



Law Council
OF AUSTRALIA

Legal Practice Section

20 July 2023

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

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

Dear Secretary

NATURE REPAIR MARKET BILL – RESPONSE TO SENATOR DUNIUM

1. I refer to the appearance of representatives of the Law Council of Australia's Legal Practice Section (**the Section**), in particular its Australian Environment and Planning Law Group, (**AEPLG**) at the Committee's public hearing on 30 June 2023 and the supplementary question directed to the Section from Senator Dunium as follows:

If [the Nature Repair Market] legislation was to be passed, then it's very likely that there would be dissatisfaction and difficulties in some cases where projects were underway. What is the Law Council of Australia understanding of what reviews, appeal rights or other corrective actions would be available to the dissatisfied parties in those situations?

2. The AEPLG has prepared this response to Senator Dunium's question.
3. In short, there are no existing reviews or appeal rights or other corrective actions that could be taken if a proponent of a biodiversity conservation project that was "in operation" when the Nature Repair Market commenced was dissatisfied with that state of affairs. The change in the regulatory regime (if the Nature Repair Market Bill was to pass) would simply represent the normal regulatory risk faced by any project.
4. The AEPLG notes that if the intention of the Nature Repair Market is truly to incentivise new biodiversity conservation and generate "net positive" outcomes, then projects in operation at the time the Nature Repair Market commenced would not properly be classified as "new" and could not meet the fundamental intention of the Nature Repair Market.
5. The AEPLG further notes that the Nature Repair Market is directed only towards those biodiversity projects that comply with the methodologies approved under the legislation and thus can qualify for biodiversity credits under the scheme. For biodiversity projects already underway, it seems likely that it will be virtually impossible for those projects to comply with an approved methodology – unless the methodology somehow "grandfathered" certain existing projects into the system. This would be contrary to any "net positive" intention in the regime (see the previous paragraph).
6. Biodiversity projects that were in operation prior to the commencement of the Nature Repair Market were presumably established for other legal compliance or "social

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licence to operate” reasons. Those reasons should not be affected by the commencement of the Nature Repair Market.

Yours sincerely

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