

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: IQ23-000194

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: \$137 billion figure in the explanatory memorandum

Hansard Page: 55

Question Date: 30 June 2023

Question Type: Spoken

Senator Hanson-Young asked:

Mr Bennie: We were involved in the drafting, but it is drafted by our legal area.

Senator HANSON-YOUNG: Who thought it was a good idea to use the \$137 billion figure in the explanatory memorandum?

Ms O'Connell: We would have, as in the department, in the sense that it's a publicly available, published report.

Senator HANSON-YOUNG: Have you seen PwC's response to this committee saying that the use of that figure is wrong?

Ms O'Connell: The only thing I would say is that the use of that figure comes and is derived from the report.

Senator HANSON-YOUNG: I feel like it was a scene of The Hollowmen—\$10 billion wasn't enough and \$20 million wasn't enough, so you wrote '\$130 billion' on the whiteboard, and somebody whistled and said: 'Yes, that's the one! Let's put that in.' Even PwC says it's a ludicrous figure to use.

Ms O'Connell: It's in their report.

Senator HANSON-YOUNG: Did the department think that you should stress test some of this stuff, or do you just take PwC's advice and that's enough?

Ms O'Connell: As I said, we referenced it but we also, as I've been through—

Senator HANSON-YOUNG: Do you stand by it? Do you stand by it?

Ms O'Connell: It's not our figure; it's theirs.

Senator HANSON-YOUNG: And they have now said that it is misleading to use that figure. So I'm asking you: does that department stand by the use of the figure?

Ms O'Connell: When we used it, it was referencing a publicly available report done by PwC. And it is not the sole thing that we talk about in terms of the demand drivers.

Senator HANSON-YOUNG: The figure is used in the explanatory memorandum. This Senate committee has been told it is a misleading figure. Will you advise the government to amend the explanatory memorandum?

Ms O'Connell: I'll take that on notice.

Answer:

The Explanatory Memorandum includes the Policy Impact Assessment for the Bill at Attachment B. Policy Impact Assessments are prepared at a point in time as one input that informs government decision making. This document included two references to the PwC report as one of the few published documents discussing the potential value of nature positive initiatives in Australia. This assessment was approved by the Office of Impact Analysis in the Department of the Prime Minister and Cabinet.

It would not be appropriate to revise the Policy Impact Assessment given its point in time status.

There are no references to the PwC report in the substantive part of the Explanatory Memorandum.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000196
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Native title areas
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. On page 24 paragraph 77, with respect to native title areas (exclusive and non-exclusive possession) “In practice, this means that all biodiversity projects to be carried out on native title land or waters would need either to be undertaken by relevant native title holders or would require the consent of the native title holders before the project could be registered this would ensure that native title holders have the FINAL SAY”
 - a. Does this mean vast areas of the Australian land mass and territorial waters could effectively be locked up for 100 years with no development, exploration, mining, agriculture, or other?
 - b. In the notes on page 23 paragraph 69 “Native title land will generally be either Crown Land or Torrens system land”; “most kinds of land rights land would be able to register”. In relation to question 2, point a) will Aboriginal Corporations who have native title/cultural heritage claims on grazing homestead perpetual lease G.H.P.L (which is Crown Land) and freehold land (Torrens System Land), Forestry leases – national parks, etc. be able to register biodiversity projects on this land?
 - c. If so, this will effectively make Aboriginal Australia the “Rent Seeking Landlord” over vast areas of Australian Agricultural land and waters – is this correct? Given on page 13 paragraph 23 “for the purposes of the definition of CROWN LAND, it is immaterial whether the land is subject to lease or licence”!

Answer:

- (a) No. This provision provides that where a native title determination has been made, the native title holders must consent before a project can be registered on that land.
- (b) The Bill provides that most persons, including individuals, body corporates and body politics, are eligible persons to register a biodiversity project. As such, Aboriginal Corporations may be able to register a project. However, like other persons, the Aboriginal Corporation would need to meet one of the conditions set out at section 15(6) of the Bill which include:
 - a. They own the land on which the project is be registered
 - b. They hold a lease on the land on which the project is to be registered that allows the project activity to take place
 - c. They have consent from the landholder or relevant leaseholder to register project.

These arrangements are generally consistent with those in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

- (c) No.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000197
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Biodiversity projects - protection from invasive species
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

Given the possibility of vast areas of Australia being committed to biodiversity projects for up to 100 years, what guarantees are there that feral species and invasive noxious weeds will not become dominant to the detriment of Australian native flora and fauna?

Answer:

The Nature Repair Market Bill promotes the enhancement and protection of biodiversity in native species in Australia. This would include managing feral species and weeds. The specific details of how feral species and weeds are managed would be considered and specified when developing a methodology determination (method). Project plans would enable the requirements of the methodology to be tailored to regional and site-specific factors.

The Bill established assurance and compliance requirements in. A proponent would be required to report on the implementation of the project and biodiversity improvement. The Regulator would have the power to audit projects, gather information to monitor general compliance or undertake more specific investigations into suspected breaches. Project proponents would be subject to record-keeping and project monitoring requirements.

Integrity of the biodiversity outcomes is further strengthened by other regulatory powers in the Bill. This includes monitoring, investigation, civil penalties, infringement notices, enforceable undertakings, and injunctions. The Bill allows for cancellation of biodiversity projects and relinquishment of certificates in response to specific circumstances of non-compliance.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000198
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Biodiversity credits
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

100 years will affect 3 generations of Australians, is there any allowance for changing political, economic, and social circumstances and expectations in relation to biodiversity credits and how they will effectively work?

Answer:

1. The Bill provides for default permanence periods of 25 years or 100 years unless a methodology determination allows for a different permanence period. This provision allows for methods to provide for a different period, which could be shorter or longer as appropriate for that method, and could provide flexibility for proponents to choose the length of a permanence period within limits set by a method. The register will publicly disclose the permanence period for each project.

The Bill also allows project proponents to cancel projects in certain circumstances, which can include:

- Before a biodiversity certificate is issued
- On relinquishment of the biodiversity certificate relating to that project, and
- On relinquishment of a biodiversity certificate that is equivalent to the one issued for the project.

These arrangements will provide flexibility for project proponents.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000199
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Guarantees of land management
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. At Page 3 in the notes “Buyers are expecting to be able to invest in nature to ACHIEVE PHILANTHROPIC OBJECTIVES, meet their social and environmental responsibilities, compensate for their impacts on nature and manage risks associated with their dependencies on nature”.
- a) What guarantees will we have that the philanthropists will maintain and manage the land they will lock up?
 - b) Are we legislating principles of the Voice?

Answer:

- a) The responsibility for managing projects will sit with the person who registered the project – not the person who purchased the certificate related to the project. All project proponents, including farmers, First Nations groups and corporations, will be required to undertake projects in a way that is consistent with the Nature Repair Market Bill, including the relevant methodology determination. The required management and maintenance requirements will be defined by the relevant methodology. The methodology will be informed by science, meet the integrity standards published in the legislation, and will undergo public consultation before being approved. The application of the method will be overseen by the Clean Energy Regulator, which will have broad monitoring, compliance and enforcement powers.
- b) The Bill includes no provisions designed to give effect to the proposed Voice to Parliament.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000202
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Scope of the Market
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. With the opening of the market to all land tenure, aquatic environments and the ocean – how will the department manage priorities in relation to developing the methods?
2. Can there be multiple methodologies for the same type of land i.e. agriculture land?
 - a. If so, how does the department intent to avoid confusion in the market about which methodology is best?

Answer:

1. Please refer to information on method prioritisation provided for Question number IQ23-000223.
2. Yes. This would provide landholders with choice.
 - a. The most appropriate method for a project would depend on a range of factors including the type of land, local climate, the other activities that are occurring on the land (for example agriculture), and the wishes of the landholder. The department will prepare and maintain communications material to help landholders choose the best method for their circumstances. In addition, on-ground experts and advisors like Natural Resource Management organisations will be able to support landholder decision making.

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

Question No: IQ23-000204

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Co-designed project methods

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

Explanatory Memorandum (EM) Page 3 – states “It is intended that project methods would be co-designed with stakeholders, including Aboriginal persons and Torres Strait Islanders”.

- a. What does this mean in practice or what sort of process is envisaged?
- b. Does every method have to be co-designed?
- c. Which stakeholders would need to be consulted with?
- d. What if the method is not approved/ liked by some stakeholders?
- e. Who decides if the co-design has been done appropriately?

Answer:

- a. Methods will be designed and drafted by the department through a process that allows for the drawing on a diverse range of experience and expertise through a range of consultation and engagement techniques. This could include consulting scientific experts, First Nations and other experts through working group/s, workshops and/or webinars, public consultation periods and providing periodic updates to stakeholders. Further feedback on a method will occur through the statutory consultation process managed by the Nature Repair Market Committee when established.
- b. The Bill does not mandate a co-design process.
- c. There is mandatory public consultation under the bill. Input on methodologies will be provided by experts and stakeholders, including researchers, State and Territory governments, natural resource management organisations, non-government organisations, landholders, industry groups, potential buyers, environmental practitioners, agriculture experts and First Nations experts. The Nature Repair Market Committee will consider feedback received as part of mandatory public consultation in providing advice to the Minister on a draft method.
- d. The Bill defines the matters the Nature Repair Market Committee and Minister are to have regard to in providing advice and making a method, respectively. The Minister may have regard to any matter they consider relevant, which may include the adequacy of the co-design approach. This would be detailed in any statement of reasons.
- e. The Minister and the Nature Repair Market Committee may have regard to the adequacy of the co-design approach.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000205
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Effect of variation on existing registered biodiversity projects
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. EM Page 63 para 336 states "...a variation to a methodology determination would take effect on the day after the variation instrument is registered or, if the instrument specifies a later commencement day, on that later day".
 - Can the department confirm that if you have a project under a particular methodology and that methodology is varied – that unless the proponent applies to the Clean Energy Regulator then the proponent would have to vary their project in line with the amendments to the methodology?
 - If so, why?
 - Can the department provide an example of when this would occur?
 - What if this requires a change in activities that costs money to implement or a considerable effort on the project proponent(s) – who pays?
 - How long does the project proponent(s) have to apply to the Regulator after the change? Can the project proponent(s) continue with the existing method until the Regulator assesses their application?

Answer:

The Nature Repair Market Bill includes provisions that allow for the rules to define the conditions for when a methodology determination variation applies to an existing registered biodiversity project. Registered projects will not necessarily be required to transfer if the methodology determination that the project is registered under is varied.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000206
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Objects of the Act
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

It is important to understand the objects (c), (d) (i) (ii) of the Act. What do they mean in a practical sense given all objects must be met?

- (a) to promote the enhancement or protection of biodiversity in native species in Australia; and
(b) to contribute to meeting Australia's international obligations in relation to biodiversity; and
(c) to promote engagement and co operation of market participants (including Aboriginal persons and Torres Strait Islanders, governments, the community, landholders and private enterprise) in the enhancement or protection of biodiversity in native species in Australia; and
(d) to:
(i) support and promote the unique role of Aboriginal persons and Torres Strait Islanders in enhancing and protecting biodiversity in native species in Australia; and
(ii) enable the use of the knowledge of Aboriginal persons and Torres Strait Islanders related to biodiversity in native species in Australia, guided by the owners of that knowledge; and
(e) to contribute to building a knowledge base, and capacity, related to the enhancement or protection of biodiversity in native species in Australia.

Answer:

The objects of a bill provide the overarching objectives that the bill aims to deliver. The specifics of how the market will operate to achieve these objectives are defined through the bill. The objects of the Nature Repair Market Bill:

- clarify the purpose of the legislation
- may be used by courts of decision makers in interpreting other provisions, and
- state the constitutional head of power for the Bill.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000207
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Naming of Nature Repair Bill
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. The objects of the Act include – “the enhancement or protection of biodiversity in native species in Australia”.
 - a. Given the object of the Act is about ‘enhancement or protection’ why has the Bill been called Nature Repair i.e. as planting native species in a certain location may not be repairing nature but is leading to biodiversity outcomes?
 - b. Will priorities be focused on threatened species and conservation outcomes?

Answer:

1a. The Bill’s title reflects that the legislation is intended to deliver environmental improvements, with a focus on restoring damaged ecosystems, and managing existing ecosystems that deliver biodiversity improvements.

1b. Biodiversity projects must be covered by a methodology determination. A methodology determination sets out requirements for undertaking a kind of biodiversity project. It is intended that prioritisation of methodology determinations would be informed by such factors as demand from industry and the Government’s environmental targets and priorities.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000209
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Excluded Projects
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. Bill Part 2 Division 5 – Excluded biodiversity projects states below:

33 (2) In deciding whether to make rules for the purposes of subsection (1) specifying a particular kind of project, the Minister must have regard to whether there is a material risk that that kind of project will have a material adverse impact on one or more of the following:

- (a) the availability of water;
- (b) biodiversity (other than the kinds of biodiversity to be addressed by the project);
- (c) employment;
- (d) the local community;
- (e) if there is a local community of Aboriginal persons, or Torres Strait Islanders, who have a connection to the project area—that community;
- (f) land access for agricultural production;
- (g) the environment.

i. Can the Department outline what factors and data would be considered for each of these provisions?

ii. In relation to (e) can the Department confirm who could have a connection to a project area? Is there a definition of connection and how would this provision be considered in practice?

Answer:

- i. The sorts of factors and data likely to be considered for provisions outlined in clause 33 of the Bill may include:
 - The level of impact caused by the category of project
 - Mitigations to that impact that might be achieved through other arrangements (for example, varying the relevant methodology), and
 - Outcomes of broader consultation.

- ii. The term ‘connection’ is not defined in the Bill for the purposes of this clause. However, examples of Aboriginal persons and Torres Strait Islanders that might have a connection to a project area could include local Native Title holders, local land rights holders, and other Aboriginal persons and Torres Strait Islanders with interests in land that fall short of land title.

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

Question No: IQ23-000211

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Measuring biodiversity outcomes

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

EM Page 2 – states The Bill would:

“create a nationally consistent framework to describe and measure biodiversity outcomes”

a. Given a number of methods can be developed and endorsed by the Nature Repair Market Committee – how will the Bill create a consistent framework to measure biodiversity outcomes?

b. The Final Policy Impact Assessment outlines some existing approaches and data sets that might be used – what is the spatially explicit classification system and approach to condition assessment?

Answer:

a. The legislation includes provisions for Biodiversity Assessment Instruments. The purpose of a Biodiversity Assessment Instrument is to achieve appropriate consistency in how methodology determinations measure and assess biodiversity (including both a baseline and changes in biodiversity over time).

The Biodiversity Assessment Instrument will provide the framework for consistent measuring and assessing of biodiversity which will, among other things, enable market participants to be able to compare projects developed under different methodology determinations in terms of the project’s impact (or likely impact) on biodiversity.

b. The National Vegetation Information System provides a nationally consistent spatially explicit classification system for native vegetation. Ecosystem accounting provides for condition assessment and the Habitat Condition Assessment System provides for nationally consistent assessment of ecosystem condition.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000212
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Compliance and enforcement
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. EM page 7 – verify progress other than audit – The EM states “This could enable, for instance, assurance to be conducted by new and evolving monitoring technologies where appropriate without compromising biodiversity or other environmental standards”.
 - a. The former Coalition Government committed over \$8 million from 2022-23 over three years to develop low-cost tools for biodiversity monitoring and assessment - where is this project up to? Have any new technologies been discovered? If not, why not?

Answer:

On 26 April 2023 the Innovative Biodiversity Monitoring grants program was opened. This is an open competitive grants program with funding of up to \$8 million to encourage technology and approaches that provide effective biodiversity monitoring at lower cost.

Grant applications closed on 24 May 2023, with over 150 applications received across a range of technologies and organisations. All applications will be assessed in accordance with program guidelines and recommendations will be provided to the Minister.

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

Question No: IQ23-000213

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Biodiversity Assessment Instrument

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

1. When will the biodiversity assessment instrument be developed?

The EM para 263 states – “The purpose of a biodiversity assessment instrument is to establish an overarching, evidence-based standard to achieve appropriate consistency in how methodology determinations measure and assess biodiversity (including both a baseline and changes in biodiversity over time).…”

2. Can the Department outline what the elements of the instrument are?

3. Can the Department confirm that there could be more than one instrument?

a. If so, how many instruments will be made?

b. If so, will there be more than one instrument on the same land type i.e. agricultural land?

4. How will the instrument enable potential buyers to compare some aspects of projects under different methodology determinations to understand their relative value, and support scheme-level reporting of outcomes?

5. Is the instrument to determine the relative value of the project or the biodiversity outcome or both?

6. What if the biodiversity assessment instrument doesn't create an easy way for the market to determine the relative value?

7. Why isn't the assessment instrument developed now to give a sense of what methodologies can be developed and potentially be put forward for consideration by the Nature Repair Market Committee?

8. Does the statement in the EM para 297 (below) enable a methodology to be submitted to the Nature Repair Market Committee with an assessment instrument? If so, who would need to agree to the assessment instrument?

“Subclauses 45(12) and (13) would have the combined effect that:

- the Minister would only be able to make a methodology determination if there is a biodiversity assessment instrument (or instruments) in force that applies to that methodology determination; and

- the methodology determination would be required to comply with any requirements imposed by the relevant biodiversity assessment instrument (or instruments) that apply to the methodology determination.

9. Can the department outline what section 445 means in the EM – does it mean that the Minister cannot vary or revoke a biodiversity assessment instrument because the methodology can be varied and revoked, therefore it is not required to vary or revoke a biodiversity assessment instrument? Noting that section 446 then mentions provisions to deal with varying and revoking a biodiversity assessment instrument.

Answer:

1. The biodiversity assessment instrument can only be developed following passage of the Bill. The design and content of biodiversity assessment instruments will be informed by expert input, engagement and consultation.
2. The biodiversity assessment instruments will be developed building on insights from consultation and drawing on a broad range of expert, First Nations, market participant and practitioner input. It will also be informed by the approached for measuring biodiversity outcomes that was developed for the agriculture biodiversity stewardship pilots.

A biodiversity assessment instrument may include elements relating to requirements for standard terminologies (definitions) or interpretations, such as how project attributes, and locations in a project area, are described. It might also include rules concerning the interpretation of broader concepts relating to biodiversity, and factors to be considered when determining how biodiversity and changes in biodiversity will be measured and assessed.

- 3.a. The Bill allows for more than one biodiversity assessment instrument to be made by the Minister. A biodiversity assessment instrument may apply generally, or to a class of methodologies.
- 3.b. The Bill allows for more than one biodiversity assessment instrument to apply to the same piece of land. The requirements in biodiversity assessment instruments will be applied at the project level through the methodology determinations. The biodiversity assessment instrument will enable potential buyers to be able to compare projects developed under different methodology determinations.
4. The biodiversity assessment instrument could identify a standard set of attributes that need to be reported using nationally consistent classifications, terminology and units. For example, the Agricultural Biodiversity Stewardship Pilots used a consistent metric in both the carbon plus biodiversity projects and the enhanced remnant vegetation projects.

This is intended to provide consistent information to potential buyers to allow them to compare projects and assess relative value.

5. A biodiversity assessment instrument guides the design of methodologies to achieve appropriate consistency in the measurement and assessment of the biodiversity outcomes.
6. A biodiversity assessment instrument guides the design of methodologies to achieve appropriate consistency in the measurement and assessment of biodiversity. The methodology guides the information that is included on a biodiversity certificate and the register.

Projects will vary in terms of the ecosystem, the types of management activities, and the biodiversity benefits they will deliver. The presentation of information in a standardised way in biodiversity certificates and the public register, is intended to overcome some of the complexity, to support potential buyers to value and compare projects.

7. The biodiversity assessment instrument can only be developed following passage of the bill. In accordance with the bill this will be informed by consultation and be considered by the Nature Repair Market Committee.
8. The Minister makes the biodiversity assessment instrument following consultation and consideration by the Nature Repair Market Committee. A biodiversity assessment instrument is required to be in place for the Nature Repair Market Committee to advise the Minister on methodology determinations.

9. Paragraphs 444, 445 and 446 of the Explanatory Memorandum, when read together, explain the effect of subclause 59(7) of the Bill, which provides that subsection 33(3) of the Acts Interpretation Act 1901 will not apply to a biodiversity assessment instrument.

Subsection 33(3) of the Acts Interpretation Act states that where an Act gives a power to make an instrument, this will be interpreted to include a power to change or revoke that instrument in the same way and under the same conditions.

Subclause 59(7) of the Bill means that this section will not apply to a biodiversity assessment instrument. Instead, subdivisions B and C of Division 4 of the Bill (sections 60 to 63) set out the procedures for varying or revoking a biodiversity assessment instrument. These procedures include asking the Nature Repair Market Committee for advice, and consulting on the proposed varying of the instrument.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000214
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Nature Repair Market register
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. EM page 7 states – “Transparency about the ownership and use of biodiversity certificates would promote public confidence in the scheme and enable assessment of the overall contribution of the scheme to nature repair. Information on the register would also allow buyers to assess and value biodiversity certificates”.
 - a. Why has the criteria the Regulator considers for excluding project area (and now project details) – “the register could reasonably be expected to substantially prejudice either: the commercial interests of the project proponent for the project, or other person” been removed from this Bill that was in the Agriculture Biodiversity Stewardship Market Bill 2022?
2. EM page 7 states – “Buyers who misrepresent or make false or misleading claims about their contribution to nature repair may be liable under Australian Consumer Law”
 - a. What is the penalty?
 - b. What does the ‘contribution to nature repair’ mean in the context of potential Carbon + Biodiversity and Enhancing Remnant Vegetation methodology which is about rewarding farmers for biodiversity outcomes, rather than nature repair per se i.e. planting wind breaks and connecting corridors?

Answer:

1. The Nature Repair Market Bill is consistent with recent amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011* that were made following the review of Australian Carbon Credit Units led by Professor Ian Chubb.
- 2a. Australian Consumer Law (ACL) is schedule 2 of the *Competition and Consumer Act 2010*. The ACL applies nationally and contains simple rules to ensure that businesses trade fairly with consumers. The ACL is administered and enforced jointly by the Australian Competition and Consumer Commission and the State and Territory consumer protection agencies, with involvement of ASIC on relevant matters. Penalties can apply to some offences and these are detailed in the ACL.
- 2b. Nature repair refers to the overall intent of the legislation to deliver biodiversity improvements, with a focus on restoring damaged ecosystems: to repair nature. The Bill allows for farmers to be rewarded for undertaking projects that result in genuine biodiversity improvements on their land and therefore contribute to nature repair. This would include the types of projects undertaken through the Carbon + Biodiversity and Enhancing Remnant Vegetation projects.

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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000215
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Approval of registration of biodiversity project
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

15(6) (a) relates to if a project area consists of, or includes, Torrens system land includes the following clause:

(v) a person who holds a legal estate or interest (other than an estate in fee simple) in the Torrens system land that is covered by subsection 89(2) and that is prescribed by the rules has consented to the carrying out of the project on the land as a registered biodiversity project by the proposed project proponent or proposed project proponents; and

1. Can this be explained:

- a. Who is the project proponent who holds an estate in fee simple?
- b. Who is being referred to in section (v) as having a legal estate or interest?
- c. If you own your land will you have to consult or get approval from anyone else?
- d. Can it be confirmed that this section of the Act relates to EM page 23 paragraph 73 that states – “This would allow the Minister to, in appropriate circumstances, require the consent of other (additional) eligible interest holders prior to registration, including persons with certain indigenous-related legal interests (other than native title rights, which would be covered by paragraph 15(6)(b))”?
- i. Can the department provide a list of all the ‘other (additional) eligible interest holders’ prior to registration, and in what circumstances they become ‘interest holders’?
- ii. Will these ‘eligible interest holders’ be listed in Rules under the Legislation?

Answer:

1.

- a. The intention of section 15(6)(a) is that a project can only be registered on a piece of land where the applicant:
 - owns the land, or
 - holds a lease on the land with terms that permit the project to occur, or
 - is authorised by the owner or leaseholder to register the project.

Examples of circumstances where a person would generally be able to register a project include:

- a person who has freehold title over the project area, and
- a person who holds a pastoral lease that permits the project activity over the life of the project.

The Bill provides rule making powers to provide clarity in relation to this technical area.

The intention of section 15(6)(b) is that native title holders must provide consent for a project to be registered on land that includes an area that is the subject of a native title determination.

Part 7 of the Bill sets out other people who may have an “eligible interest” in a project who must give consent before a project is issued with a certificate.

- b. see previous answer
- c. see previous answer
- d. Yes, this is correct.
 - i No. These would be defined in the rules made for the purpose of 15(6)(a)(ii), which would then apply to 15(6)(a)(v). The policy on that is yet to be determined.
 - ii Yes, any new eligible interest holders would be detailed in the Rules.

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: IQ23-000216
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Payment structure
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. EM page 7 - Contracts between buyers and sellers can structure payments over the life of a project (typically with some upfront payments to establish the project and periodic payments for project outcomes over time).
 - How are the payment structures made between the buyer and seller i.e. is it up to them?
 - The Carbon + Biodiversity pilot method has very specific payment structures to break the barrier of entry for the Carbon methodology i.e. upfront payments for the first 3 years for biodiversity, then ACCUs can be gained as the trees have grown – Can payment structures be built into the methodology?

Answer:

The Bill does not set out details of how contracts between buyers and sellers of biodiversity certificates are to be established. The department will develop standard contract templates to support the market.

The details of payment structures under contracts between buyers and sellers would be matters set out in the individual contract as negotiated between the parties.

Certificates issued early will support up front payments. This is consistent with the approach under the Agriculture Stewardship pilots that allowed for biodiversity payments that recognised that undertaking the activity would deliver biodiversity outcomes.

Environment and Communications Legislation
Answers to questions on notice
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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]

Question No: IQ23-000217

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Reporting

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

1. EM Page 7 states that it is 'anticipated that reports publicly available via the project register'.
 - How will confidentiality be maintained?

Answer:

1. It is expected that the rules setting out the requirements for reports on biodiversity projects will be drafted in a way that would exclude information that would be confidential from a commercial, personal or other perspective. However, in the event that there were confidential information required for a report, the rules would allow this information not to be published on the register.

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: IQ23-000218
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Biodiversity Integrity Standards – Part 4, Division 3
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. EM page 74 para 410 – is about multiple biodiversity projects on the same area of land and only counting biodiversity outcomes and only counting biodiversity outcomes from this methodology to avoid double counting.
 - a. Can the department explain how this could occur in a practical sense and give an example of how this might occur?
2. The biodiversity integrity section also indicates: “if any condition set out in, or requirement imposed by, the methodology determination in accordance with subsection 45(5) or (6) involves an estimate or projection—the condition or requirement must require that the estimate or projection must be conservative; and”
 - a. Can the department explain what this means in practice?
 - b. Will methodologies have to demonstrate how they deliver and can measure biodiversity outcomes?
 - c. How will one methodology that has been piloted and tested (such as the Carbon + Biodiversity and Enhancing Remnant Vegetation) be considered in comparison to a methodology that hasn’t been tested in the field?
 - d. Do untested methodologies potentially erode the integrity in that method and the market as a whole?
 - e. How will a potential plethora of methods be managed to avoid confusion by participants in the market – the buyers and the sellers?
 - f. Will there be a cap of the number of methodologies on a certain landscape i.e. farm land?

Answer:

- 1a. The intention is that a single project area could be wholly or partly covered by more than one methodology determination as part of different biodiversity projects.
 - For example, a project may involve fencing a nominated area to exclude livestock and protect remnant vegetation. Another project, applied to the same area, may involve increasing understory plant diversity and associated fauna by weeding and planting appropriate understory species, which could be recognised as an additional biodiversity benefit. Different biodiversity outcomes could be issued separate tradable certificates.
- 2a. The intention of requiring an estimate or projection to be conservative is to ensure that estimates and projections err on the side of caution and avoid the risk of overestimating biodiversity benefits delivered under methodologies. Overestimating the benefits of projects may reduce market confidence and undermine the integrity of the scheme. It will be up to the Committee to determine how this is applied in practice. We note that a similar clause is

included in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act). The Emission Reduction Assurance Committee issued an information paper in 2021 that provides information on how it interprets the offsets integrity standards under the CFI Act. This includes how they interpret the term 'conservative'.

2b. Yes. A methodology determination must stipulate how a biodiversity project carried out in accordance with the determination will achieve biodiversity outcomes that can be measured, assessed, and verified. A methodology determination would be required to be covered by an applicable biodiversity assessment instrument, which guides the design of relevant methodology determinations to consistently measure and assess biodiversity outcomes.

2c. All methodology determinations must be supported by clear and convincing evidence and would be required to go through the statutory process, which includes a period of public consultation and review by the Nature Repair Market Committee. The Committee may then advise the Minister on whether the determination complies with the biodiversity integrity standards and requirements in an applicable biodiversity assessment instrument. In developing methodology determinations, the department will draw on existing knowledge and expertise from a range of sources. This would include learnings from the Carbon + Biodiversity and Enhancing Remnant Vegetation pilots as well as wider sources of evidence like ecological science and other proven ways to enhance and protect biodiversity.

2d. As noted in 2c, all methodology determinations will need to be supported by clear and convincing scientific evidence, which can come from a range of sources.

2e. It would be a function of the Nature Repair Market Committee to undertake public consultation in relation to advice to be given to the Minister or the department about the development and prioritisation of methodology determinations. The department will consider a range of factors in progressing any new methodology determinations and anticipates that there would be public guidance about methodology determination priorities to help manage this risk.

2f. The Bill does not cap the number of methods.

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Answers to questions on notice
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Inquiry: Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]
Question No: IQ23-000219
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Biodiversity Certificates
Question Date: 04 July 2023
Question Type: Written

Senator Cadell asked:

1. Bill 70 – Issue of Biodiversity Certificates states:
 - (2) If the Regulator is satisfied that:
 - (f) the project is sufficiently progressed to have resulted in, or be likely to result in, the biodiversity outcome for the project; and
 - a. How will the Regulator determine if the project is sufficiently progressed or be likely to result in the biodiversity outcome for the project?
 - b. Does this mean a project must have commenced before a certificate is issued?
 - c. With regard to ‘biodiversity outcomes’ can activities be a proxy for these outcomes for example, planting trees, or weed/pest animal management?
2. Page 6 EM states “Biodiversity certificates would be able to be deposited with the Regulator in circumstances where the project proponent wishes to reflect an ongoing commitment to a project, including where other statutory requirements apply”.
 - a. Does the statutory requirements relate to the potential for depositing it for the purposes of the potential offsets under the Environmental Protection and Biodiversity Conservation Act?

Answer:

- 1)
 - a. The methodology will define the requirements that landholders need to undertake to be issued with a certificate. Methodologies would be developed through consultation and informed by science. The Clean Energy Regulator would assess projects against these approved methodologies.
 - b. The timing of the issuance of a certificate would be defined in the methodology.
 - c. The methodologies would describe the biodiversity outcomes that would be achieved by the activity. This could include activities such as native vegetation plants or weed/pet management. The methodologies would need to meet the integrity standards, be informed by science and include public consultation.
- 2) The term “statutory requirement” is not aimed at a specific piece of legislation. However, it could include a Commonwealth, state or territory environmental offset requirement set out in legislation.

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: IQ23-000221

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Participation by governments

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

1. Allowing governments being able to participate in the market – would this lead to cost shifting? For example could state government land be managed through the market, rather than by the government themselves?

Answer:

Under the Nature Repair Market Bill, a government participant could undertake a project on government-owned land, and costs of the project could be funded through the sale of the relevant biodiversity certificate. The project would need to comply with a biodiversity methodology and deliver a biodiversity improvement that would be unlikely to occur if the project is not carried out. While the government entity remains responsible for ongoing land management, any claims in relation to the project outcomes are transferred to the certificate holder.

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: IQ23-000224

Hearing Date: 30 June 2023

Division/Agency: Nature Repair Market and Environmental Science Division

Topic: Methodologies and farming practices

Question Date: 04 July 2023

Question Type: Written

Senator Cadell asked:

1. The Carbon + Biodiversity Pilot allows plantings to provide multiple benefits including shelter for stock – will this still be allowed under the Nature Repair Market Bill?
2. The Enhancing Remnant Vegetation pilot allows for participating farmers to undertake enhanced grazing control, along with other measures such as weed or pest control – will methods still allow farming activities to be undertaken under the Nature Repair Market Bill?

Answer:

1. Yes. This will be considered in detail in developing methodology determinations and taking into account the learnings from the Carbon + Biodiversity pilot.
2. Yes. This will be considered in detail in developing methodology determinations and taking into account the learnings from the Enhancing Remnant Vegetation pilot. The intention is to enable a wide range of landholders to enhance and protect biodiversity, including as a part of their wider land use activities.

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: IQ23-000247
Hearing Date: 30 June 2023
Division/Agency: Nature Repair Market and Environmental Science Division
Topic: Nature Repair Market Bills - Additional Senator Duniam questions
Question Date: 14 July 2023
Question Type: Written

Senator Duniam asked:

1. By what process, or processes, would the NRM committee members best be appointed?
- 2a. Would it be vital to the success of the nature repair market legislation that the relevant Federal Government is acting in a very timely way on Threat Abatement Plans, Recovery Strategies and Conservation Advices?
- 2b. What would be the key risks if this approach was not followed?

Answer:

1. Members of the Nature Repair Committee would be appointed by the Minister by written instrument, consistent with Part 19 of the Nature Repair Market Bill. This is the approach taken under similar legislative schemes. For example, the Minister is also responsible for appointing members of the Threatened Species Scientific Committee under the *Environment Protection and Biodiversity Conservation Act 1999* EPBC Act and the Minister for Climate Change and Energy is responsible for appointing members of the Emissions Reduction Assurance Committee under the Carbon Farming Initiative Act.
- 2a. Documents such as Threat Abatement Plans, Recovery Strategies and Conservation Advices are expected to inform projects and methodology development in the Nature Repair Market. They will also help buyers and sellers value biodiversity certificates by highlighting the environmental value of different projects.
- 2b. The Department of Climate Change, Energy, the Environment and Water has not undertaken a risk assessment on this matter. The Threat Abatement Plans, Recovery Strategies and Conservation Advices, along with other expert advice is expected to inform method development and nature repair market projects.