

# WENTWORTH GROUP OF CONCERNED SCIENTISTS

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## WENTWORTH GROUP SUBMISSION TO THE ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE INQUIRY - NATURE REPAIR MARKET BILL 2023

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The Wentworth Group of Concerned Scientists is an independent group of scientists, economists and professionals, working to secure the long-term health of Australia's land, water and biodiversity. We focus on solutions-based, science-driven policy reforms. Achievements since our inception include:

- Working with former leaders to advance national water reform, leading to the **2004 National Water Initiative**, the **Commonwealth Water Act 2007**, establishment of the \$10 billion Commonwealth Water for the Future program and supporting delivery of the Murray-Darling Basin Plan.
- Collaborating with the former Premier of NSW, Bob Carr, to develop a new model for landscape conservation in NSW, including the establishment of **Catchment Management Authorities** (now called Local Land Services), and developing science-based regulations to improve the management of **native vegetation** in NSW.
- Working with the former Premier of Queensland, Anna Bligh, and CSIRO, to build a strong public policy case for carbon farming, resulting in the Commonwealth **Carbon Farming Initiative Act 2011**.
- Developing the landmark **Accounting for Nature** model, which contributed to the UN System of Environmental Economic Accounts adopted in 2013 and the *National Strategy for Environmental-Economic Accounting* endorsed by Commonwealth, state and territory Environment Ministers in April 2018.

We appreciate the opportunity to contribute to the Environment and Communications Legislation Committee inquiry into the Nature Repair Market Bill 2023.

The Government has proposed a Nature Repair Market to drive investment in the repair of Australia's degraded landscapes. A key objective of this market, as stated in the Nature Positive Plan, is to "deliver benefits for landholders, investors and the environment by encouraging investment in restoration activities to deliver clear, measurable biodiversity outcomes."<sup>1</sup>

If Australia is to achieve its national and international commitments, reverse the current trajectory of environmental decline, and turn our ambition for 'nature positive' into reality, **the Nature Repair Market needs to achieve real, additional and absolute biodiversity gain. That is, every dollar invested should leave the environment in a demonstrably better condition than it would have otherwise been, and this investment should not compensate for losses elsewhere.** The market should contribute to the restoration of past landscape degradation and help halt ongoing biodiversity declines; it should not be used as a vehicle to counterbalance future losses.

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<sup>1</sup> DCCEEW 2022, *Nature Positive Plan: better for the environment, better for business*, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.

We wish to draw the committee's attention to six key opportunities to enhance the Bill before consideration by Parliament, in line with this 'nature positive' outcome. We believe the amendments proposed below are vital to enabling the Nature Repair Market to "deliver clear, measurable biodiversity outcomes".

## **1. Explicitly exclude offsets from the market.**

The problem: The likely inclusion of 'environmental offsets'<sup>2</sup> in the market is the single biggest threat to market integrity and the ability of the market to benefit biodiversity. Environmental offsets are intended to compensate for unavoidable impacts on environmentally significant matters (e.g., state, territory or nationally listed threatened species, ecological communities or heritage values) by offsetting losses at one location with "like-for-like" gains at a secondary location. However, in practice, environmental offsets are increasingly well recognised as being poorly implemented and governed<sup>3</sup> with the potential to contribute to further environmental decline.<sup>4</sup>

The proposed inclusion of environmental offsets in the Nature Repair Market could exacerbate existing issues relating to the delivery of environmental offsets while simultaneously undermining the ability of the market to deliver absolute biodiversity gain. It would also hinder the Government's commitment to "nature positive" reforms.

To address the problems with environmental offsets, reforms are urgently needed to the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the key instrument for regulating environmental offsetting at a national level. The Government has committed to EPBC Act reforms, including development of a statutory National Environmental Standard for environmental offsets to ensure environmental gains are delivered, and strengthening of the mitigation hierarchy.<sup>5</sup> The Wentworth Group support this commitment.

The solution: Undertake urgently needed reforms to the EPBC Act and insert a new provision into the biodiversity integrity standards (Division 3, Section 57) within the Bill to explicitly exclude the use of biodiversity projects and their associated biodiversity certificates to fulfil environmental offset obligations under the EPBC Act and any State or Territory legislation, regulations or policies that fulfil a similar purpose.

## **2. Ensure that biodiversity projects deliver real and verifiable gains, and those gains are accurately represented on biodiversity certificates.**

The problem: To achieve real and additional biodiversity benefits, biodiversity certificates must reflect actual biodiversity gain that can be directly attributed to a registered biodiversity project *and* would not have occurred in the absence of the project (i.e., additionality). However, the Bill only considers additionality in relation to the eligibility or otherwise of a project or methodology and does not include any clear requirements for the measurement and accreditation of benefits

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<sup>2</sup> When we use the term 'environmental offsets' we are specifically referring to environmental offset obligations under the *Environment Protection and Biodiversity Conservation Act 1999*, and any State and Territory legislation, regulations or policies that fill a similar purpose.

<sup>3</sup> ANAO 2020, *Auditor-General Report No.47 2019–20 Referrals, Assessments and Approvals of Controlled Actions under the Environment Protection and Biodiversity Conservation Act 1999*, Australian National Audit Office, Canberra, June. CC BY 3.0.

<sup>4</sup> Samuel, G 2020, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October. CC BY 4.0.

<sup>5</sup> DCCEEW 2022, *Nature Positive Plan: better for the environment, better for business*, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.

attributed to the project activity alone. Without such requirements, there is a risk that certificates may overinflate biodiversity benefits, certificate holders could make false and misleading public claims and market integrity could be undermined.

This issue is of particular concern in relation to biodiversity 'protection' projects, which are based on the assumption that biodiversity values at the site would have been lost or substantially declined in the absence of the project. The inclusion of 'protection' based projects in the market indicates that averted loss will be a permissible way to obtain a biodiversity certificate. If averted losses are permitted, this complicates considerably the estimation of additional benefit. For these projects, it will be critical to separate out the component of biodiversity gain directly attributable to the project activity. Without a clear requirement for the measurement of 'additional benefit', potentially ALL existing biodiversity at a protection project site could be credited.

Furthermore, the Bill provides little detail of how biodiversity outcomes will be represented on biodiversity certificates.

The solution: Update provision 1 (d) in the biodiversity integrity standards (Division 3, Section 57) within the Bill to include the amended and additional text shown below in bold:

*(d) a biodiversity project carried out in accordance with the methodology determination must be designed to achieve enhancement or protection:*

*(i) that is of **native** biodiversity ~~in native species~~; and*

*(ii) that can be measured, assessed and verified **using a scientifically robust method (as specified in the biodiversity assessment instrument associated with that methodology determination)**; and*

*(iii) for which benefits measured can be directly attributed to the registered biodiversity project and would not have occurred in the absence of the project.*

AND

Amend section 70(3) of the Bill to provide further specificity regarding the information to be captured on biodiversity certificates, including but not limited to the specific outcome(s) achieved, or on track to be achieved, the additional biodiversity gains directly attributable to the project, whether any project actions or outcomes contribute to priorities identified in agreed conservation planning documents (such as species or ecological community recovery plans, threat abatement plans or Natural Resource Management (NRM) plans), whether the biodiversity project was undertaken on the Indigenous estate and/or involved the participation of Aboriginal and Torres Strait Islander peoples, and the duration of permanence period for the biodiversity project.

### **3. Strengthen key provisions that impact the integrity, transparency and accountability of the Nature Repair Market.**

The problem: The Bill fails to capture key integrity, transparency and accountability requirements, suggesting they may be left out or contained within subordinate regulations which may not be subject to the same level of parliamentary scrutiny nor the requirement for public consultation.

- a) The Bill provides for the Secretary to delegate their powers (including the power to purchase biodiversity certificates) to an official of the Regulator (s224). This could create a scenario where the Regulator is responsible for the registration of biodiversity projects and issuance of biodiversity certificates and is a purchaser of those same certificates.

This is inconsistent with Recommendation 1 the *Independent Review of Australian Carbon Credit Units (ACCUs)*<sup>6</sup> (the Chubb Review).

- b) Auditing provisions throughout the Draft Bill rely on accredited greenhouse and energy auditors, with no requirement for subject-matter experts to be involved in auditing. While the use of greenhouse and energy auditors provides a level of administrative convenience, auditing of biodiversity projects encompasses considerably more complexity and should be undertaken by auditors that possess relevant expertise in the monitoring and assessment of biodiversity.
- c) A significant amount of the subordinate legislation referred to throughout the Draft Bill will be prescribed through “the rules”, which are not subject to a public consultation process and can be made by the Minister without seeking advice from the Nature Repair Market Committee. This is of particular concern where rules materially impact market integrity or transparency, for example:
  - i. The “relinquishment equivalence requirements” (s151), which will determine when it is acceptable for alternative biodiversity certificate(s) to be relinquished (instead of the original certificate) following voluntary cancellation of a registered biodiversity project;
  - ii. The definition of a “significant reversal of biodiversity outcome”, which will influence when the Regulator can issue a biodiversity certificate relinquishment notice in response to: a) reversal of biodiversity outcome other than due to natural disturbance or conduct etc (s146); or b) reversal of biodiversity outcome due to natural disturbance or conduct and no mitigation happens (s147). Sections 146 and 147 are significant as they appear to be the key provisions to increase likelihood of biodiversity outcomes being realised;
  - iii. The parameters through which a registered biodiversity project (including a project for which a certificate has been issued) can be varied in relation to the project area, the methodology determination that covers the project, the project’s activity period and permanence period (s20); and
  - iv. The “specified matters” that a biodiversity certificate must set out (s70).
- d) Monitoring, auditing and compliance provisions in the Bill are insufficient. There are no provisions to prescribe the frequency or scope of the Committee’s monitoring and compliance functions or to require the Regulator to undertake regular audits of a representative subset of biodiversity projects under each methodology determination.

**The solution:** Amend the Bill in a number of key areas to enhance integrity, transparency and accountability within the Nature Repair Market. Proposed amendments include:

- a. Amend section 224 of the Bill to prohibit the Secretary from delegating powers relating to the Commonwealth purchase of biodiversity certificates to the Regulator.

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<sup>6</sup> Chubb, I., Bennett, A., Gorring, A., Hatfield-Dodds, S., 2022, *Independent Review of ACCUs*, Department of Climate Change, Energy, the Environment and Water, Canberra, December. CC BY 4.0.

- b. Replace all references to "accredited greenhouse and energy auditors" throughout the Bill with "accredited biodiversity auditors" AND insert new provisions within the Bill (by way of a new division in Part 11 Audits) to provide for the establishment of a biodiversity auditor accreditation scheme. The provisions could be modelled on ss75-75A of the *National Greenhouse and Energy Reporting Act 2007*.
- c. Ensure that all "rules" that could materially impact market integrity, transparency or accountability are subject to public consultation and review by the Nature Repair Market Committee, including:
  - i. "relinquishment equivalence requirements" (s151)
  - ii. the definition of a "significant reversal of biodiversity outcome", (s146 and s147).
  - iii. The parameters through which a registered biodiversity project (including a project for which a certificate has been issued) can be varied (s20)
  - iv. the "specified matters" a biodiversity certificate must set out (s70).

The Nature Repair Market Committee review process should include consideration of whether the specified rules comply with the biodiversity integrity standards.

- d. Amend sections 195 and 219 of the Bill, relating to the functions of the Nature Repair Market Committee and the Regulator respectively, to prescribe specific minimum targets for monitoring, auditing and compliance.

#### **4. Commit to the development of a Biodiversity Investment Strategy and establishment of an associated Special Account.**

The problem: The Bill does not clearly define the nature or scope of its objectives beyond "enhancement or protection of biodiversity", leaving ambiguity and uncertainty in the outcomes that will be delivered by the market.

The solution: Insert a new part in the Bill to require the Government to publish a Biodiversity Investment Strategy and establish an associated Special Account. The new part could be inserted between Parts 6 and 7 and be titled "Part 6A"

The purpose of the Biodiversity Investment Strategy would be to provide guidance on intended Government policy priorities. This strategy would not bind market participants but would:

- a. define, in a clear and measurable way, the outcomes the Nature Repair Market is seeking to deliver and the baseline against which these outcomes would be measured
- b. provide clarity around public policy intentions and forward guidance regarding potential Government purchase of certificates
- c. send a clear signal to the market (buyers and sellers) about what projects the Government perceives as more/less valuable, or lower/higher priority
- d. give landholders an insight to the kind of projects that would be marketable.

The Biodiversity Investment Strategy should promote the full and effective participation of Aboriginal and Torres Strait Islander people in a manner which is reflective of the scale and value of the Indigenous estate. The strategy should also place a premium on in-perpetuity protection.

The purpose of the Special Account would be to ensure that Commonwealth purchase of biodiversity certificates was undertaken in a manner that promoted the objects of the Bill and was consistent with the priorities elaborated in the Biodiversity Investment Strategy. The new provisions could be modelled on the Special Account provisions within the *Commonwealth Water Act 2007*.

#### **5. Promote equitable supply, particularly for Traditional Owners, through the inclusion of a participation function for the Regulator**

The problem: Targeted efforts are needed to build the capacity and capability of rural and remote communities, including Aboriginal and Torres Strait Islander peoples, to participate in and benefit from the market. Without this, important projects from a diversity of proponents and regions may not be available to the market.

The solution: Amend the Bill to include a participation function for the Regulator. This could be done by inserting a provision into Part 21, section 219 of the Bill to require the Regulator to play a role in education and capacity building, particularly for smaller land holders, land managers and traditional owners, to facilitate wider participation in and access to the benefits of the market. This function could also support the establishment of biodiversity projects that deliver priorities identified in the Biodiversity Investment Strategy (see Recommendation 4). This recommendation is consistent with Recommendation 14 of Chubb Review, “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”.

#### **6. Develop a plan for the use of regulatory levers to increase demand where needed.**

The problem: It is unlikely that there will be sufficient voluntary investment to drive the creation of a fully functioning market capable of delivering the outcomes required within the necessary timeframe. As such, regulatory levers will arguably be required to drive demand at scale. Without this there is a risk that considerable time, effort and resources will be invested in the development of a market that fails to deliver on its objectives.

The solution: Amend the Bill to require the Minister to develop a plan that sets out the regulatory levers that will be employed to drive demand, should market demand fail to materialise at scale, and the timeframe for implementation of the plan. The plan should be developed within one year of the Bill passing and mandatory consultation should be undertaken with experts and stakeholders (including affected industries and sectors) to help inform design of the plan. The plan could include the establishment of financial liabilities (e.g., linked to gross annual revenue), mandatory disclosures under the Taskforce for Nature-related Financial Disclosures or any other relevant regulatory levers the Government may choose to employ. It would complement voluntary investment in the market and send a signal to increase market confidence in future investment. The provision requiring the establishment of a plan could be incorporated into the new Part 6A proposed under Recommendation 4.

NB: This should be accompanied by public investment in the market, with the Government as an early buyer, to send a clear signal to the market and stimulate supply.