

Environment and Communications Legislation
Answers to questions on notice
Climate Change, Energy, the Environment and Water Portfolio

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

Question No: IQ23-000246

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Nature Repair Market Bills - Senator Pocock questions

Question Date: 14 July 2023

Question Type: Written

Senator Pocock asked:

1. As I read the bill, there is no prohibition against avoided loss projects? Why? Was this considered?
2. Will Biodiversity Assessment Instruments be disallowable instruments? Will they sunset?
3. It looks as though the Biodiversity Integrity Standards do not apply to the making of Biodiversity Assessment Instruments. Should the standards, or at least a version of them apply to Biodiversity Assessment Instruments?
4. As I understand it, compliance assessments (both A & B stages), measurement and monitoring, and verification are to be carried out by third parties, rather than by the regulator (CER). Why is this? Professor Burnett makes the very strong point that there would be far higher confidence if the compliance role was “in-house” within the regulator. Why has the call been made to require third party involvement?
5. Various submissions (Humane Society International Australia, Dr Peter Burnett, Landscape Foundation of Australia, Wentworth Group of Concerned Scientists, Australian Land Conservation Alliance) raised concerns that the CER does not have staff with sufficient expertise in biodiversity expertise to conduct the various functions required - audits, compliance etc. Other submitters have called for these roles to be conducted by a new body, or by the proposed EPA.
 - a. Was this considered?
 - b. Why was the option dismissed?
 - c. What confidence can we have that the key audit and compliance functions delegated under this bill to the CER will be carried out by appropriately qualified people?
6. As I understand it, compliance assessments (both A & B stages), measurement and monitoring, and verification are to be carried out by third parties, rather than by the Clean Energy Regulator. Why is this? Professor Burnett makes the very strong point that there would be far higher confidence if the compliance role was “in-house” within the regulator. Why has the call been made to require third party involvement?
7. Sections 487 and 475 of the EPBC Act provide for extended standing to seek judicial review of decisions made under the EPBC Act or Regulations. There is no such provision in this act, despite the fact (as we all know), huge damage can be done where offsets are done badly. Why is there such a huge departure from this norm? Surely providing extended standing would result in better outcomes for nature, and give greater confidence in the market.
8. As I understand it, the Nature Repair Market Committee does not have the ability to suspend the operation of methods. I note s 16, which provides that only the Minister has the power to suspend. This is substantially different from the Carbon Farming Initiative Act, under which s 27A of gives ERAC the power to suspend. Why has the power of the NRMC been limited in this way?

9. One of the significant issues dealt with in the Chubb Review was the co-location of purchasing and regulating powers. If the government were to be a purchaser, how would that decision be made? Who would make the call?

Answer:

1. The Nature Repair Market is designed to facilitate private investment in biodiversity and allow for market innovation. The Bill allows for a range of potential projects, including restoring lost and highly degraded ecosystems, and protecting and managing existing nature to prevent further biodiversity losses. The type of project and the outcomes delivered will be clearly represented on the biodiversity certificate and in the registry.

The Bill defines a biodiversity project as one that protects or enhances biodiversity. Different types of projects will deliver different types of biodiversity outcomes, for example creating new habitat or improving or maintaining existing habitat. The framework requires that projects demonstrate that these outcomes are not ones that would have happened anyway.

The requirements for undertaking, measuring, and reporting on different types of projects will be set out in methodology determinations. This will be guided by a biodiversity assessment instrument to achieve appropriate consistency in the measurement and assessment of biodiversity. Biodiversity integrity standards apply to both methodology determinations and to biodiversity assessment instruments.

2. Yes, biodiversity assessment instruments will be disallowable by either House of Parliament.

Biodiversity assessment instruments will also be subject to sunset as set out in Chapter 3, Part 4 of the *Legislation Act 2003*. They will sunset between ten years, and ten years and six months, after they were made.

3. The biodiversity integrity standards form a key component in making and varying biodiversity assessment instruments. Before making or varying a biodiversity assessment instrument, the Minister must receive advice from the nature repair market committee that the draft instrument would “would assist in ensuring that methodology determinations comply with the biodiversity integrity standards”. The Minister is only empowered to make a biodiversity assessment instrument after receiving this advice from the committee.

4. The Nature Repair Market Bill, as well as the rules and other instruments made under it, will set out a range of obligations on people who choose to register projects. These obligations will include:

- Undertaking projects in a way that is consistent with the relevant method
- Record keeping
- Project monitoring
- Regular reporting to the Clean Energy Regulator (CER)
- Positive obligations to notify the CER where certain events occur (such as reversal in biodiversity achieved through a project)
- Auditing and other assurance requirements.

The details of some of these arrangements will be set out in subordinate legislation.

The Clean Energy Regulator (CER) be responsible for ensuring that landholders and others fulfil these obligations.

The Bill provides legislated powers for the CER to investigate and ensure compliance. These include:

- Information gathering powers
- The ability to issue infringement notices
- The ability to enter into enforceable undertakings with scheme participants
- Injunction powers.

The Bill allows for other government agencies to support the CER in its role.

The only compliance related function that will generally be undertaken by a third party will be auditing. The Bill provides that audits will be undertaken by auditors who are specifically regulated under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act). The Nature Repair Market (Consequential Amendments) Bill 2023 includes amendments to the NGER Act that will allow other changes to ensure that registered auditors are fit to undertake audits that support the nature repair market.

5. The CER has competencies and systems that are suited to regulating the nature repair market. These include:

- The ability to oversee and provide guidance to environmental markets
- Registering and approving projects
- Operation of a registry system
- An established IT system and compliance framework.

In addition, there are many efficiencies for scheme participants in having a single regulator, especially for those projects that will lead to both biodiversity and carbon outcomes.

As set out in the CER's submission to the Senate Committee inquiry on the Bill, it will develop and acquire the new skills for effective oversight of the scheme.

6. See response to question 4.

7. The Bill allows for merits review of most regulatory decisions. In the first instance, a person can apply for an internal review of a decision by another CER staff member, and where that outcome is not satisfactory to the applicant, that decision could be reviewed through the Administrative Appeals Tribunal. Merits reviews can be requested not just by the original applicant, but by other persons affected by the decision.

Administrative decisions are also subject to judicial review under the Administrative Decisions (Judicial Review) Act 1977.

8. The Bill provides the Minister with the power to suspend methods through a legislative instrument, such an instrument is subject to the usual arrangements, including disallowance by either House of Parliament.

The Bill also provides that the nature repair market committee can provide advice in relation to the suspension of a method at any time. This could occur through a specific request from the Minister or of the committee's own volition. The Bill requires any advice to the Minister to be published. In the event of the committee recommending that a method be suspended, it would become a matter of public record.

9. Consistent with the recommendation of the Chubb review, the Bill ensures a separation between the regulation of the scheme and the Commonwealth purchase of biodiversity

certificates. The former sits with the CER, and the latter sits with the Secretary of the department. The purchasing powers of the Secretary cannot be delegated to officers of the CER.