates additional biodiversity benefits, not only compared to business as usual but also to other funded projects. Any activities that generate a biodiversity certificate must be focussed on achieving locally appropriate biodiversity outcomes, rather than, for example, simply planting of local species to generate carbon credits.

Recommendation 19: Each biodiversity certificate or carbon credit issued for a single site must demonstrate verifiable additional environmental gains that are appropriate for the location.

As the Market evolves, it will be important for the methodology determinations to be reviewed for effectiveness. The NR Market Bills include provision for the review of methodology determinations but there is a potentially significant limitation on these reviews imposed through the establishment of 'protected information'. The Regulator is only permitted to disclose or use protected information that relates to a particular biodiversity project if more than seven years has passed since an application for approval of the registration of a biodiversity project. Efforts to ensure early effectiveness of the Market will be significantly hampered if information on projects less than seven years old can not be used in review.

Recommendation 20: Allow for all information from approved projects to be used in the review of methodology determinations.

Nature Repair Market Committee

The Minister should not be able to direct the Nature Repair Market Committee to take into account factors that are not related to biodiversity outcomes in their consideration of a methodology (s. 55). The Nature Repair Market Committee's consideration of methodology determinations and biodiversity assessment instruments (s. 64) should be limited to ecological consideration.

³ <https://www.seraustralasia.com/standards/National%20Restoration%20Standards%202nd%20Edition.pdf>

Recommendation 21: The Minister should not be able to direct the Nature Repair Market Committee to take into account factors that are not related to biodiversity outcomes in their consideration of a methodology.

To ensure meaningful consultation, the time limit for consultation should not be shorter than 28 days (s. 56(3)), and the Nature Repair Market Committee should be able to extend the consultation period for complex methodologies.

Recommendation 22: The time limit for consultation by the Nature Repair Market Committee should not be shorter than 28 days.

Biodiversity Integrity Standards

The Biodiversity Integrity Standards do not provide adequate certainty that environmental outcomes will be achieved. The requirement under s 57(1)(a) that “a biodiversity project carried out in accordance with the methodology determination **must be designed to result in** enhancement or protection of biodiversity in native species...” (our emphasis) rather than requiring a result provides no guarantee that Market investment will actually result in an outcome.

The Biodiversity Integrity Standards should also be strengthened to recognise the need for restoration, not merely enhancement or protection, for the full suite of native biodiversity, not just species. It should be specified that any rules developed under s. 57 can not weaken the Biodiversity Integrity Standards or require socio-economic considerations to be included in methodologies.

Recommendation 23: Biodiversity Integrity Standards should be amended to require that biodiversity projects carried out in accordance with a methodology determination result in enhancement, restoration or protection of biodiversity in native biodiversity, including both species and ecological communities.

Recommendation 24: The Biodiversity Integrity Standards should include an explicit requirement that rules developed under s. 57 can not weaken the Biodiversity Integrity Standards or require socio-economic considerations to be included in methodologies.

Biodiversity certificates

The threshold of ‘likely to result in’ biodiversity outcomes (s. 70(2)(f)) is too low a bar for the issuing of a certificate. In determining whether a biodiversity certificate should be issued, a requirement that the works will not negatively impact native biodiversity outside the project area should also be included.

Recommendation 25: Biodiversity certificates should only be issued where there is demonstrated scientific knowledge on achieving the stated biodiversity outcomes with a high confidence of success in the identified timeframe, and the long-term maintenance of the project is assured.

Recommendation 26: There should be a requirement that works completed in order to obtain a biodiversity certificate will not negatively impact native biodiversity outside the project area.

Biodiversity Conservation Contracts

HSI Australia is extremely concerned by the proposal to allow the Secretary to enter into Biodiversity Conservation Contracts as part of the Market (Part 6). Experience from NSW has shown that where Government agencies are a dominant buyer of biodiversity credits, they distort the market and inhibit market take up. Allowing the Secretary to become a purchaser of biodiversity certificates is a significant risk for the success of the Market.

Examples from NSW have demonstrated the ability for Government involvement in a market to drive extremely high prices early in market development and thereby prevent early take up, but also to create situations where prices are too low for landholders to obtain a sufficient price to deliver the environmental outcomes sought and avoid significant opportunity cost (as has been seen through the Biodiversity Conservation Trust). Including offsets the Market would significantly increase the risk of Government purchasing distorting the Market in ways that do not favour positive environmental outcomes.

Commonwealth investment in biodiversity outcomes should be targeting those areas and projects needed to protect and restore Matters of National Environmental Significance, and should support investment in those areas where the Market does not deliver sufficient environmental outcomes. This would more appropriately occur outside the Market framework.

Recommendation 27: The Australian Government should not engage in purchase through the Market and should instead invest directly in protecting and restoring Matters of National Environmental Significance.

Reporting and Auditing

Allowing up to five years between reporting and allowing exemptions for reporting is inappropriate (e.g. s. 102(3)), particularly for projects that have shorter 'permanence periods'. Biodiversity gains develop over time, actions will rarely have immediate benefits. If projects are not being undertaken in the timeframes envisaged by the project plan or methodology determination, then the biodiversity gains envisaged by the methodology determination will not be realised. Regular reporting is an appropriate check on the progress of project implementation. It is also inappropriate to permit alternative assurance agreements that avoid standard reporting requirements without any guidance or standards for what constitutes an appropriate alternative assurance agreement.

Recommendation 28: At a minimum, short annual reports with more in depth reviews no more than five years apart are necessary to ensure projects are delivering environmental outcomes. There should be no exemptions to reporting requirements or alternative assurance agreements in the absence of a minimum standard for these agreements.

It is highly inappropriate for an auditor to be required to be a “registered greenhouse and energy auditor”. Registered greenhouse and energy auditors can not be guaranteed to have sufficient ecological expertise to determine whether methodology determinations are being appropriately applied. While the NR Market Bills include amendments that allow individuals with agricultural or biological or ecological science expertise to become a registered greenhouse and energy auditor, there is no requirement that auditors with that experience must undertake the biodiversity audits.

Recommendation 29: Market auditors must be required to have biodiversity management and auditing experience.

The proposed auditing scheme also lacks integrity. The fact that auditors can not enter premises without landholder permission (s. 121) severely limits the ability to determine whether project activities are being conducted appropriately. Under the proposed auditing requirements, a Market participant who purchased a biodiversity credit in good faith can have no confidence that the work is actually being conducted and appropriately audited, and risks having certificates, which they may have relied on for their own sustainability reporting, being invalidated unless the Regulator brings more substantive action against a project proponent. This is particularly important in a situation where the Regulator can relinquish biodiversity certificates on the grounds of false and misleading information (s. 144(2)).

Recommendation 30: Auditors must be appropriately empowered to review whether project proponents are implementing project plans in line with relevant methodologies, including entering properties to view the works being undertaken.

Relinquishment notices

There is also a significant issue in relation to who bears the risk of project failure. In a scheme where a project generates biodiversity certificates that are sold at a point in time, it is easy to envisage a situation where works are undertaken, the certificate transaction is complete, but the project actions are undermined by an event such as a major bushfire before the works have had time to support the development of a resilient ecosystem. While this might constitute a successful market trade, it does not deliver an environmental outcome. This risk is amplified by the fact that in some circumstances the biodiversity certificates can be relinquished at the discretion of the Regulator without any apparent limitations.

Recommendation 31: Methodology determinations and relinquishments must avoid a situation where all of the risk of project failure is borne by the environment.

The ability for a project proponent to comply with a relinquishment requirement by relinquishing equivalent biodiversity certificate or certificates is a concept that has clearly been transferred from the operation of the carbon market with no recognition that biological systems are fundamentally different to a system that trades in carbon dioxide equivalence. Any relinquishment of biodiversity certificates that are not from the site where the biodiversity outcome reversal occurred inherently leaves the environment worse off. This is an inappropriate approach in a biodiversity market.

Recommendation 32: The ability to comply with a relinquishment requirement by relinquishing equivalent biodiversity certificate or certificates from another location must be removed from the Act.

Enforcement

The NR Market Bills currently exclude third parties from taking enforcement action. Third party enforcement is a key measure of integrity and transparency and it is inappropriate to not permit third party enforcement of Market obligations.

Recommendation 33: Provisions allowing third parties to take enforcement action should be added to the Act.

Miscellaneous

Recommendation 34: The NR Market Bills would be strengthened by changes to ensure that the Regulator holds all relevant project information, that overseas offences are a mandatory consideration in the fit and proper person test, and that penalties are larger than the potential gains from committing offences under the Act. Specific recommendations in relation to these matters are outlined below.

<i>Nature Repair Market Bill 2023</i>	HSI Australia Comment
14(3) the Regulator must, on behalf of the Commonwealth, refund the application fee.	Fee refunds should be proportional based on the work DCCEEW has already undertaken to assess the application.
17(2) The Regulator must set out in the notice under subsection 15(3) that the registration is subject to the condition that a biodiversity certificate is not to be issued in respect of the project until all regulatory approvals are obtained for the project.	It must also be a requirement that the approvals are provided to the Regulator prior to the issue of a biodiversity certificate.
18(2) The Regulator must set out in the notice under subsection 15(3) that the	It must also be a requirement that the copies of the written consent are

<p>registration is subject to the condition that a biodiversity certificate is not to be issued in respect of the project until the written consent of each relevant interest holder to the registration is obtained .</p>	<p>provided to the Register prior to the issue of a biodiversity certificate.</p>
<p>55 the Minister may, by legislative instrument, direct the Nature Repair Market Committee to do any or all of the following...</p>	<p>This section should be preceded by the words that “Without limiting the matters to which the Nature Repair Market Committee may have regard...”</p>
<p>97(2) In determining whether an individual is a fit and proper person for the purposes of this Act, the Regulator may have regard to... whether the individual has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country...</p>	<p>This should be a mandatory consideration.</p>
<p>98(2) In determining whether a corporation is a fit and proper person for the purposes of this Act, the Regulator may have regard to... whether the corporation has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country...</p>	<p>This should be a mandatory consideration.</p>
<p>99(2) In determining whether a trust is a fit and proper person for the purposes of this Act, the Regulator may have regard to... whether a trustee of the trust has been convicted of an offence against, or ordered to pay a pecuniary penalty for contravening a provision of, a law of a foreign country...</p>	<p>This should be a mandatory consideration.</p>
<p>101(3) The report must relate to a period (the reporting period for the report) that... ends within 6 months before the application is made</p>	<p>This clause should be limited to situations where there have been no significant intervening events such as major floods or bushfires.</p>
<p>150(7) Despite subsection 82(5) of the Regulatory Powers Act, the pecuniary penalty in relation to a contravention of subsection (5) of this section (whether the person is a body corporate or otherwise) must not be more than the greater of... twice that market value.</p>	<p>There should also be a requirement for a penalty to be not less than the market value so that project proponents can not profit from failing to meet their legal obligations</p>

179(1) The rules may require a person to retain records for 7 years after the making of the record.	This should be extended to the life of the biodiversity certificate.
236(8) The first review under subsection (1) must be completed within 5 years after the day determined by the Minister under subsection 11(2).	The first review should occur within 3 years.