



NRM Regions Australia Submission on the National Biodiversity Market

Thank you for the opportunity to respond to the Department of Climate Change, Energy, the Environment and Water - A National Biodiversity Market proposal.

NRM Regions Australia is the national representative body of Australia's 54 regional NRM organisations. Our members cover all of Australia and are major partners in the delivery of the Australian Government's National Landcare Program. NRM Regions Australia has provided submissions regularly to Australian Government agencies, including (formerly) DAWE, DISER and CER. This includes a submission on the proposed legislation of the former Government's draft national voluntary biodiversity stewardship market.

The following provides an overview of key considerations in both developing a national biodiversity market, and specific commentary on possible legislative needs to ensure integrity in such a market. Regional NRM organisations have been key contributors to optimising outcomes and promoting integrity and supply in the carbon farming market, and we look forward to working with the Australian Government to bring our significant knowledge, experience and skills to promote the best possible outcomes in this new market.

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

Given the significance of the proposed legislation, and the opportunity to ensure a framework that has long-standing integrity, we urge the government to provide sufficient time for all stakeholders to respond to a draft bill when it is prepared, and to enable deep engagement with stakeholders (including supply and demand) as the Bill is drafted.

In addition, we urge the Government to consider lessons from the design, development, delivery, and reviews of the Australian Carbon Crediting Unit (ACCU) Framework. In particular, the review currently being led by Professor Ian Chubb into the integrity of ACCUs will provide a timely insight into how Australia's existing national environmental market, the carbon farming market, is operating. We strongly advise that the findings from this review are incorporated into the design of the National Biodiversity Market.

Our submission has two sections:

- A. Overview of issues relating to establishing a biodiversity markets framework
- B. Issues relating to the potential role and contribution of regional NRM organisations

In addition, we have provided Attachment A- *legislative considerations in the development of a new biodiversity market*. These comments relate to specific legislative concerns or opportunities that were relevant to the earlier Agricultural Stewardship Market legislation and are likely to have ongoing relevance to future legislation governing the Biodiversity Market.

A: Overview issues regarding Biodiversity markets framework

1. *The broader strategy*

The development of a national biodiversity markets framework is welcomed by NRM Regions Australia. As revealed through the recent release of the National State of the Environment report, Australia is facing a biodiversity crisis. A high integrity biodiversity 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 and relates to other 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 are:

- **Integration into a broader framework:** the markets framework must be linked to and embedded within a broader national framework and strategy for increasing biodiversity, underpinned by environmental accounting and national reporting against agreed standards, to assess overall state and trends for Australia's biodiversity. The framework could also be linked to other frameworks and strategies for aligned outcomes, such as cultural and social benefits, to support identification and success of projects that optimise co-benefits. This could also provide a way to ensure relevant independent reviews or similar inputs are included at appropriate junctures under a biodiversity market scheme, including reviews of the medium- or long-term effectiveness of the scheme, and of protocol determinations.
- **Robust protocol development and assessment:** The system must deliver robust mechanisms for developing protocols under the market that are strongly informed by evidence tying actions under the protocols to long term biodiversity outcomes. The development of protocols should go beyond deliberations of an advisory committee. This governance mechanism is necessary but not sufficient. It will also be necessary that diverse expertise, scientific and practical understanding is drawn upon, and that the process is appropriately resourced. There may be the need for a body beyond a committee with greater powers and resourcing – that sits arm's length for independence.
- **Timely audits and assurance of each of the protocols** must be undertaken to ensure each of the protocols are achieving desired biodiversity outcomes, as articulated in the protocols. Again, this process should include verification and sign off by an appropriately resourced committee or panel that has the breadth of necessary expertise.
- **Concerns of potential use of the program for biodiversity offsetting:** the framework and supporting legislation must be clear that projects promoted through the market cannot be used to compensate for the loss or harm of biodiversity or environmental assets elsewhere. Jurisdictional arrangements for offsetting have been criticised - for example the recent report by the NSW Auditor General found failings on the integrity, transparency, and sustainability of the scheme. It is critical that this program is used for delivering environmental restoration, not for enabling environmental harm.
- **That all of the above points are enshrined in the legislation** and not relegated to subordinate procedures or policies.

2. *Question of project additionality*

NRM Regions Australia considers that the framework needs to deal with additionality carefully and clearly to promote biodiversity gains and the resources for doing so. The concept of additionality as it applies in carbon may need to be considered differently for biodiversity. Additionality within the

scheme may not be essential in all cases, particularly where avoided harm is ensured, and double-dipping avoided. 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.

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 credits 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 credits or government policy, including government investments), i.e., offsetting; and
- 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

Furthermore, the market should be set up for transparency so that a project can be described as new or additional, or as protecting or building on earlier conservation work. This should sit within a broader framework to ensure net biodiversity gain over time.

3. Market drivers - presumed demand for biodiversity certificates and drivers for that demand

While NRM Regions Australia supports the development of a voluntary biodiversity market, we would welcome additional information on the anticipated level/source of demand for biodiversity credits. External research and insights from our stakeholders suggest that while there is demand for carbon farming projects that deliver co-benefits with biodiversity outcomes, there is currently limited understanding of and limited demand for pure biodiversity credits. Engagement with corporations and financial institutions has indicated that there is currently no data to suggest that purchasing of biodiversity credits provides a return on investment. Thus, the initial investment into the market is likely to be limited to philanthropic organisations, and corporations that are seeking to promote their green credentials.

While increased prominence and importance of the environment, social, and governance issues (ESG) and the Taskforce on Nature-Based Financial Disclosures (TNFD) will increasingly provide a driver for markets where disclosures create the momentum for biodiversity action and investment, it is not clear the extent or pace at which this might occur.

Activity and demand in the carbon market has been driven by voluntary and compliance motivations, as well as significant Government funded purchasing. We recommend further work and modelling be undertaken or provided in relation to this issue, as it is important to scheme design.

NRM Regions Australia would welcome further information on likely sources of government and/or private investment to the market.

B: Key issues for NRM organisations

Regional NRM organisations are the obvious partners to support the Australian Government to 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, detailed geospatial information, and a knowledge and understanding of the local environment that 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, and can use these relationships to drive achievement of multiple environmental, social and economic outcomes through these emerging markets.

The current proposal overlooks the opportunity to harness expertise, experience and local networks of NRM organisations (as well as other appropriate regional/state/territory organisations). We recommend the following initiatives to harness the knowledge, networks, and standing capability that regional NRM organisations offer.

1. ***Consultation/involvement of regional NRM organisations in protocol determination process***

Ensuring complementary and integrated regional planning approaches to enhance and improve biodiversity requires local and regional inputs. The factsheet acknowledges the heterogeneous nature of Australia's biodiversity. As such, it is important that protocol determinations are informed by local and regional perspectives.

The proposal does not currently suggest specific 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 making of protocol determinations. While the recently released fact sheet does not provide much detail, this issue also arose under legislation proposed for a biodiversity stewardship market earlier this year.

We suggest that a Bill establish a process to specifically capture and incorporate the relevant expertise of regional, state or territory organisations (beyond a public consultation process).

Protocol determinations present an opportunity for NRM organisations to be part of a formal process to ensure that the type of biodiversity project contemplated by a given protocol 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 (alongside advice from the committee or suchlike), or by requiring the Advisory committee to receive advice from relevant organisations as part of its consideration of, and advice on, proposed protocol determinations. These measures may also assist to ensure that protocol determinations are cognisant of, and complementary to, local / regional circumstances and opportunities.

2. ***Safeguarding regional natural resource management planning - requirement for 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- recognising the role that regional NRM plans can play in informing these market developments to optimise outcomes. Despite this requirement, there is currently little transparency as to whether consistency with regional NRM plans is being achieved by carbon farming projects. Given achievement of biodiversity outcomes is the core business of regional NRM organisations, it is critical that the biodiversity market legislation incorporates the knowledge, expertise and planning undertaken by regional NRM organisations in a more meaningful and explicit way. Also, we recommend greater transparency in relation to ongoing management of this important requirement.

We recommend the biodiversity market legislation include a requirement that a project be consistent with a regional natural resource management plan. This requirement should be included in the legislation to ensure proposed projects are consistent with regional NRM plans and require notification if they become inconsistent with a regional NRM plan, particularly in the absence of any other requirement to engage with NRM organisations in relation to the making of protocol determinations. In addition, the Regulator should need to be satisfied it is consistent before registering a project. Further, there should be periodic reporting to ensure active and ongoing consideration and management of this requirement, with transparency and access to appropriate data/information.

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 projects. This investment could be scaled up in line with demand over time.

3. 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 appropriate regional data

To reduce the risk to all participants in the market - project developers, land managers, and purchasers of biodiversity credits, it is critical that the impacts of the changing climate are considered and incorporated explicitly into the legislation requirements for project conception and generation of biodiversity credits. The recently released State of the Environment Report showed that climate change is now a key driver of biodiversity loss, and failure to incorporate climate change projections and consideration of the increase in temperatures and associated extreme events, both increases the risk of perverse outcomes from projects, limits the chances of long-term protection of biodiversity, and exposes scheme participants to increased financial risk.

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 and implementing the above recommendation to ensure biodiversity credit projects are consistent with regional NRM plans, would enable an effective and streamlined approach to ensuring consideration of climate impacts in all projects.

4. Other considerations relevant to NRM organisations

Regional NRM organisations plan and deliver programs that support healthy and productive country, viable communities and sustainable industries. As such, NRM organisations are critical to all stakeholders by providing education, awareness raising, planning tools and information to farmers/scheme participants. This would 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 can help to build capacity and develop

strategic approaches to integrated management of agricultural, biodiversity and carbon uses and activities.

NRM organisations experience and capability in key delivery areas, such as biosecurity, water, soils, drought resilience and community capacity mean that they are well placed to assist the integrity and market uptake of initiatives like development of biodiversity credits. It is important to ensure there is an appropriate balance in the new legislative framework between reliance on private sector firms undertaking this work and public trust and accountability. Relevant to this risk are considerations of information and know-how being housed (on a proprietary basis) within business sector service providers and developers.

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 biodiversity credit scheme (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 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 be formalised in the proposed biodiversity market legislative framework.

Thank you again for the opportunity to provide a submission on the proposed biodiversity market.

For further information please contact NRM Regions Australia CEO Dr Kate Andrews: 0403 604 823.

Attachment A- legislative considerations for a new biodiversity market

In March 2022 the previous Coalition government introduced legislation for the development of an environmental stewardship market. While the new biodiversity market is proposed to be more inclusive and move beyond farmers, informal meetings with staff of DCCEW indicate that the previous legislation is likely to form a foundation for the development of legislation for the new scheme. Some specific legislative recommendations and suggestions based on the former draft legislation, along with information provided by the current government, inform the following comments. These comments should be considered within the context of our broader submission.

1. ***Expert committee/board composition***

The establishment of an expert committee is not a sufficient mechanism in and of itself to provide oversight and expertise for the biodiversity credit market. Rather it is recommended that an appropriately resourced board or approval authority be appointed. This group will require consideration of diverse expertise, such as ecological, along with an understanding of practical concerns and barriers to supply for landholders. We suggest including a requirement in the draft Bill that at least one member have sufficient biodiversity / ecology qualification and experience.

It is worth noting that the risk of ensuring relevant expertise is captured through a board/committee processes and functions is amplified if engagement and consultation with relevant state/territory and regional organisations (NRM organisations, pastoral boards, environment departments etc.) is not embedded in the scheme.

2. ***Audits and assurance***

Regular audits and assurance of each of the protocols are required to ensure each of the protocols are achieving desired biodiversity outcomes, especially those specified or articulated in the protocols. We request that auditors are required to have expertise (relevant degree/s) in environmental, ecology and/or biodiversity fields. The previous Bill proposed 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 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 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.

3. *Project Proponent legal right to carry out project*

The future legislation will need to 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 may have been an oversight in the previous proposed legislation, as Part 9, Division 3 of the Agriculture Biodiversity Stewardship Market Bill (proposed s 92) requires notification if the project proponent ceases to have the right to carry out the project (despite not being required to demonstrate that they have the right to carry out the project at the outset).

The previous Bill risked uncovering gaps or issues with a project proponent’s legal right to carry out a project after a project has been registered (and the associated investment of time and cost in the registration process).

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.

In addition, under the previous draft legislation, A “biodiversity project” is defined to mean “... a project, carried out in a particular area, that is designed to enhance or protect biodiversity in native species (whether the effect on biodiversity occurs within or outside the area).” Therefore, it appears the definition of ‘biodiversity project’ means that a project may be capable of generating a biodiversity certificate for enhancing biodiversity outside the project area. To protect the integrity and security of credit issues, it is suggested that the legislation:

- i. clarify the definition of ‘biodiversity project’ (presumably remove reference to ‘or outside’ the area, and/or refer explicitly to a ‘project area’); and
- ii. ensure appropriate links to eligible interest holder consent (particularly to areas associated with a biodiversity project if these are intended to be broader than a project area) and include clear provisions to assure the permanence of biodiversity gains/enhancements in ‘off site’ areas.