

1 June 2023

Committee Secretary
Senate Standing Committees on Environment and Communications



PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

Nature Repair Market Bill 2023 – Committee Inquiry

The Australian Financial Markets Association (**AFMA**) is responding to the Environment and Communications Legislation Committee’s inquiry into the Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023.

AFMA is the leading financial markets industry association promoting efficiency, integrity and professionalism in Australia’s financial markets, including the capital, credit, derivatives, foreign exchange, energy, carbon, and other specialist markets. Our membership base is comprised of over 125 of Australia’s leading financial market participants, including Australian and foreign banks, securities companies, state government treasury corporations, fund managers, energy firms, as well as other specialised markets and industry service providers. Our role is to provide a forum for industry leadership and to advance the interests of all these market participants. AFMA and its members are actively involved in Australia’s existing environmental product and carbon markets, and AFMA maintains market conventions and industry standard documentation for these markets.

Key Points

- **The Bill should clarify what certificates can be used for**
 - **Certificates should be issued in smaller marketable parcels**
 - **The Bill should provide greater clarity about how investors can earn a return**
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1. Overview

AFMA is supportive of market led nature recovery and welcomes the Government’s ambition to introduce such a legislative framework. As noted in the Explanatory Memorandum (EM), there is much appetite amongst the private sector to boost and protect biodiversity via investment; this sentiment is very much echoed across AFMA members. Like any market, AFMA wants to see the Nature Repair Market (NRM) thrive, with fungible products, strong liquidity and high integrity. However, it is AFMA’s view that the design could be improved with a better product design and more focus on how the market mechanisms will operate. These concerns and suggestions are expanded on in detail below. Whilst AFMA remains supportive of the intent we suggest amendment to better achieve the Bill’s ambitions.

AFMA assess that there are a number of high-level issues that need to be addressed to facilitate the establishment of a successful market for nature recovery, including:

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- a) Clarifying who will be the buyer for the proposed certificates;
- b) Determining how the product will generate returns for investors;
- c) Issuing standard sized fungible certificates to facilitate trading.

Additionally, we believe the Bills should incorporate the institutional changes proposed for Australian Carbon Credit Units (ACCUs) in the Chubb review and deal with the potential for double counting of ACCUs with biodiversity co-benefits.

It is on this basis that AFMA makes the following observations, comments and recommendations.

2. The five fundamentals to making markets work

Making a market work requires specific settings, drivers and conditions. Without these, there is no guarantee that the market will deliver as intended. These can be categorised into five key conditions:

1. **Product** – From the outset, the product must be clearly defined to the buyer. It must be apparent what the product is, what type of financial product it is, the underlying asset/value, its tradability and fungibility.
2. **Participants** - A market brings together buyers and sellers, the market is the mechanism to enable the investment to take place but both suppliers and buyers are required to enter the market to make it function.
3. **Supply and demand** – are mutually dependent drivers that fuel a market. On the supply side, suppliers need confidence both in the products themselves and that investors will continue to flock, or they will either limit or cease to supply their product. Buyers on the other hand, require confidence not only that the supply will continue, but that the quality/ value will remain, the products remain fungible and tradable in a liquid market. Whilst dips in supply can alter the market in either a positive or negative way, if the decrease in supply is as a result of a lack of supplier confidence in the product or their ability to sell it to investors or amongst other buyers, this can be detrimental to the market.
4. **Price risk** – All markets require incentives for investors to manage price risk. Investors look for markets that are stable and liquid to manage their risk. Furthermore, and for new markets in particular, when there is uncertainty around future price and demand, investors therefore need to be able to hedge.
5. **Return** – Products that provide an interval or continuous revenue stream are the preferred and safest form of investment as they allow investors to appropriately balance their books, manage risk and assess the investment's performance. Investors are unlikely to invest in a product that does not have clear returns on investment.

3. Who is the buyer?

AFMA's view is that the current intended buyer is not apparent within the Bill. Our understanding is that the Bill is intended to create a framework to facilitate the voluntary purchase of biodiversity certificates. We anticipate that voluntary demand for certificates under the scheme will be limited and that more clarity about who the expected buyers are and if the credits can be used to meet compliance obligations would assist the development of the market.

It is AFMA's assessment that currently there is no clear buyer usage for the certificates other than as voluntary biodiversity certificates. The NRM regulatory framework is based on the framework for the carbon market, but the key difference is that ACCUs have a clear usage (offsetting) where the certificates issued under the Bill do not. To boost the usage of certificates and assist Australian businesses reach the 2030 climate goals, AFMA would encourage government to include and outline

offsetting usage within the legislation. The ACCU market has thrived since the Safeguard Mechanism created a clear demand for ACCUs; AFMA therefore determines that the NRM could have similar successes if likewise incorporated offsetting.

AFMA notes and applauds that the NRM will be the world's first national market. At a state level, AFMA understands that both the New South Wales¹ and Western Australian² Governments have designed offsets markets. It would therefore be advantageous for the Bill to determine and outline within the legislation, how the NRM may work alongside existing or emerging state level schemes. AFMA would recommend that consideration be made to the certificates' potential usage to comply with a state level obligation or if there is to be a new commonwealth obligation. It is AFMA's view that this would aid incentivising buyers and that alignment will be necessary, as similarly expressed above.

AFMA Recommendations

- i. Clarify the intended buyers by setting out the purposes/ uses of certificates.
- ii. Enable the certificates to be bought and sold for offsetting purposes and outline in the legislation how this can be done.
- iii. Consider and confirm how the NRM will work alongside existing or new state level schemes.
- iv. Align the NRM with state level obligations or introduce a similar transferable commonwealth obligation.

4. Product design

As expressed above, there are fundamental elements to create an investable product and a tradeable product. If the intention for creating the certificate is to stimulate investment in biodiversity projects, then the certificate does not have to also be tradeable. AFMA's recommendations on how to develop the NRM to increase the investibility of the certificates and to promote a functioning market are discussed below.

4.1. Creating an investable product

AFMA would firstly highlight that ahead of any market design, ensuring the invest-ability of a product is a pre-market activity, it is important that all investment considerations are assessed and met ahead of market design, as a first step. If a product is not deemed a prudent investment, it is unlikely that it will develop the scale to become a tradeable product.

As noted above, market participants want to invest in biodiversity, but this is unlikely to occur on a large scale unless the economics stack up. In its present form, there is no interval return. Issuing one certificate that reaches maturity in-line with landownership (25-100 years) would not be considered prudent investing to most wholesale investors as there is no continuous revenue stream, as referenced above (market fundamental 5), on the basis that providing investors with regular revenue streams also allows them to appropriately balance their books, manage risk and access the investment's performance.

The most efficient solution that AFMA would propose would be to create a bond-like return. For example, instead of issuing one certificate that reaches maturity at the end of the project lifespan, issue one certificate that reaches maturity every year, thus providing an investor with annual revenue— a clear incentive. Following the reporting period and maturity of the last certificate, a new

¹ [New South Wales Government: Biodiversity Offsets Scheme](#)

² [Western Australian Government: Pilbara Environmental Offsets Fund](#)

certificate can be issued that will mature the following year until the end of the project's natural lifespan.

AFMA's view is that the current proposal to only issue one certificate for each project will also limit investibility as only investors able to fund an entire project will be able to buy certificates and the size of individual projects will be limited by the ability of a single buyer to fund them. Our views on issuing of certificates are discussed further in section 4.2.

AFMA Recommendations

- v. Create a regular return stream to incentivise investors.

4.2. Creating a tradeable product

Successful tradeable markets rely upon high liquidity and strong fungible products. Buy and hold markets, with limited trading, tend to develop when products do not have these features. AFMA does not think the current market design will give rise to a liquid market given the longevity of the markets' lifespan, there is unlikely to be frequent trades thus squeezing liquidity.

AFMA also asserts that implementing AFMA's above regular return stream recommendation would allow the market to better respond and assess asset values whilst boosting liquidity. This recommendation is in line with other environmental products which are similarly traded on a one-year basis and those markets are performing well with fungible products and strong liquidity.

To boost tradability, AFMA recommends that the following changes be implemented:

a) Make certificates standard sized parcels

Standard parcel sizes are important for tradable markets because it allows buyers to compare on a like for like basis with a standardized quantity. They also allow a greater range of buyers and sellers to participate as they allow participants to buy different sized parcels that are the right size for their needs.

AFMA understands there is some discussion that while a single certificate might be issued for a given project some methodologies may allow the project to be broken into smaller parcels. If this approach is adopted, we want to stress that it is important that the smaller parcels are recorded in the scheme register to ensure buyers have evidence of their title to the certificate.

b) Issue certificates for a standard (shorter) tenor

Whilst AFMA understands the basis for issuing certificates with long (25-100 year) tenors we are concerned that this may not deliver a market friendly fungible product. AFMA anticipates that only a limited number of buyers will be willing to buy products with such long tenors and we are concerned that for sellers receiving a single payment for a very long lived project will not align well with the costs of operating the project. AFMA therefore recommends that Government consider ways to issue certificates with shorter tenors.

c) Establish a rating system

A rating system allows investors to easily identify, compare and trade certificates based on their type and assessed value, which would make the products more fungible and therefore more tradeable. For example, between 2012 and 2014, the UK's Department of Environment, Food and Rural Affairs and Natural England ran biodiversity offsetting pilots³. Whilst the scheme is different to the Bills' proposals, a category/ rating system was used and AFMA believes the creation of such a system would be beneficial for the market and investors.

³ [UK Department for Environment, Food & Rural Affairs and Natural England: Biodiversity offsetting](#)

Furthermore, consideration should also be given to how certificates may be used in the context of climate related financial disclosures that are likely to be forthcoming. For example, see the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD)⁴.

4.3. Firming up integrity

AFMA understands that an audit conducted by the Audit Office of New South Wales last year found that the NSW Biodiversity Offsets Scheme had significant issues including design of core elements, integrity and credit supply. The audit noted that “the market is not well developed; most credit types have never been traded and credit supply has been slow in the context of growing demand.” AFMA sees the potential for similar issues to occur in the NRM we therefore recommend that government considers the issues that have faced the NSW Scheme and implement the transferable recommendations made by the Audit Office in their report.

AFMA Recommendations

- vi. Create standardised fungible and tradeable products by:
 - a. Making certificates a standard size
 - b. Giving them standard tenors
 - c. Implementing a ratings system so that products are more comparable
- vii. Shorten the reporting period to align with the product tenor.
- viii. Consider the issues found in the NSW Biodiversity Offsets Scheme and implement the transferable recommendations.

5. Carbon Market Alignment

AFMA notes the intention to have the market operate alongside the carbon market and the legislative basis of this Bill, the Carbon Credits (Carbon Farming Initiative) Act 2011. AFMA is a strong supporter of the carbon market, and we currently administer Carbon Market Conventions that streamline market practices and maintain legal documentation that enable Australia’s over the counter markets.

AFMA has two primary suggestions:

5.1. Address the potential double counting and greenwashing

A number of activities may give rise to certificates under the Bill and ACCUs. AFMA supports projects being able to generate multiple benefits but wants to highlight that some ACCUs are currently issued with co-benefits related to biodiversity which purchasers are willing to pay a premium for. AFMA is concerned that there is the potential for double counting if the same activity can be counted towards a co-benefit under an ACCU as well as a certificate issued under the NRM. To avoid this risk, we recommend that there should be a prohibition on counting the same activity towards both the ACCU co-benefits and NRM certificates.

To mitigate the potential of double counting, in addition, AFMA recommends that the Bill incorporate clear accountability measures and safeguards for the CER and oversight/ review of the methodologies applied by them. AFMA is concerned that double counting poses a risk of greenwashing and would like to see accountability and integrity steps taken to mitigate the potential. Integrity concerns surrounding a product, particularly greenwashing, can have a detrimental impact on investment and the market.

5.2. Chubb Review Governance Recommendations should be implemented for the NRM

⁴ [Task Force on Climate Related Financial Disclosures: TCFD Recommendations](#)

Given the NRM's regulatory framework is based on the framework for ACCUs we suggest that the Government should, where relevant, consider implementing the Chubb Review recommendations⁵ related to the regulatory architecture. In particular, AFMA would like to draw attention to, the recommendations which we think are relevant to the Bill:

- Separation of assurance, regulation and policy development
- Establishing the Carbon Abatement Integrity Committee
- Establishing a transparent proponent-led process for developing and modifying methodologies
- Ensuring strong Offsets Integrity Standards
- Maximising transparency and data access

We believe adopting the Chubb Review recommendations will aid credibility, supply and investor confidence to the carbon market and think where relevant they should be adopted for the NRM.

AFMA Recommendations

- ix. Address the risk of double counting for ACCU co-benefits and biodiversity credits.
- x. Incorporate greater accountability and oversight for the CER.
- xi. Implement the relevant Chubb Review Governance Recommendations to the NRM.

6. Land

AFMA represents financial market participants and focused on the efficiency, integrity and growth of Australia's financial markets. Therefore, AFMA does not seek to comment or make recommendations on landownership aspects of the Bills. However, more broadly as it relates to investor confidence and tradability, AFMA recommends that Government further engage on legal, planning, and landownership issues to address and foster confidence in project ownership issues in conjunction with the existing landownership rights and registration of biodiversity projects on land titles. AFMA assesses this is particularly important to give investor certainty in instances of land dispute and land sales.

AFMA Recommendations

- xii. Further consult and engage on legal, planning, landownership and title issues.


7. Register

AFMA welcomes the proposed introduction of a transparent publicly accessible market. Whilst further detail on the register would be welcome, AFMA would nevertheless caution the Government to consider the outstanding issues with the Australian National Registry of Emissions Units (ANREU). Carbon market participants have raised concerns about the functionality and usability of ANREU which it would be good to avoid in the NRM register. Namely, market participants report that the search and reporting functionality is lacking in adequate necessary information; that account and user set ups take too long and difficult to obtain; and that the ability to transact is difficult due to poor functionality and being out of pace with the markets' growth. Therefore, AFMA would encourage the Government to consult more widely to ensure that the data in the registry meets the markets' needs and that it has appropriate functionality to support the market.

AFMA Recommendations

⁵ [Independent Review of Australian Carbon Credit Units: Executive Summary Final Report recommendations and key findings](#)

- xiii. Consult to ensure that the data in the registry meets the needs of the market.
- xiv. Provide appropriate functionality to the register to support the market.

We thank you for considering the points and suggestions raised in this submission. AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. 

Yours sincerely,



Monica Young

Policy Manager