



Nature repair market: submission by the Labor Environment Action Network (LEAN)

The Labor Environment Action Network (LEAN) represents Labor members and supporters who celebrate Labor's environmental legacy and who campaign to ensure the environment is central to its future. LEAN is an active participant in environmental debate and decision making across the Labor Party with a goal to improve environmental commitments from the party.

LEAN supports the Government's intention to create innovative financial mechanisms to attract private investment to protect and restore biodiversity and native ecosystems in Australia. LEAN emphasises that such mechanisms must complement and not replace Government regulation and core funding for conservation and environmental restoration.

LEAN has the following comments on the draft legislation and its policy context.

1. The priority is to get the environment laws right

LEAN considers that the priority for the nature positive agenda must be a new federal environment act to replace the outdated *Environmental Protection and Biodiversity Conservation Act 1999*, which has palpably failed to deliver either of the outcomes in its title. Only once the federal legal framework has been properly reformed, and the national environmental standards promised in the Government's nature positive plan have been delivered, will it make sense to consider further innovation in financial mechanisms to supplement the necessary public investment in biodiversity conservation and restoration.

Acceleration of the Nature Repair Market Bill ahead of the broader environmental law reform risks creating a disconnect between the conservation, restoration and nature positive objectives of the environment laws and a specific mechanism to create innovative financial tools to promote investment in biodiversity conservation and restoration. The risk is that, rather than the financial mechanism conforming to the broader objectives and requirements of the Nature Positive Plan and particularly the environment laws, the prior passage of the nature repair market will lead to the environment laws conforming to the market structure.

LEAN therefore urges the Government to consider delaying further progress on the nature repair market until the broader framework for environmental protection and biodiversity conservation and restoration has been achieved, or at least presenting a revised Bill on the

nature repair market and a new Bill on federal environmental law simultaneously so that they can be considered as part of a cognate package.

2. The Nature Repair Market must be consistent with the national environment laws and particularly the legislated national environmental standards

Irrespective of the relative timing of the Nature Repair Market Bill and the revised national environment laws, the Nature Repair Market must be consistent with the environment laws, and particularly the legislated national environmental standards. In particular, the proposed biodiversity integrity standards must be consistent with the standards developed for Matters of National Environmental Significance, Regional Planning and Offsets. The legislation establishing the Nature Repair Market must explicitly state the need for consistency with the relevant national environmental standards.

3. The market should be grounded in a science-based national biodiversity investment strategy

The Government's draft legislation to create a nature repair market focuses entirely on the rules for creating biodiversity certificates, including that they create a transferable property right.

In order to ensure that the nature repair market is nature positive, the legislation should specify that **biodiversity certificates cannot be issued for projects in areas that have already been designated as protected**, including as national parks or as critical habitat under the new Federal Environment Act, unless they can demonstrate **measurable improvements to biodiversity outcomes through active management**.

The legislation should also include a requirement that the Government develop and regularly update a **science-based national biodiversity investment strategy** to inform decision-makers of the priorities for conservation and biodiversity investment. The priorities could include priority areas, priority species and priority threats.

This is essential to ensure that investments within the Nature Repair Market are targeted to the highest priority needs and not only to areas that happen to belong to landholders who have an interest in gaining access to the market. The market will only have a nature positive outcome if investment is properly directed towards the highest conservation return and not only the highest financial return.

4. Biodiversity is not fungible and biodiversity certificates must not be used to offset damage

The draft legislation does not deal with how biodiversity certificates can be used. LEAN understands that the new federal environment law will deal with this, strengthening the argument for the Nature Repair Market Bill and a new federal environment law to be dealt with simultaneously as cognate legislation. Only by seeing both Bills together will industry,

environmental groups and the general public be able to comment on a fully informed basis on the proposed supply and demand sides of the proposed nature repair market.

LEAN considers that biodiversity certificates should be considered **non-fungible tokens**, which can be personally owned and traded in the way that works of art can be owned and traded. This conceptualisation makes clear that biodiversity is not fungible.

Biodiversity certificates as non-fungible tokens **should not be available for use as offsets for projects requiring mitigation under the new federal environment laws**. They would, however, provide a mechanism for entities wishing to invest in biodiversity conservation and restoration to be matched with landholders who wish to undertake certified conservation and restoration activities. While this voluntary market is likely to be initially small, the increasing adoption of nature-related financial disclosures by international companies is likely to see increased demand for high-integrity, high-quality biodiversity certificates.

LEAN understands that the Treasury, while consulting on the Government's intention to introduce legislation to mandate climate-related financial disclosures, does not currently have plans to introduce similar requirements for nature-related financial disclosures. Nonetheless, such disclosures are becoming increasingly common and global investors are increasingly recognising the importance of understanding nature-related risks. **If the Government were to expand its financial disclosure requirements to include nature-related risks, the nature repair market could provide an important mechanism for companies to meet any such requirements.**

LEAN notes the PwC report referenced on the Government's Nature Repair Market web page (*A nature positive Australia - the value of an Australian biodiversity market*) specifically recommends:

A biodiversity market should not include biodiversity offsets, and instead, prioritise biodiversity stewardship certificates solely for conservation outcomes. Offset schemes attempt to balance habitat destruction with gains elsewhere, which poses increased risk to an effective biodiversity market. There is a lack of evidence to show that offset schemes deliver the predicted biodiversity outcomes and there is risk that offset schemes result in a net loss of impacted biodiversity. By contrast, biodiversity stewardship certificates (that are not used for offsetting) can be sold on the private market to companies wanting to invest in nature and enhance their environmental credentials. This would be particularly attractive to tourism operators, for example, along the Great Barrier Reef, where businesses are directly and tangibly impacted by biodiversity decline.

5. Offsetting mechanisms for project approvals must be developed separately under the reformed federal environment laws

Mitigation measures for projects approved under the new federal environment laws should be developed under specific methods consistent with the proposed new national environmental standards and applied on a case-specific basis, noting the importance of following the mitigation hierarchy of avoiding or mitigating harm before resorting to local protection and restoration and finally a possible conservation payment.

While we understand the Government's intention that the biodiversity certificates approved under the Nature Repair Market Bill will be high quality and high integrity, they run the risk of becoming a relatively low cost offset opportunity that will lead to continuing environmental decline. In order to prevent such an outcome, LEAN urges the Government to ensure that any last resort conservation payments are set at a level high enough to create a financial incentive consistent with the mitigation hierarchy. This is the only way to achieve the Minister's laudable objective of ensuring that this Government turns around decades of environmental decline and instead presides over a genuinely nature-positive outcome.

Conclusion

LEAN supports the creation of mechanisms to enable innovative financial tools to encourage significant private investment in biodiversity conservation which are complementary to regulation and substantial core funding from the Government.

LEAN would welcome an opportunity to expand on these points to the Committee.