

Opening Statement – Environmental Defenders Office

30 June 2023

Environmental Defenders Office (**EDO**) is a national legal centre specialising in public interest environmental law. We have engaged in environmental policy and law reform through provision of expert legal advice to parliamentary processes for over 30 years. EDO strongly supports investment in environmental restoration and for funding to go to landholders across Australia for biodiversity stewardship, and welcomes policy measures to ensure funding for nature protection and restoration.

However, EDO is concerned that the Nature Repair Market Bill (**the Bill**) as drafted will not deliver positive outcomes for nature, secure restoration in the long-term, or deliver the investment which is critically needed to protect and restore the environment. EDO recommends significant changes must be made to the Bill for it to achieve ‘nature positive’ outcomes in line with the federal government’s Nature Positive Plan, as well as international and domestic commitments to protect habitat and endangered species.

EDO has received inquiries from a number of parliamentary offices on this Bill and we have provided advice on amendments to strengthen it. We note some amendments have been passed in the House, but further examination of the Bill is needed via this inquiry and by the Senate.

A critical issue for the Committee to consider is how the new market will interact with offsetting under other environmental regulatory schemes, such as the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). It is now clear the government intends for biodiversity certificates generated under the market to be available to offset impacts to the environment approved under the EPBC Act.

Linking the nature repair market to offsetting requirements fundamentally changes the character of the market, including the key driver of demand, the methodologies that will be needed, the type and permanence of the projects proposed, and the transparency measures that will need to be in place. The Bill as drafted does not sufficiently deal with these matters.

There is a fundamental difference between creating a biodiversity certificate for a project that is solely designed to deliver an environmental benefit, compared to a biodiversity credit that is created for the purpose of offsetting habitat destruction to facilitate a development impact elsewhere. The nature repair market, as proposed by the Bill, does not create innately interchangeable units that can be readily used to exchange loss for gains.

As such, allowing biodiversity certificates to be used as regulatory offsets jeopardises the ability of the market to achieve any ‘repair’ of nature. EDO does not support offsets being part of the proposed market.

To prevent a net *loss* of biodiversity under the new market, if it is to be used for offsetting, significant amendment must be made to the Bill. For example, ensuring greater transparency, longer permanence periods, strict equivalency standards, and restrictions on sale of certificates used for offsetting are crucial. EDO is of the strong view these requirements and restrictions must be in the primary legislation, not the rules.

Further, it is unclear how the market will interact with the proposed reforms to the EPBC Act, and implementation of the government’s Nature Positive Plan. Without the new Offsets National

Environmental Standard being legally enforceable, there is little to ensure crucial offset safeguards are in place. This means significant questions remain about the treatment of biodiversity projects that have been used as offsets after their permanence periods have elapsed, or what happens if a project used for offsetting fails to achieve positive biodiversity outcomes. The passing of the EPBC Act reforms will also have implications for the administration and governance of the scheme, not least the promised establishment of a new environment protection agency (EPA) which is better placed to regulate a biodiversity focused market than the Clean Energy Regulator. It is essential that these foundational reforms are legislated and a national standard for biodiversity offsetting is in place *before* a nature repair market commences. This Bill is putting the cart before the horse.

EDO is concerned that without significant amendment to the Bill, the Nature Repair Market risks enabling worse environmental outcomes through offsetting. EDO recommends the Bill as drafted should not be passed, and parliamentary focus should be on legislating the urgently needed reforms to the EPBC Act

Thank you.