



NRM Regions Australia Submission on the Nature Repair Bill

Thank you for the opportunity to respond to the Department of Climate Change, Energy, the Environment and Water's Exposure Draft Nature Repair Market Bill.

About NRM Regions Australia

NRM Regions Australia is the national representative body of Australia's 54 regional NRM (natural resource management) organisations. Our members cover all of Australia and are major partners in the delivery of the Australian Government's Natural Heritage Trust programs. NRM Regions Australia has provided submissions regularly to Federal Government agencies, including (formerly) DAWE, DISER, DCCEEW and CER. This includes a submission on the proposed Biodiversity Market in September 2022.

Regional NRM organisations have been evolving for over 20 years. We plan and deliver programs that support healthy and productive land, viable communities and sustainable industries. We work from the paddock to the regional scale to address issues that require a landscape perspective. This includes through informing and supporting on-ground conservation and environmental restoration programs, delivery of programs to build community capacity in NRM, and engagement with governments and other stakeholders on issues requiring a broader perspective, such as management of biosecurity risks. All regional NRM organisations have a regional NRM plan that describes the NRM priorities for that region.

Regional NRM organisations have a fundamental role to play in embedding a biodiversity market into a broader integrated response to Australia's conservation and restoration challenges that were identified in the State of the Environment report, at the multiple scales necessary for nature positive outcomes.

Introduction

This proposed legislation is significant. As seen through a number of reviews of environmental credit frameworks last year, including the recent Australian Carbon Crediting Unit (ACCU) review chaired by Professor Ian Chubb (Chubb Review) and the review of the NSW offsets scheme by the Auditor General for NSW, insufficiently robust legislation without high integrity provisions at every level may, at best, cast doubt on the reliability of a scheme, and at worst, undermine the health of the environments it is designed to restore and protect.

We welcome the Government's release of the Nature Positive Plan to provide an overarching framework for the Nature Repair Market, along with enhanced regulation to protect nature. While there are many uncertainties around the level of demand for voluntary investment in certificates through the Nature Repair Market, we know that stronger regulation can prevent harm from occurring in the first place. We urge the Government to provide additional information about how

the proposed scheme will work in concert with other key legal and policy reforms in advance of the finalisation of this Bill. This includes specific advice on how any Nature Repair Market legislation will interact with the EPBC Act, and environmental offsets reform.

We also suggest the Government consider lessons from the design, development, delivery, and reviews of the ACCU Framework, including the recommendations from the Chubb Review into the integrity of ACCUs. There is an opportunity to embed recommendations from the Chubb Review into the nature repair market legislation. Increased involvement of regional NRM organisations and meaningful and monitored alignment with regional NRM plans will help with this.

Regional NRM organisations were delivery partners for the Government's National Agricultural Stewardship pilot. A review of this Pilot is currently underway. The results from this review will provide important insights into both the design and delivery of the proposed nature repair market legislation, including in relation to permanence, addressing additionality, administration, models of support, and resourcing for participants in such schemes, as well as how participation in complex environmental markets can be supported. We suggest the Government consider how to incorporate the findings of this review into the legislation and or guidance materials.

Our submission provides a number of suggestions to improve and strengthen the draft Bill to ensure integrity and accessibility, and to optimise on-ground outcomes. Our submission contains the following components:

1. Executive summary
2. Key roles for regional NRM organisations and NRM plans
3. Overarching Issues regarding the Nature Repair Bill
4. Opportunities for specific Bill amendments

1. Executive summary

The 54 regional natural resource management (NRM) organisations across Australia have a key role to play in supporting the national Nature Repair Market. Our regional NRM plans cover the whole of Australia, and document priority landscape scale objectives for the environment within a social, economic and cultural context. As such, reflecting regional NRM organisations and plans in the Bill and other supporting legislation, frameworks, and guidance materials as they evolve, will enable smoother and more efficient delivery of the new market- much of the knowledge and work already exists. Specific points regarding the draft Nature Repair Bill for regional NRM organisations include:

- **Consistency with regional NRM plans:** Regional NRM plans are driven by a biodiversity and conservation imperative, and provide guidance on priorities for strategic protection and enhancement of biodiversity at a regional scale in the public interest. Regional NRM plans cover every part of Australia. Enshrining a requirement in the legislation for biodiversity projects to align with regional NRM plans (as per the CFI legislation) is an efficient way to ensure biodiversity projects are considered and valued in their landscape context, including connectivity, competing land uses, cumulative impacts, and perverse outcomes. We also recommend a requirement that projects state how they align with regional NRM plans before certificates are issued. Continued alignment of projects with regional NRM plans could be demonstrated through periodic reporting on project progress- ongoing reflection on regional NRM plans will offer project proponents opportunities to continue management that aligns with current regional goals and best practice.
- **The Biodiversity Assessment Instruments.** The development of these instruments is critically important to ensure the quality of the biodiversity restoration efforts- and the value of a project will be determined by its context. Regional NRM organisations have specialist knowledge of the natural assets in their regions, as well as extensive and long-term knowledge of how to restore and support nature conservation in a landscape context. To ensure the best outcomes based on local knowledge and consideration of the environmental, economic, social and cultural contexts, regional NRM organisations must be involved in the development of biodiversity assessment instruments.
- **Method development:** Regional NRM organisations (and state/territory bodies) should be resourced to actively participate in method development. Regional NRM organisations are uniquely placed to understand their local environments, and the barriers and enablers that support participation in conservation efforts in their regions. Involving regional NRM organisations in method development will lead to development of more practical approaches that support participation, while minimising the risk of adverse outcomes if methods are not considered in a landscape context. This approach proved successful in the codesign and ground-truthing of the Government's 'Carbon plus Biodiversity' pilot program.
- **Participation in the nature repair market** Providing support for individuals and communities, including First Nations communities, to participate in the proposed Nature Repair Market will be key to ensuring success. As the skilled, trusted and independent advisors on the ground, with appropriate resourcing, we believe NRM regional organisation staff are well placed to both participate in the co-design of programs to support participation, and also work as the on-ground enablers for the nature repair market. Our existing knowledge and capability in carbon farming, agriculture, community conservation

and other activities would allow us to add additional value through providing a suite of project options and support the capacity of rural and remote communities to participate in the Nature Repair Market.

Other comments on the Bill

- **Science as the basis of the Bill.** Including a scientific-evidence base as the primary consideration in the development of the biodiversity assessment tools and methodological determinations is fundamental to the successful repair and protection of nature - a primary objective of the Bill. We recommend explicit inclusion of scientific evidence as the basis for the development/refinement of biodiversity assessment standards, methodological determinations and monitoring, and reporting and auditing of outcomes from biodiversity projects and the overall scheme
- **Consideration of climate change impacts.** The current Bill is silent on the impacts of climate change on projects. We suggest the inclusion of a requirement to consider climate projections in project planning. The warming climate and associated increases in extreme events will lead to an increased risk of project reversal. Up front consideration of how climate resilience can be built into projects will reduce risk for participants and purchasers.
- **Additionality.** The current Bill seems to allow for protection of existing, well-managed conservation sites that require additional support to ensure their ongoing protection. NRM Regions Australia supports this approach- supporting management of well-preserved sites offers good value for money and important conservation outcomes (across land tenures and uses).
- **Biodiversity integrity standards.** The biodiversity integrity standards are an important component of ensuring projects are designed to, and will, deliver genuine biodiversity outcomes. To further strengthen the standards, we have suggested several changes to wording to reduce the likelihood of adverse impacts on biodiversity and to ensure the protection and enhancement of biodiversity can be managed within the project area.
- **Timely audits and assurance - methods and scheme.** Timely audits and assurance must be undertaken by appropriately skilled scientists/professionals for both individual methodology determinations, to ensure they are achieving desired biodiversity outcomes and the scheme overall, to ensure the objectives of the Act are being achieved. The intervals for reviews of the Scheme should be embedded in the Act.
- **Offsets.** The draft bill does not prevent the Nature Repair Market being used for offsetting (or create clear and explicit processes to safeguard risks associated with offsetting). NRM Regions Australia believes this flexibility should be removed and the proposed legislation be clear that projects promoted through the market cannot be used to compensate for the loss or harm of biodiversity or environmental assets elsewhere. If the Government chooses to preserve the flexibility for the market to be used for offsetting purposes, additional safeguards and mechanisms should be added within the Bill, to limit the conditions under which biodiversity certificates could be used for this purpose, and to ensure that protections are not eroded through amendments to subordinate instruments over time.
- **Government as the initial purchaser of biodiversity certificates.** We recommend the Government commit to investing in the scheme to facilitate early participation and to test and refine the scheme's design where necessary.

- **Aggregation.** Guidance documents for the scheme should describe how it will be streamlined. Biodiversity conservation is most successful, and optimises social, economic and cultural outcomes, when implemented at an appropriate landscape scale.
- **Increase information and transparency requirements for the Register.** The Register currently requires limited data/information to be provided on biodiversity certificates. To ensure transparency and integrity of the scheme we recommend a number of additional requirements, including whether the project is also generating ACCUs, whether more than one project/biodiversity certificate applies over a given portion of land (stacking), whether the project is contributing/being used as an offset, what the relevant permanence period is, and details of the purchaser.

2. Key roles for regional NRM organisations and NRM plans

Regional NRM organisations are the obvious partners to support the Government to optimise outcomes, increase integrity, and drive investment in the new biodiversity market. NRM regional organisations work with all land managers, they cover the entire continent, and they are the authors of regional NRM plans. Every regional plan is informed by community input, geospatial information, and a knowledge and understanding of the local environment. This information is used to prioritise environmental assets for protection and enhancement. Regional NRM organisations have extensive community and land manager networks, including with First Nations peoples. These relationships can support the achievement of multiple environmental, social, economic and cultural outcomes through these emerging environmental markets.

The proposed draft Bill overlooks the opportunity to harness expertise, experience and local networks of NRM organisations and make use of the comprehensive plans that exist for every region in Australia. The proposed legislation should include the following initiatives to harness the knowledge, networks, planning and standing capability that regional NRM organisations offer.

- a. *Safequarding regional natural resource management planning - requirement for project consistency with regional NRM plans*

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (cth) (**CFI Act**) requires that carbon farming project proponents state whether their projects are consistent with the applicable regional NRM plan. This requirement under the CFI Act recognises the role that regional NRM plans can play in informing these market developments to optimise outcomes. We know that many project developers access regional NRM plans to consider this requirement, but there is currently no formal requirement for project developers to demonstrate how their project is consistent with the regional NRM plan, or any audits or reviews undertaken to establish consistency.

Achievement of biodiversity outcomes is the core business of regional NRM organisations. Ensuring project alignment with regional NRM plans will necessarily increase the investment in projects that have a better chance of delivering landscape-scale outcomes that are supported by regional communities. Thus, when compared with the CFI Act, it is even more critical that the Nature Repair Bill both incorporates a requirement for projects to be consistent with regional NRM plans, and enables processes and resources to ensure they are. Plus, because regional NRM plans are developed in the public interest, requirements for project consistency with regional NRM plans will

provide additional integrity to biodiversity certificates overall. Requiring biodiversity projects to align with regional NRM plans will also:

- help organisations and individuals to identify opportunities for biodiversity projects;
- reduce the risk of adverse outcomes that are possible where projects are not considered in a landscape context;
- amplify the impact of all projects that register to obtain biodiversity certificates;
- provide a basis for assessment i.e., where a biodiversity project is considered in its context, it will become clearer what the value of that project is/should be.

In addition to amending the Nature Repair Bill to include a requirement that a project be consistent with the relevant regional natural resource management plan, we also request the inclusion of provisions to ensure that consistency is achieved and maintained in a more meaningful and explicit way. The requirement to be consistent and maintain consistency with the relevant regional NRM plan could be incorporated into Part 2, Division 2 - Registration of Biodiversity Project. Draft wording as follows:

“the proposed project must state how it is consistent with the objectives of the applicable regional natural resource management plan.”

In addition, further reference can assist with the avoidance of negative unintended consequences by expanding Part 2, Division 5 Section 33 (2) to include *“the proposed project is inconsistent with the regional NRM plan”* as a reason for a biodiversity project being an ‘excluded biodiversity project’.

The Regulator should need to be satisfied that a project is consistent before registering a project, and require notification if a project becomes inconsistent. Further, there should be periodic reporting to ensure active and ongoing consideration and management of this requirement, with transparent access to appropriate data/information.

We also recommend greater transparency in relation to ongoing management of this important requirement, including identification of which plan a project has been deemed consistent with on the relevant biodiversity certificate/Register. This will help to inform prospective buyers seeking to maximise the impact of their investment. Historical investments in nature repair have frequently been ad hoc, and of insufficient scale to enable landscape scale restoration. Considering ways to reward participants for suites of coordinated projects that are demonstrably aligned with regional NRM plans will lead to better outcomes.

To enable the above legislative requirement, regional NRM organisations should be appropriately resourced to allow them to engage meaningfully with project proponents to assist in the development of NRM plan consistent biodiversity projects. This investment could be scaled up in line with demand over time.

b. *Biodiversity assessment instruments*

The development of the biodiversity assessment instruments is critically important to ensure the quality of the biodiversity restoration efforts- the value of a project will be determined by its context. Regional NRM organisations have specialist knowledge of the natural assets in their regions, as well as extensive and long-term knowledge of how to restore and support nature conservation in their regions. The importance of considering biodiversity protection and enhancement projects in

their regional context was proven through the Agricultural Stewardship pilot run by the Government - the value of certain projects was influenced by their ability to contribute to landscape scale objectives described in regional NRM plans. To ensure the best outcomes based on local knowledge and consideration of the environmental, economic, social and cultural contexts, regional plans must be considered, and regional NRM organisations must be involved, in the development of biodiversity assessment instruments.

c. Consultation/involvement of regional NRM organisations in method development processes

Division 3 of the draft Bill establishes the Biodiversity Integrity Standards. Proposed section 57(1)(e)(iii) provides:

“For the purposes of this Act, a methodology determination complies with the biodiversity integrity standards if...any condition set out in, or requirement imposed by, the methodology is, among other requirements, consistent with enhancement or protection of biodiversity in native species that is appropriate to the project area.

Proposed section 57(1)(e)(iii) confirms that methodology determinations should be informed by local and regional evidence that is appropriate to a project area. This includes the landscape context. Ensuring complementary and integrated regional planning approaches to enhance and improve biodiversity requires local and regional inputs. It has been the work of regional NRM organisations over decades to determine how to support biodiversity projects in regionally and locally appropriate locations.

Currently, the draft Bill does not specifically require engagement with (or even notification of) relevant state/territory government departments or regional organisations (including regional NRM organisations or pastoral land boards), in relation to the development of methods. We suggest that the draft Bill include clear provisions to specifically capture and incorporate the expertise of NRM organisations as well as other relevant regional, and state or territory organisations in a co-design process for methodological determinations that goes beyond a public consultation process.

Methodology development offers an opportunity for NRM organisations to be part of a formal process to ensure that the type of biodiversity project contemplated by a given methodology determination is appropriate and has a social license in that region. This could be achieved by requiring the Minister to receive recommendations from relevant ‘referral’ organisations such as NRM organisations and other relevant agencies (alongside advice from the committee), or by requiring the Nature Repair Market Committee to receive advice from NRM organisations and other relevant organisations as part of its consideration of, and advice on, proposed methodologies. These measures will help ensure that methodology determinations are cognisant of, and complementary to, local / regional circumstances and opportunities, and build additional rigour and transparency into method development processes.

In addition, methodologies that enable whole-of-system benefits to generate biodiversity certificates are preferable to stacking multiple certificates to achieve more integrated outcomes. NRM Regions Australia have been long term proponents of a whole- farm planning method for carbon, such as the integrated farm management method (IFM) that is currently being developed by the Clean Energy Regulator for ACCU crediting.

- d. Reflect climate change and a changing climate - set out how projects will be appropriate in the longer term and ensure appropriate permanence in a changing climate through reference to current regional data

Beyond consideration of unlawful acts related to climate change under the fit and proper person test, climate change is not mentioned in the draft Bill.

Given the State of the Environment Report confirmed that climate change is now a key driver of biodiversity loss, this omission is surprising. To reduce the risk to participants in the market - project developers, land managers, and purchasers of biodiversity certificates - it is critical that the proposed legislation explicitly requires consideration of the impacts of a changing climate as part of methodology development and approval, as well as at a project-level when applications for project registration and issuance of a biodiversity certificate are made. Failure to incorporate in the proposed legislation a requirement to consider climate change projections and the implications of changes in temperatures and associated extreme events, both increases the risk of perverse outcomes from projects that limit the chances of long-term protection of biodiversity, and exposes scheme participants to financial risks associated with market confidence and social licence.

Data held by regional NRM organisations, and incorporated into regional NRM plans, can help inform climate appropriate projects. In 2015 regional NRM organisations across Australia were funded to incorporate 'Climate-Smart' planning into their regional plans. Resourcing regional NRM organisations to update this data regularly, alongside the implementation of the above recommendations regarding consistency of biodiversity projects with regional NRM plans, would enable an effective and streamlined approach to ensuring consideration of climate impacts in all projects.

- e. Relevant points from the ACCU review

There were several recommendations from the Chubb Review released in January 2023 that are relevant to the implementation of the proposed Nature Repair Bill and regional NRM organisations. These include:

Recommendation 3. *The Clean Energy Regulator (CER) be responsible for project monitoring, compliance and enforcement, and providing transparent project and scheme information:*
3.1 *The remit of the CER should explicitly include monitoring and the publishing of information on the impact of the scheme in the protection of Australia's natural environment and improved resilience to the effects of climate change in accordance with the objects of the CFI Act (section 3).*

The proposed nature repair market Bill should require the CER (or other parties) to monitor and publish information on the impact of the scheme.

Recommendation 14. *The Australian Government should continue to support the capacity and capability of rural and remote communities, including First Nations Australians, to participate in and benefit from the ACCU scheme.*

Providing support for individuals and communities, including First Nations communities, to participate in the proposed Nature Repair Market will be key to ensuring success, but there is little information available as to how participation in the scheme will be supported. As the skilled, trusted advisors on the ground, with appropriate resourcing, we believe NRM regional organisation staff are well placed to support the capacity of rural and remote communities to participate in the proposed Nature Repair Market, and our existing knowledge and capability in carbon farming, agriculture, community conservation and other activities would allow us to add additional value through providing a suite of project options. As was the case with the previous Agricultural Stewardship program, we believe that regional NRM organisations are well-placed to participate in a co-design process to support early participation and monitoring of the performance of the scheme. We would welcome any additional information on how the early phases of the scheme will be supported and delivered.

f. Other considerations relevant to NRM organisations

Regional NRM organisations plan and deliver programs that support healthy and productive landscapes, viable communities and sustainable industries. As such, NRM organisations are critical providers of education, awareness raising, planning tools and information relevant to land managers, farmers and proposed scheme participants. NRM organisations can help to build capacity and develop strategic approaches to integrated management of agricultural, biodiversity and carbon uses and activities. This could include information in relation to how to design and implement agricultural uses and activities alongside carbon projects and separate biodiversity projects (in different areas of a property). NRM organisations experience and capability in key delivery areas, such as biosecurity, water, soils, drought resilience and community capacity, and the acknowledged position of NRM staff as trusted, independent advisors, mean that they are well placed to assist the integrity and market uptake of initiatives like development of biodiversity certificates.

We suggest resourcing to provide environmental market extension officers to be employed by regional NRM organisations. Direct financial support to regional NRM organisations to employ dedicated staff will increase participation in the Nature Repair market (upon commencement), as well as the benefits arising from these and other markets, such as the carbon farming market. This builds upon the success of the Carbon plus Biodiversity trials and ongoing work in carbon farming and the Emissions Reduction Fund.

Regional NRM organisations are a critical part of practical biodiversity management in Australia. We can provide:

- project ready land manager networks;
- advice and support on the integration of environmental and productivity outcomes, including drought resilience;
- opportunities to bring farmers together to talk about environmental markets and support peer to peer learning -this is critical in practice adoption, and has been identified as a limitation to participation by farmers in some areas of Australia;
- trusted, unbiased, technical advice tailored to individual farm businesses;
- information and resources to aid consideration of the benefits and risks arising from the aggregate regional biodiversity conservation projects. This includes the potential

for these projects to be aligned to strategic regional goals, such as recovery of regionally threatened ecosystems, connections between remnant vegetation patches, protection of waterways, and sustainable whole-farm plans where generation of biodiversity certificates or other credits for market is one element. Involvement of regional NRM organisations means these projects are considered on both an individual and regional basis – something that will not occur in the absence of targeted and resourced consideration.

We recommend the role of regional NRM organisations in the market be formalised.

3. Additional issues regarding the proposed Nature Repair Market Bill

a. The broader strategy

The development of a national Nature Repair market is welcomed by NRM Regions Australia. As revealed through the release of the National State of the Environment report in 2022, Australia is facing a biodiversity crisis. A high integrity biodiversity market framework will be one component in helping to address this crisis and protect and restore Australia's precious natural assets. The design of the scheme, and how it fits with other national and state legislation, as well as how it interrelates with policies and programs will be key in determining its overall success in meeting its objectives and, critically, ensuring the program results in significant benefits and no unintended harm. Key components to ensuring this, that are not currently addressed through the exposure draft Nature Repair Market Bill or its supporting documentation are:

- **Relationship to other reforms.** The Government's Nature Positive Plan highlights reform in multiple areas of environmental legislation, regulation and governance. We recommend that the draft Nature Repair Bill remain in draft form until other important related legislation, including the revised EPBC Act (or equivalent), is available for consideration. This will allow the Nature Repair Bill to be considered in an appropriate legal context.
- **Timely audits and assurance - methods and scheme.** Timely audits and assurance must be undertaken to ensure each of the methodology determinations are achieving desired biodiversity outcomes, as articulated in the methodology determinations. This process should include verification and sign off by an appropriately resourced committee or panel that has the breadth of necessary expertise at prescribed intervals under the proposed Act (not just be left to details in the methodologies themselves). In addition, as is the case with the EPBC Act and other legislation designed to enable environmental protection and enhancement, such as the Murray Darling Basin Plan, periodic reviews of the legislation should be undertaken. It is recommended that a review of the nature repair market legislation and associated rules, methodology determinations and relevant instruments are undertaken within 10 years of the commencement of the legislation, and at regular intervals thereafter (e.g., every 10 years). Such reviews should focus on whether the objectives of the Act are being achieved, whether there is confidence in the market enabled by the Act and what (if any) reforms could be made to optimise the operation of the statutory framework.
- **Potential use of the program for biodiversity offsetting:** The draft Bill does not prevent the Nature Repair Market being used for offsetting or create clear and explicit processes to safeguard risks associated with offsetting. However, the Government's Nature Positive Plan

is suggestive that it is possible. NRM Regions Australia believes this flexibility should be removed and the proposed legislation be clear that projects promoted through the market cannot be used to compensate for the loss or harm of biodiversity or environmental assets elsewhere. The recent State of the Environment report has described an environment in severe and rapid decline, with little hope of reversing the trend quickly. The proposed biodiversity certificate market is an example of a market designed to address a market failure, and with many of Australia's fragile ecosystems on the brink of collapse, there simply isn't the resilience within these systems to withstand further market failures. The recent PWC report - 'A nature positive Australia- the value of an Australian biodiversity market' 2022 states:

*“Remediative measures are important, particularly where a biodiversity market incentivises landscape or habitat restoration activities; **however, offsetting should only be considered where impacts to biodiversity are unavoidable, if at all.**”*

Already, the Government's Nature Positive Plan suggests that where appropriate 'like for like' offsets cannot be sourced, development proponents will have the option to make a 'conservation payment' to proceed with projects-thus enabling and streamlining ongoing, and possibly irreversible, biodiversity loss. Since elected, the Government has shown a strong commitment to environmental repair and an increase in protected areas. We think it is critical to the integrity of the proposed market that it is used for delivering environmental restoration, not for enabling environmental harm.

In the case that the Government chooses to allow the legislation/market to be used for off-setting, strong additional safeguards would be required within the Bill to ensure protections are not eroded through subordinate instruments through successive governments through time. Such safeguards could include that biodiversity certificates used for offsets must:

- demonstrate newness and additionality (new activities not already occurring/commenced and beyond business as usual and what is required by law)
- demonstrate a net gain in biodiversity i.e. the certificate must describe a greater value than the impact;
- link offsets to the actual achievement of outcomes – rather than a likelihood of them being achieved. History shows that gains have not been achieved for offset projects, and enabling projects to proceed/be finalised without realisation of actual outcomes (just a promise of them), may release developers/other project proponents from the onus of ensuring the offset requirements are met/ funding additional works to ensure they will be;
- require 100-year permanence periods;
- be constrained by timing and use provisions – i.e. there should be a limit on the banking of certificates to limit the ability of developers to buy up certificates to use in future projects. This would also require the introduction of vintages for certificates or projects against which banking restrictions operate; and
- ensure any certificates used for offsetting must be traceable within a national register to enable transparency and auditing. A further provision should be to provide for project proponents to specify whether their biodiversity certificate can

be sold for offsetting purposes, as project proponents may want to ensure their project is not enabling harm elsewhere.

- **Transparency and integrity:** the Register currently requires limited data/information to be provided on biodiversity projects. To ensure transparency and integrity of the scheme we recommend a number of additional requirements. These include: whether the project is also generating ACCUs; whether a carbon project is registered on all or part of the project land; whether more than one project/biodiversity certificate applies over a given portion of land; whether the biodiversity certificate is contributing/being used as an offset (or whether the owner has prohibited this use); whether the project is subject to a Government conservation contract; and whether the issued certificate has been purchased by jurisdictional or national government representatives.
- **That all of the above points are enshrined in the legislation** and not relegated to subordinate procedures or policies. The above items are material safeguards that require certainty and predictability and should therefore be included in the proposed Act.

b. Question of project additionality

The draft Bill states that, for a biodiversity project to be eligible it must be covered by a methodology determination that operates such that the project should result in “enhancement or protection of biodiversity ... that would be unlikely to occur if the project was not carried out”. NRM Regions Australia considers that this definition provides sufficient scope that not all projects must necessarily be additional, as some projects will involve the protection of existing high-value biodiversity via ongoing management. We want the scope for landholders who have protected and managed areas for biodiversity to access the scheme, including IPAs, and to help them continue to do so into the future, and think that this definition is sufficiently flexible to enable such areas to be protected. Projects could be categorised as either ‘restoration’ or ‘protection and enhancement’ projects.

Adding a biodiversity market mechanism to support landholders, Traditional Owners, and others to protect and restore what they already have is a significant need and would deliver extra resources to where they are needed most. There will need to be careful arrangements to ensure that these activities are not locked out. This could be stacked with other government investment such as Ranger programs or investments into natural infrastructure for natural hazard mitigation.

Biodiversity certificates could also be used very effectively to help add value to and prioritise projects under existing markets, such as the carbon market. The carbon plus biodiversity trial demonstrates that potential- and the role of regional NRM organisations in making it happen.

However, some safeguards to ensure integrity in the system to prevent offsetting and double-dipping are required. In this regard we submit:

- legislation should ensure that biodiversity certificates cannot be used to compensate for harm or inaction elsewhere (by purchasers of certificates or government policy, including government investments), unless it meets specific and rigorous additional requirements for offsets;

- with respect to assessing additionality, stacking of outcomes should be allowed, provided that biodiversity certificates are not being generated and used:
 - To redirect existing government funding or mandated funding (heritage, biodiversity management funding) into a scheme for credits that represent biodiversity that already exists; or
 - to meet existing legislative requirements or landholder obligations, for example the management of noxious weeds as per the local, state or federal legislation, or for required rehabilitation of disturbed/developed sites; or
 - multiple times as it moves across a supply chain, and which may artificially inflate claims of sustainability or environmental protection.

Furthermore, the market should be set up for transparency so that a project can be described as new or additional (restoration projects), or as protecting or building on earlier conservation work (protection and enhancement projects). This should sit within a broader monitoring and evaluation framework to ensure net biodiversity gain over time at both a regional, state, and national level.

c. Commonwealth participation in the nature repair market

In order to test and improve the operation of the market in the early stages, we suggest the Government allocate an initial sum of money to purchase biodiversity certificates. Experience from the carbon market has demonstrated limited appetite from investors - voluntary investors make up a small proportion of the market, with the Government being the primary purchaser or ACCUs to date.

While increased prominence and importance of the environment, social, and governance issues (ESG) and the Taskforce on Nature-Based Financial Disclosures (TNFD) may eventually provide a driver for biodiversity certificate purchasing where disclosures create the momentum for biodiversity action and investment, it is not clear the extent or pace at which this might occur. As disclosure frameworks are implemented, it will also be necessary to consider how portfolio investment offsets might be managed within the legislation (i.e., with stricter provisions as per physical offsets), and whether additional considerations of this should be incorporated into the legislation now.

A commitment by the Government to participate as a purchaser in the scheme will ensure early participation, and enable the system to be trialled to inform and tailor advice to potential participants as interest increases.

d. Aggregation

While the Bill mentions having multiple project proponents/participants, it is silent on the concept of project aggregation. We believe that the ability to streamline and enable aggregation of projects will be essential to:

- Encourage participation of landholders with smaller holdings. As has been the case with carbon farming, the administrative burden versus the reward has been limiting for many smaller landholders. Conversely, these smaller holdings are often on higher value land that

has high conservation value and high carbon sequestration potential, an obstacle that North Coast Local Land Services has sought to overcome through their Biodiverse carbon project pilot. <https://nrmregionsaustralia.com.au/wp-content/uploads/2022/10/Partnering-for-impact-North-Coast-Local-Land-Services.pdf>.

- Enable considered, landscape scale conservation that maximises the value and benefits of the investment.
- Provide at-scale investment opportunities. As initiatives such as the TNFD increase, it is likely that investors will be looking for large scale projects to invest in to limit their administrative expenses. Enabling easy aggregation of projects to provide larger, high conservation value projects will drive additional investment in nature.
- Ensure a larger portion of the Australian landscape is being managed for conservation in a way that ensures biodiversity outcomes, in line with the Government's conservation goals.

Ensuring consideration of how aggregation can be streamlined under the legislation/through guidance materials will support landscape scale biodiversity outcomes.

e. Biodiversity certificates, investment and outcomes

The draft Bill specifies that a 'Biodiversity certificate' will be created as the saleable unit resulting from development and delivery of a project under the Nature Repair Bill. The Bill also suggests that a single certificate will be generated for sale for each project, although there seems to be some flexibility or ambiguity around when the certificates will be able to be sold i.e., upon development of a project plan, or delivery of the outcomes sought under the project. Under a crediting scheme, as in the case of ACCUs, up-front investment is justified via the promise of ongoing revenue through the sale of ACCUs. However, with a single biodiversity certificate as the saleable unit, it is unclear how the following will be managed:

- The cost of management through time - i.e., how will landholders be compensated/rewarded for ongoing management?
- Tax implications of a one-off payment may act as a disincentive to uptake from both participants and buyers, as it is likely to be beneficial to many businesses to spread payment and income over multiple years.
- Difficulty in pricing of projects - one certificate will, and should, be worth more than another, but it will be difficult for both parties to determine an appropriate price/value for money where there is no common unit of quantification, as is the case with carbon.
- Crediting of outcomes should be linked to periodic monitoring to ensure the project is achieving its stated objectives, and to ensure long-term commitment to delivery of outcomes through the project. One-off payments may undermine this.

Supplementary materials on how the scheme will be managed to address the above constraints, as well as additional information on how the certificates will be generated and sold through the project permanence period to incentivise participation and ensure outcomes are achieved, would be welcomed.

4. Opportunities for specific Bill amendments

In addition to the above overarching and strategic issues and recommendations above, we recommend a number of specific amendments to the current drafting of provisions in the draft Nature Repair Market Bill. These are described below.

a. Project proponent and eligible interest holders

The legislation should define ‘project proponent’ in the same way as the CFI Act. The CFI Act defines the ‘project proponent’ (in relation to an offsets project under the CFI Act) as the person who:

- (a) is responsible for carrying out the project; and
- (b) has the legal right to carry out the project.

There should be an up-front requirement for the person applying to register a biodiversity project to have (or attest to having) the legal right to carry out the project (and confirm they are responsible for carrying out the project). This would reduce the risk of uncertainty and any dispute about these issues being delayed to the point at which all eligible interest holder consents are required (prior to issuance of a certificate). By this stage, proponents and communities may have invested time and money in activities, or have expectations that are difficult to recalibrate.

It is prudent, and likely to avoid future dispute, for the scheme to require up-front consideration of whether the person applying to register a project (to become the project proponent, with associated market benefits) has the legal right to do so and to seek this legal representation from the applicant.

b. Legislative consideration of adverse impacts that might arise from biodiversity projects

Under the current draft Bill Part 4, Division 2, Section 47 (1bi) the Bill states that:

(1) In deciding whether to make a methodology determination, the Minister:

*b) **may** have regard to the following:*

(i) whether significant adverse environmental, agricultural, economic or social impacts are likely to arise from the carrying out of the kind of project that the determination covers;

Having regard to the significant adverse impacts of projects under a methodology determination should be a mandatory requirement for the Minister. The draft Bill should be amended to provide that the Minister ‘**must have regard**’ to these matters.

There are concerns in some communities with high numbers of carbon farming projects that these have led to adverse impacts, including absenteeism and pest and weed issues. The potential for these issues to arise where there is not sufficient consideration of other land uses and social impacts has been reflected both by the decision by the previous agriculture Minister Littleproud to limit the extent of HIR projects without ministerial consent, and also by the recent Chubb Review which found that it was unclear whether processes and requirements are appropriate to manage negative social, economic and environmental impacts, including on agricultural productivity and regional communities.

Regional NRM organisations could contribute advice relevant to the consideration of these matters, particularly the potential adverse impacts of biodiversity projects under a potential methodology (or variation of a methodology). As recommended above, this could also be supported by requiring biodiversity projects to be consistent with regional NRM plans and by involving NRM organisations in the development and assessment of proposed methodology determinations.

c. Biodiversity Integrity standards

In addition to a project-level assessment of consistency with regional NRM plans (as per our recommendations above), consideration of consistency with regional NRM plans should be an explicit requirement in the biodiversity integrity standards. This will provide greater certainty in relation to the development or variation of methodology determinations.

In addition, under the draft Bill, Part 4, Division 3, proposed Section 57: Biodiversity Integrity Standards, a methodology determination complies with the biodiversity integrity standards if:

“(a) a biodiversity project carried out in accordance with the methodology determination should result in enhancement or protection of biodiversity in native species (whether the effect on biodiversity occurs within or outside the project area) that would be unlikely to occur if the project was not carried out.”

We support rewarding landholders whose actions result in benefits across multiple areas - effective catchment management for benefits such as water quality outcomes rely on it. However, given only the outcomes within a project area are able to be controlled by the proponent (and enforced under the proposed scheme), we have some concerns that projects that rely heavily on off-site outcomes are vulnerable to impacts beyond the control of the proponent and may expose the proponent and purchaser to a high level of risk. For example, in the case that a biodiversity certificate is granted for replanting a small area of bushland to enable a larger landscape connectivity outcome, how will the biodiversity certificate be managed in the event that other parts of that continuous vegetation are compromised by either deliberate clearing or bushfire? We are eager to understand what safeguards will be in place to protect the integrity of biodiversity certificates issued for outcomes beyond the immediate project area/control of the proponent.

Also under the Biodiversity Integrity Standards, proposed section 57(1)(b) provides:

“(b) a biodiversity project carried out in accordance with the methodology determination should be designed to prevent the project from having a significant adverse impact on biodiversity in a native species that is protected under:

(i) a law of the Commonwealth; or

(ii) a law of a State or a Territory in which the project area is wholly or partly situated;

We think the above should be changed from “should be designed to prevent the project from having a significant adverse impact on biodiversity” to “**must not have a significant adverse impact on biodiversity**”. This strengthening of the legislation should ensure that not only is a project designed

to minimise any adverse impacts, but that the onus is on the project proponent to ensure that adverse impacts do not occur throughout the life of the project.

d. Consultation by the Nature Repair Market Committee

Under Division 2, Subdivision E, the draft Bill sets out requirements for consultation on methodology determinations with a specified minimum consultation period of 28 days on the development/variation of methodology determinations. However, the legislation also allows that the time for consultation be shortened to 14 days provided:

“the Nature Repair Market Committee considers that the time limit is appropriate in the circumstances.”

We consider that 14 days is insufficient for consultation. The process of methodology development and refinement will be highly complex, and in order for organisations to meaningfully understand, explain and engage with their members or stakeholders and provide a considered response, 14 days is inadequate. This is particularly important given the central role of methodologies in determining project activities, timing for issuance of certificates, permanence periods and a number of other elements of the market that are critical to integrity and stakeholder confidence.

We suggest that this reference to a reduction in time is removed from the proposed legislation or, as a minimum, replaced with words such as *‘under exceptional circumstances and where there is the risk of immediate environmental, social, cultural or economic harm, the Nature Repair Market Committee may limit the consultation period to 14 days.’* to ensure appropriate statutory parameters are placed on any abbreviated timeframes.

e. Additional matters for the Nature Repair Market Committee to take into account

Part 4, Division 2, 55- Additional matters for the Nature Repair Market Committee to take into account states:

“The Minister may, by legislative instrument, direct the Nature Repair Market Committee to do any or all of the following:

(a) have regard to one or more specified matters in giving advice about the making of a methodology determination;

(b) have regard to one or more specified matters in giving advice about the variation of a methodology determination;

(c) have regard to one or more specified matters in giving advice about the revocation of a methodology determination.

There is no reference to what might constitute a ‘specified matter’ under the draft Bill. The inclusion of this clause in the Bill could be subject to use for political gain in the future. We recommend drafting in the proposed legislation should ensure that such directions must promote the objects of the Act and are additional and ancillary to the biodiversity integrity standards.

f. Understanding and including science as the basis of the Bill

The draft Bill makes no reference to or commitment to using science-based methods or measurement. Including a scientific-evidence base as the primary consideration in the development of methodological determinations is fundamental to the successful repair and protection of nature - a primary objective of the Bill. We strongly recommend explicit Inclusion of scientific evidence as the basis for the development/refinement of methodological determinations and monitoring, reporting and auditing of outcomes from biodiversity projects with the Bill. This could be included as a clear and mandatory requirement in the biodiversity integrity standards, in place of reference to 'evidence' and as a new standard with wording as follows (or similar):

“Methodology determinations must be made and informed by best-available scientific data and evidence in informing biodiversity conservation and nature repair under the Bill (Act)”.

This will include the use of biological data collected through recognised tools and approaches. Data should be made available through state and Australian Government data repositories and provided as open data where possible.

g. Audits and assurance

Regular audits and assurance of each of the methodology determinations are required to ensure each of the methodology determinations are achieving desired biodiversity outcomes, especially those specified or articulated in the methodology determinations. Auditors used under the proposed nature repair market scheme should be required to have expertise (relevant degree/s) in environmental, ecology and/or biodiversity fields.

Part 11 of the Bill proposes the use of auditors registered under the National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Act) and associated Regulations. NGER auditors require qualifications and expertise focused on greenhouse and energy reporting, CFI Act (carbon credit generation), and renewable energy legislation. This is not sufficient for biodiversity projects and certificates.

Integrity and validation will be key attributes sought and expected by potential markets, as well as being critical factors to land managers and NRM regions to achieve the biodiversity outcomes. Ensuring that the audit (and compliance process for individual projects) meets expectations and is adequately resourced is fundamental to success. Acknowledging the potential for highly dispersed project locations and complex nature, consideration should be given to how, with continental coverage and skilled resources at regional level, some regional NRM organisations might provide support to this process. This becomes particularly important when considering the maturity of potential projects which the market will demand and may require medium to long term monitoring and audit processes.

Thank you again for the opportunity to provide a submission on the Exposure Draft - Nature Repair Bill.

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