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# ACF submission to Senate Environment and Communications Legislation Committee inquiry into the Nature Repair Market Bill 2023

**Recommendation 1: The Bills should not proceed until reforms to the EPBC Act are completed.**

**Recommendation 2: If the Bills do proceed, the *Nature Repair Market Bill 2023* should be amended to prevent the Nature Repair Market being used as a source of biodiversity offsets.**

## Introduction

The Australian Conservation Foundation welcomes the opportunity to make a submission on the *Nature Repair Market Bill 2023* and *Nature Repair Market (Consequential Amendments) Bill 2023* (the Bills).

ACF has had a consistent position through consultations the former government's *Agricultural and Biodiversity Stewardship Market Bill 2022* and the current governments proposed Nature Repair Market. We have:

- Welcomed in principle the intention of providing for support for landholders to protect and restore nature on their land;
- Expressed concern about the lack of evidence for demand and lack of detail about the biodiversity outcomes the Market is intended to deliver;
- Opposed the use of biodiversity offsets as a source of demand for Biodiversity Certificates.

We made a detailed submission to the exposure draft of the Nature Repair Market Bill reiterating and expanding on the concerns outlined above and in addition recommending that reforms to the *Environment Protection and Biodiversity Conservation Act 1999* committed to by the government be completed first.

**These concerns have not been addressed and so we recommend that the Senate reject the *Nature Repair Market Bill 2023* and the *Nature Repair Market (Consequential Amendments) Bill 2023*.**



If the Bills proceed, then we recommend that the Senate introduce amendments to exclude the use of biodiversity certificates under the Nature Repair Market as biodiversity offsets under Commonwealth and State or Territory laws.

### National nature law reform needs to come first

We have welcomed the government's response to the Samuel review of the EPBC Act as outlined in the Nature Positive Plan. Reforms such as new National Environmental Standards, the establishment of a new national Environmental Protection Agency, reforms to ensure fit for purpose conservation planning, and the development of regional planning all have the potential to drive transformational change in our national biodiversity protection laws, effectively setting a new baseline for environmental management. This new baseline will effectively create the floor for the market and logically needs to be in place first.

Given these significant reforms to the EPBC act and the timetable for their development and introduction later this year or early next year, we remain concerned about the sequencing of these reforms and the introduction of the Nature Repair Market legislation – in our view is that the latter should follow the EPBC reforms rather than the sequence currently proposed. Legal protections need to come prior to the market, not after.

**Recommendation 1: The Bills should not proceed until reforms to the EPBC Act are completed.**

### The Bill should be amended to exclude biodiversity offsets

The government has confirmed in the Explanatory Memorandum to the Bills that they intend to use the Nature Repair Market to deliver biodiversity offsets required under the EPBC Act or other legislation (such as state and territory laws). We oppose the use of Biodiversity Certificates for this purpose and recommend that the Senate amend the Bills to prevent the use of the Nature Repair Market in this manner.

In our submission to the exposure draft of the legislation, we urged the government to address questions as to expected demand for biodiversity certificates and what the Nature Repair Market is expected to deliver in terms of biodiversity outcomes. These questions remain unanswered, which heightens our concerns that biodiversity offsets will be the only certain source of demand for biodiversity certificates.

To call something “nature repair” when it is funded by biodiversity loss elsewhere is fundamentally contradictory, and the use of biodiversity offsets to drive demand for biodiversity certificates under the Nature Repair Market amounts to government endorsed greenwashing of biodiversity destruction.

Our view on biodiversity offsets is that “while biodiversity offsets have a limited role to play in effective biodiversity protection regulation, the lack of appropriate constraints on their utilisation and poor system design means that these schemes are at best ineffective and at worst contribute to the ongoing decline in threatened



species, native habitat, and biodiversity values.”<sup>1</sup> There is abundant recent evidence to support this position including the findings of the NSW Legislative Council inquiry into the Integrity of the NWW Biodiversity Offset Scheme (“there are multiple problems with the scheme, including serious flaws in its design and operation that raise fundamental questions about whether it can achieve the stated goal of ‘no net loss’ of biodiversity”)<sup>2</sup> and the Victorian Auditor-General’s Office *Review of Offsetting Native Vegetation Loss on Private Land* (“Victoria is not achieving its objective of no net biodiversity loss from native vegetation clearing on private land”).<sup>3</sup>

The Samuel review of the EPBC Act was also very critical of the how offsets have been used under the EPBC Act, concluding that “the current EPBC Act environmental offsets policy contributes to environmental decline rather than active restoration” and requires fundamental reform.<sup>4</sup>

It is apparent that the claimed demand for the Nature Repair Market is not supported by any independent modelling or analysis of the claimed corporate or philanthropic demand for such a scheme, and it seems that the scheme is being developed on a “build and they will come” basis. This reinforces the need to ensure focus on the facilitation of *new and additional* investment in biodiversity conservation rather than making the success of the scheme contingent on the generation of demand through biodiversity offsets. Even an ideal biodiversity offset scheme, at best, slows loss and decline. In reality, biodiversity offsets schemes have delivered poor outcomes. The risk that the Nature Repair Market becomes dependant on offsetting for its development and success should be avoided.

We believe that the *Nature Repair Market Bill 2023* be amended to exclude the use of the biodiversity certificates under the Nature Repair Market to meet biodiversity offsets obligations. Amendments should be made to prevent projects from being developed to meet biodiversity offsets obligations, and to ensure that biodiversity certificates even if not developed specifically as a biodiversity offset cannot be later used to satisfy an offset obligation.

We suggest the following amendments to the *Nature Repair Market Bill 2023*:

- Amend clause 7 to include a definition of “biodiversity offset” as an obligation under a Commonwealth, State or Territory law to offset or compensate for the adverse impact of an action on biodiversity (this is based on s 20A of the *Carbon Credits (Carbon Farming Initiative) Rule 2015*).

<sup>1</sup> [ACF submission to the New South Wales Legislative Council Planning and Environment Committee Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme](#), September 2021.

<sup>2</sup> NSW Legislative Council Planning and Environment Committee (2022) [Integrity of the NSW Biodiversity Offsets Scheme](#), page ix..

<sup>3</sup> Victorian Auditor-General’s Office (May 2022) [Offsetting Native Vegetation Loss on Private Land](#).

<sup>4</sup> Professor Graeme Samuel (2020) Independent Review of the Environment Protection and Biodiversity Conservation Act – Final Report, Chapter 8.





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- Amend clause 33 to provide that biodiversity offsets are excluded biodiversity projects.
  - Amend clause 57 to provide that a Methodology Determination will not meet the Biodiversity Integrity Standards where if it is to be used for the purposes of a biodiversity offset.
  - Amend clause 140 to prevent the deposit of a biodiversity certificate with the Regulator for the purposes of a biodiversity offset. This addresses the suggestion the Explanatory Memorandum to the Bills that such a deposit could be used to meet offset obligations.<sup>5</sup>

**Recommendation 2: If the Bills do proceed, the Nature Repair Market Bill 2023 should be amended to prevent the Nature Repair Market being used as a source of biodiversity offsets.**

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<sup>5</sup> Explanatory Memorandum, Nature Repair Market Bill 2023, 144

