

24 February 2023

Department of Climate Change, Energy, the Environment and Water
Biodiversity Market Team
GPO Box 3090
Canberra ACT 2601



Environment Institute
of Australia and
New Zealand Inc.

Via email: naturerepairmarket@dcceew.gov.au

Dear Sir/Madam

RE: Nature Repair Market Bill Exposure Draft - Consultation

The Environment Institute of Australia and New Zealand (EIANZ) welcomes the Department of Climate Change, Energy, the Environment and Water's (DCCEEW or the Department) release of the *Nature Repair Market Bill* (exposure draft) and supporting information. EIANZ welcomes the opportunity to comment in response to the documents and work with the Department to achieve better biodiversity outcomes for the Australian environment.

EIANZ is a not-for-profit, professional association for environmental practitioners. The Institute promotes independent and interdisciplinary discussion on environmental issues and advocates good practice environmental management delivered by competent and ethical environmental practitioners. It accredits qualifications, certifies practitioners, and holds members and certified practitioners to a robust Code of Ethics and Professional Conduct.

Members and certified practitioners come from a range of technical disciplines including environmental assessment, monitoring, and regulation, ecology, natural resource conservation and management, environmental accounting, heritage conservation, and environmental law. Members and certified practitioners work in government, industry, consulting services, academic institutions, and the community.

The EIANZ supports, in principle, the objective of *establishing a market-based scheme that enables landholders to protect, manage and restore nature through tradeable certificates*. This approach is intrinsically linked to the approach of state governments that requires the provision of biodiversity offsets where development impacts can't be avoided or mitigated. EIANZ's support for such measures is qualified to the extent that these mechanisms depend on a legislated and proscriptive market for which there is evidence of market failures through gaming the system and a lack of willingness by landholders to participate and investors to provide capital for an uncertain outcome and corporate benefit.

The EIANZ advocates improved mechanisms to support biodiversity conservation and management and to this end has recently released a Position Statement on Biodiversity Offsets. This submission should be read in conjunction with that Statement ([here](#)).

At the meeting between the EIANZ and DCCEEW on 16 February 2023, feedback on specific aspects of the exposure draft of the Bill was requested by the Department. The EIANZ feedback is presented in two parts, firstly the specific matters requested and secondly other matters that the EIANZ believes require critical consideration if this initiative is to have a successful beneficial impact on facilitating investment in the conservation and repair of nature, and redressing biodiversity decline.

(1) ITEMS RAISED AT MEETING 16 FEBRUARY 2022

(a) Auditing

The importance of a strong mechanism for documentation of biodiversity values by independent auditors, both at the point of issuing certificates and for ensuring effective retention and improvement in biodiversity values cannot be understated. While it is critical for there to be rigor and consistency behind the standards that biodiversity values are measured against, they need to be balanced with a level of pragmatism so that cost and timeframes do not become prohibitive and a disincentive for landholders to participate in the scheme.

The requirements for suitably qualified and experienced persons to undertake these reviews should have regard to their expertise in the assessment and recording of biodiversity values, as well as understanding of audit and assurance procedures. A background in ecology, environmental or natural resource management, or land rehabilitation will be essential to inform the opinion expressed as to the validity of biodiversity values. These skills are currently not residing within the government departments but within the consulting and university and research sectors and this needs to be acknowledged and recognised by the Department.

There should be a quality management system for auditing biodiversity values as proscribed by the Auditing and Assurance Standards Board [here](#). This will ensure that there is consistency and thoroughness to the audit work conducted by accredited independent auditors. Setting in place an effective and credible assurance arrangement for documenting the retention and improvement in biodiversity values will be critical for the provision of information on which the market will determine the monetary value of certificates.

The EIANZ has a well-established scheme for credentialling environmental practitioners as Certified Environmental Practitioners (CEnvP). These credentials, such as CEnvP (General Practice) and CEnvP (Ecology Specialist) recognise competency and proficiency, professionalism and ethical practice. The certification is used by governments to determine the suitability of a person to perform specialized activities and ensures competency beyond academic qualifications as the process requires CEnvP to demonstrate every two years their proficiency and practice in the field. For example, in environmental impact assessment, there is a CEnvP (IA Specialist) (REAP) certification for registration as Registered Environmental Assessment Practitioners (REAP) under NSW legislation. The Institute would be keen to work with DCCEEW to credential persons in the requirements for independent auditing under the nature repair scheme.

Through such an arrangement the government could point to an independent arrangement for credentialling auditors by a recognised professional body that holds members and certified practitioners accountable to a robust Code of Ethics and Professional Conduct.

The EIANZ would welcome the opportunity to further discuss the arrangements for assessing biodiversity values, their retention and improvement, as they lie at the heart of the integrity (perceived and real) of the scheme and the willingness of investors to provide capital for its advancement.

(b) Biodiversity Integrity Standards

Biodiversity integrity will be crucial to ensuring that there are effective and transparent outcomes from the bill. Some items that EIANZ consider essential to achieving this objective are:

- Having appropriate minimum standards for biodiversity assessment and management practices that achieve stated objectives for areas of land for which certificates are issued.
- Funding arrangements that ensure funds paid by investors for certificates can only be applied by landowners to the purposes of retaining and improving biodiversity values for which a certificate is granted. Without such arrangements, there is the risk of finances being applied to non-scheme purposes, and the integrity of the scheme being undermined. The application of funding ought to be part of the independent auditing and assurance process.
- Setting a minimum price for certificate(s), based on the commercial cost of management of the area for which they are issued to achieve the stated objectives of biodiversity retention and improvement.

The EIANZ recommends that the following matters be considered in the further development of the Bill:

- Splitting of certificate(s) to separate out the biodiversity values, rather than issuing one certificate per project area. This will be more transparent, achieve efficiencies in establishment costs, and will also assist the operation of a market for certificates.
- Establishment of the anticipated market demand and provision of a publicly accessible platform to enable verified trades between suppliers and purchasers.
- Detailed modelling of the operation of the proposed market to stress test its components and establish its likely viability as a source of investment income for retaining and improving biodiversity values.
- Establishment of the inter-relationships with other schemes and instruments, for example carbon farming and offset markets, and biodiversity offset requirements or markets under other jurisdictions. There is a risk of landholders double dipping by selling the same biodiversity outcomes in different markets.

(c) Alignment of Language

There are presently numerous schemes that result in land rehabilitation, including non-statutory mechanisms (e.g., Landcare) and statutory (e.g., biodiversity offset requirements as conditions of environmental approvals), that are delivered by all levels of government across all of Australia's States and Territories. While the proposed Nature Repair Market is unlikely to resolve differences in language across all of these schemes, it provides a valuable opportunity to align some key terms and approaches. Some key considerations are:

- The Bill does not refer to Matters of National Environmental Significance (MNES). In delivering biodiversity outcomes there is value in identifying whether the primary purpose of the Nature Repair Market is to address MNES plus the extent to which it considers Matters of State Environmental Significance (MSES) and Matters of Local Environmental Significance (MLES).
- It is anticipated that methodologies for measuring biodiversity will be drawn from approaches such as Biocondition (in Queensland), Vegetation Quality Assessments/Habitat Hectares (in Victoria) or Biodiversity Assessment Method (in NSW). Such methods are similar in their overall approach but are significantly different in their application. While identifying appropriate methodologies will likely be a matter for the Nature Repair Market Committee to resolve, having a national approach that allows for the accreditation of other methodologies may assist in aligning the proposed market to existing activities.
- There are references to the word 'integrity' in the scheme and its guidance materials. This language refers to different forms of integrity. In some cases, it refers to quality of the biodiversity values associated with a project area for which a certificate is to be issued. In other cases, it refers to the probity of the operations of the market.

Consideration should be given to using the term only in the context of the probity of certificates and the market.

- The objectives of the Act include facilitation of "...the enhancement or protection of biodiversity...". The term "protection of biodiversity" is not defined despite being repeated throughout the draft Bill. It can have several meanings e.g. securing an area under a covenant or some other mechanism or protecting it from a threat such as protection from clearing that would likely happen in the absence of a biodiversity project. It has been assumed that protection means the latter of these. The term would ideally be defined in the Act.

(2) Other issues to be considered

There are several matters that must be considered to successfully progress the Nature Repair Market. The points below, presented in no particular order, provide a high-level summary of these key issues. The EIANZ welcomes the opportunity to discuss these points in greater detail with the Department:

- Consider altering the naming of the bill and the overall scheme given that for many practitioners in this space, the acronym NRM generally connotes Natural Resource Management, and this is already a well-established community of practice. Continuation of the current naming would create unnecessary confusion adding to an already complex area of practice and would undermine the benefit and value that NRM has played in its grassroots engagement and protection of environmental values over many years.
- There may be some potential for linkages to other similar initiatives globally and the framework should be constructed in such a way that allows for this, taking into consideration not only the potential for international trading but also for natural capital accounting methodologies on both the supply and demand side of the market. See [this](#) overview from the European Commission for example.
- It is understood one of the aims of the market is to attract landholders to undertake additional protection / restoration work on their lands that may have otherwise been reluctant to do so before the introduction of such a mechanism. If this is the case, then it will be necessary to make the process attractive in terms of costs (outlay and return), limited encumbrances on land and administrative burdens. At this stage, it does appear that encumbrances (such as covenants, easements, or other legal means of protection) are excluded from the Draft Bill, but it is difficult to ascertain what are the likely financial incentives and administrative burdens. It is however clear that there are significant punitive measures should a landholder fail to deliver (Section 46 of the Draft Bill). Put simply, at this stage it is known that the 'stick' is large and the 'carrot' is unknown. This would result in avoidance of the utilisation of the scheme by many to whom it is directed.
- While there are punitive consequences for landholders who fail to perform in accordance with the terms of a certificate issued for a project area this is a matter for the scheme regulator. Consideration could be given to providing a remedy for purchasers of certificates that subsequently lose value because of diminished biodiversity values. This should be a consideration in the suggested stress test modelling of the proposed market.
- There must be clearer links between carbon farming and carbon markets. Dr Ken Henry delivered a keynote presentation to the EIANZ's National Biodiversity Offsets Conference, 2022, on this subject and provided many useful insights into this need. Dr Henry's presentation can be found [here](#).

In summary, the EIANZ sees the proposed Nature Repair Market as a positive step in garnering greater private investment in the retention and improvement of Australia's biodiversity values. However, there are a number of inherent weaknesses that will undermine the scheme as it has been currently described within the exposure Bill that EIANZ would like the Department to address prior to the introduction of the legislation to Parliament for debate. The Institute would welcome the opportunity to work with DCCEEW to achieve the outcome it seeks.

Yours sincerely

A handwritten signature in blue ink that reads "Vicki Brady". The signature is written in a cursive style and is contained within a light grey rectangular box.

Vicki Brady
President

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About EIANZ

The Environment Institute of Australia and New Zealand (EIANZ, the Institute) is a professional association for environmental practitioners. The Institute supports environmental practitioners and promotes independent and interdisciplinary discussion on environmental issues. The Institute also advocates environmental knowledge and awareness, advancing ethical and competent good practice environmental management.

A Certified Environmental Practitioner Scheme (www.cenvp.org) is also in place to assess and certify competent experienced environmental practitioners working in government, industry and the community. This includes specialist competencies such as Impact Assessment, Ecology, Land Rehabilitation and Contaminated Lands.

The EIANZ is an advocate for environmental assessment, management and monitoring investigations and reports being certified by suitably qualified and experienced persons for the completeness and scientific rigor of the documents. One of the ways of recognising a suitably qualified practitioner is through their membership of, and certification by, an organisation that holds practitioners accountable to a code of ethics and professional conduct, such as the EIANZ.

The EIANZ is a not-for-profit, charitable organisation incorporated in Victoria, and a registerable Australian body under the Corporation Act 2001 (Cwlth), allowing it to operate in all Australian jurisdictions.