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Beyond repair?

Comment on the Draft Nature Repair Market Bill (2023)

The draft Nature Repair Market Bill presents a fundamentally confused blueprint for a voluntary market in biodiversity conservation services. The Bill does not address the causes of biodiversity loss in Australia, and it remains unclear how many important details of the proposed market will operate. Further, the experience of the Clean Energy Regulator in administering the existing carbon market inspires little confidence that the proposed Nature Repair Market will lead to meaningful conservation outcomes.

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Summary

In December 2022, the Australian government released its Nature Positive Plan, a multifaced reform agenda to strengthen and streamline Australia's ailing national environmental legislation, the Environmental Protection and Biodiversity Conservation Act. More broadly, the Plan aims to prompt a "conceptual shift" towards "nature positive" outcomes, namely those where species and ecosystems are "repaired and regenerated" in contrast to the status quo of long-term decline.

A central pillar of the Nature Positive Plan is the creation of a national market in privately managed biodiversity values. This market, called the Nature Repair Market ("NRM"), will be overseen by the Clean Energy Regulator and shares a common legislative architecture to that of the existing carbon market.

This submission has been prepared in response to the Department of Climate Change, Energy, the Environment and Water's invitation for public submissions on the model legislation (the Nature Repair Market Bill) released in December 2022.

Our submission starts by placing the proposed NRM in the context of Australian biodiversity outcomes and broader failures in conservation policy. Rates of biodiversity decline in Australia are among the worst in the world, driven in large part by ongoing pressures such as habitat clearing, climate change and the risks posed by introduced species. It is argued that the NRM does not grapple with the core drivers of biodiversity loss (which remain largely unaddressed by government policy) and so has little potential to provide anything other than marginal benefits to the environment.

In part two of this submission, we provide an overview of the limits of environmental markets where they have been implemented previously in Australia. Additionally, we outline a series of governance concerns that relate to the model of market management proposed in the Bill. In developing this argument, we draw on the observed failures in governance that have impacted the Australian carbon market, on which the NRM is based and with which it will share a regulator.

Lastly, we raise issues with specific weaknesses in the draft Bill. We highlight several key areas of market operation that have not been explained by the government and which are not clear from the legislation as drafted. These include the fundamental question of how (and why) the government expects the private sector to voluntarily finance biodiversity conservation work throughout Australia, particularly when the government seems unwilling. Further, we note the unsettling lack of detail on how biodiversity assessments will be

conducted and the measurement integrity risks that can be anticipated given precedents in the carbon market.

The Australia Institute has invested significant amounts of effort into researching environmental policy within Australia, and in particular, the operational integrity and efficacy of environmental markets. It is our view that in general, environmental markets in commodities such as carbon and water have poor track records of delivering positive environmental benefits and are typically victim to significant governance and regulatory failures.

This analysis is particularly relevant to the Australian carbon market, which in practice facilitates industry greenwashing and the needs of the nascent carbon market industry through the production of low-integrity carbon credits, generated by flawed measurement methodologies.

That the proposed NRM shares the same legislative architecture as the existing carbon market means that it likewise is potentially vulnerable to the same governance failures and will similarly result in limited environmental benefit.

Australia's ecosystems are collapsing. Ignoring simple and effective policy options such as regulation and ending destructive subsides in favour of indulgent policy experiments will come at a potentially devastating cost.

Introduction

The Australia Institute welcomes the opportunity to provide feedback on the model Nature Repair Market Bill ("the Bill"). As drafted, the Bill provides a legislative framework to support the government's proposed voluntary biodiversity market, the "Nature Repair Market" ("NRM").

The Australia Institute has already highlighted the significant flaws in the underlying premise that market mechanisms can deliver environmental outcomes. Our concerns appear to be justified and well-founded upon reading the proposed design of the NRM and the absence of complementary environmental policy outside of the scheme.

We understand the goal of the NRM is to provide a means for companies, organisations and individuals to finance conservation initiatives on privately owned land. The NRM forms an important pillar of the government's 2022 "Nature Positive Plan". This plan outlines a reform agenda to implement outcomes-based environmental regulation, improve decision making with respect to environmental approvals and increase the public accountability and integrity of national environmental governance.[1]

The need for more effective environmental policy, particularly with respect to biodiversity conservation is difficult to overstate. The government's own Nature Positive Plan highlights the fact that "Australia's natural environment is deteriorating and it's not resilient enough to withstand current or emerging threats."[2]

Biodiversity loss is a global crisis that is comparable to climate change in its severity. In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) published the landmark Global Assessment Report on Biodiversity and Ecosystem Services. This report remains the most comprehensive review of global biodiversity to date and draws on over 15,000 individual sources. It concludes that approximately 1 million species are already at risk of extinction unless urgent action is taken to reduce fundamental drivers of biodiversity loss. Globally, these drivers include land use change, climate change, direct exploitation, pollution and the introduction of alien species.[3]

[1] DCCEEW, 2022, Nature Positive Plan: better for the environment, better for business, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf

[2] Plibersek, T., 2022, Nature Positive Plan: better for the environment, better for business, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf, p.iii

[3] IPBES, 2019, Global Assessment Report, Summary for Policymakers, p.12

Biodiversity loss on this scale is both unsustainable and incompatible with long-term human survival, wellbeing and economic prosperity.

Australia has a particularly poor track record of safeguarding biodiversity. Lax controls on land clearing for agriculture and extractive industries, climate change and the impacts of non-native species, have resulted in the loss of substantial habitat for native species. Currently, Australia holds the grim distinction of being the continent with the single worst rate of species extinction globally.[4] [5]

Worryingly, the decades of scientific research that have catalogued the extinction of native Australian species has failed to catalyse commensurate policy responses on the part of successive governments. Instead of adequately supporting conservation, Australian governments have failed to legislate or otherwise implement sufficient protections for remaining areas of habitat and have also systemically underfunded conservation programs for decades.

In 2020, the once-per decade review of the Environmental Protection and Biodiversity Conservation Act (EPBC Act) was conducted, under the supervision of Professor Graeme Samuel. The Samuel's Review, found that "Australia's natural environment and iconic places are in an overall state of decline" and that the nation's flagship environmental legislation was "not fit to address current or future environmental challenges."[6]

Echoing a similar note of pessimism, the 2021 State of the Environment Report concluded that in the absence of transformative policy change, "negative trends in nature, in ecosystem functions and in many of nature's contributions to people are projected to continue to 2050 and beyond."[7]

The decades of neglect towards Australian biodiversity mean that existing trends are unlikely to be reversed by anything short of fundamental policy reform that combines enforced protection of native species habitat with a strong commitment to finance the protection of threatened species.

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[4] Preece, N.D., 2017, Australia among the world's worst on biodiversity conservation, https://theconversation.com/australia-among-the-worlds-worst-on-biodiversity-conservation-86685

[5] Ritchie, E., 2022, 'Gut-wrenching and infuriating': why Australia is the world leader in mammal extinctions and what to do about it, https://theconversation.com/gut-wrenching-and-infuriating-why-australia-is-the-world-leader-in-mammal-extinctions-and-what-to-do-about-it-192173

[6] Samuels, G, 2020, Independent Review of the EPBC Act, Executive Summary, https://epbcactreview.environment.gov.au/resources/final-report/executive-summary

[7] State of the Environment Report, 2021, https://soe.dcceew.gov.au/biodiversity/outlook-and-impacts#outlook

At times, rhetoric from the Environment Minister appears to recognise the scale of the current crisis. From her forward to the Nature Positive Plan, Minister Plibersek acknowledges "native species extinction, habitat loss and cultural heritage destruction are all accelerating, and reform is urgently needed."[8] Conversely, her declaration in September 2022 that she envisages a future wherein "Australia will house its own Green Wall Street: a trusted global financial hub, where the world comes to invest in environmental protection and restoration," indicates that the privatisation and trade of nature and ecosystem services are core elements of the government's Nature Positive agenda, beyond the creation of the NRM.[9]

Despite calls from ecologists and scientists for increased direct spending on conservation initiatives, the government appears to be attempting to outsource conservation funding to the private sector.[10] The NRM appears to be one means of facilitate this. Many questions about how this might work in practice remain unanswered, including:

- What will incentivise private expenditure on particular conservation projects?
- Which projects which will be eligible to generate Biodiversity Certificates?
- How will biodiversity values will be measured and assessed reliably?

The model legislation in key respects prompts more questions than it answers.

This submission identifies three core weaknesses of the model Nature Repair Market Bill and the proposed voluntary market in Biodiversity Certificates.

These are:

(1) There are no provisions in the Bill to address the underlying causes of biodiversity loss in Australia;
(2) Fundamental elements of the proposed market in Biodiversity Certificates are not thought out or articulated; and
(3) The proposed governance arrangements can neither guarantee the integrity of the market nor that of the biodiversity assessment methods.

[8] Plibersek, T. in DCCEEW, 2022, Nature Positive Plan: better for the environment, better from business, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf, p.iii.

[9] Slezak, M., 2022, 'Nature credits' could make Australia the 'Green Wall Street' for the world, Tanya Plibersek says, https://www.abc.net.au/news/2022-09-01/australia-hopes-to-create-green-wall-street-with-credit-scheme/101392808

[10] Ritchie, E., Evans M.C. & En Chee, Y., 2022, Labor's plan to save threatened species is an improvement – but it's still well short of what we need, https://theconversation.com/labors-plan-to-save-threatened-species-is-an-improvement-but-its-still-well-short-of-what-we-need-191845

In light of these deficiencies, we expect the proposed biodiversity market will do little on its own to improve biodiversity outcomes in Australia. Given the voluntary nature of the market and the government's lack of commitment to purchasing Biodiversity Certificates, it is unlikely even to attract sufficient private sector capital to result in meaningful conservation outcomes.

As such, the NRM should be viewed as ─ at best ─ a distraction from the necessary public investment in biodiversity conservation and the strong environmental protections for which ecologists, conservation scientists and environmentalists have been advocating.

Background

Context

Biodiversity loss is the consequence of habitat-destroying processes which are well established. Currently, the EPBC Act identifies 22 individual "threatening processes" that it groups into three areas, direct human impacts,[11] harms imposed by invasive species, and climate related impacts. While the pressures relevant to individual threatened species and ecosystems can vary across Australia, the aggregate impacts of these processes lead directly to incremental habitat destruction and ultimately extinction.

Given Australia has one of the highest extinction rates in the world — and the single highest rate of mammalian extinction in the world — it is clear that we are doing a very poor job at managing these processes.[12]

The 2021 State of the Environment Report observed that "our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem conditions unless current management approaches and investments are substantially improved."[13] The report also characterised much of Australia's conservation policy as being built upon "measures of last resort for preventing species extinction" and bemoaned "the growing dependency on biodiversity offsets to protect matters of national environmental significance from the impacts of development," due to the "lack of demonstrated successful outcomes and inadequate oversight."[14]

This picture of public sector neglect is echoed by state environmental reports on biodiversity conservation outcomes. The 2021 Victorian State of the Environment Report (Biodiversity Update) rated almost all Victorian biodiversity indicators as "poor," with almost all trend indicators suggesting existing rates of decline were worsening.[15] Likewise, the most recent NSW State of the Environment Report, reported that the number of

[11] These include processes such as marine pollution and land clearing for agriculture or development.

[12] Ritchie, E., 2022, 'Gut-wrenching and infuriating': why Australia is the world leader in mammal extinctions, and what to do about it, https://theconversation.com/gut-wrenching-and-infuriating-why-australia-is-the-world-leader-in-mammal-extinctions-and-what-to-do-about-it-192173

[13] State of the Environment Report, 2021, https://soe.dcceew.gov.au/biodiversity/outlook-and-impacts

[14] State of the Environment Report, 2021, https://soe.dcceew.gov.au/biodiversity/outlook-and-impacts

[15] Victoria State of the Environment Report (Biodiversity Update), 2021, p.23, https://www.ces.vic.gov.au/sites/default/files/publication-documents/State%20of%20the%20Environment%20Biodiversity%20Update%202021%20Report_WEB.pdf

threatened species in NSW continues to rise despite initiatives such as the Save Our Species Program. The NSW Environmental Protection Authority notes, "Management and conservation efforts will not be enough to save many species without addressing key threats such as habitat removal and climate change."[16]

Shockingly, the related Biodiversity Indicators Outlook Report, published in 2020, concluded that since European settlement, some 67% of NSW's ecological carrying capacity has been lost. The report further estimates that 50% of currently threatened species are likely to go extinct within 100 years.[17]

It must be underscored that while there is a consensus that biodiversity values are declining within states and at the national level, the accuracy of most assessments of ecosystem health continue to be frustrated by significant data gaps. The underfunding of conservation science has meant that knowledge deficiencies undermine the effective use of conservation resources. Funding arrangements are generally insufficient but are notably also distributed across numerous jurisdictions and initiatives, meaning actual funding levels are both opaque and subject to changes over time.

Current policies

Not only have Australian governments have failed to invest in long-term policies to protect Australian biodiversity, they are highly complicit in subsidising activities that contribute to the destruction of remaining areas of native habitat.

Both the Commonwealth and by state governments have awarded significant concessions to extractive industries, including mining and native forest logging. Research by The Australia Institute has estimated that direct and indirect government subsidies to the fossil fuel projects to exceed A$10 billion each year.[19] These industries do significant damage to biodiversity, and these concessions allow this damage to continue. For example, direct

[16] NSW EPA, 2021, NSW State of the Environment Report 2021, p.67

[17] NSW DPIE, 2020, NSW Biodiversity Outlook Report, https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/Biodiversity-Indicator-Program/biodiversity-outlook-report-first-assessment-200621.pdf

[19] The Australia Institute, 2022, Fossil Fuel Subsidies in Australia, https://australiainstitute.org.au/wp-content/uploads/2022/03/P1198-Fossil-fuel-subsidies-2022-WEB.pdf

public subsidies allow native forest logging to continue in states like Victoria despite it being uneconomic and a habitat-destroying legacy industry.[20]

Both the 2021 State of the Environment Report and many of its state-level equivalents recognise the expansion of such extractive industries as being a direct driver of the further loss of remnant native habitat.[21] Crucially, such projects continue to gain approval from the government, which has shown a strong reluctance to limit the expansion of coal and natural gas projects on environmental grounds.[22]

It is also clear that existing environmental protections are failing to safeguard the habitat of threatened species. A 2022 review of referrals under the EPBC Act for example, found that additional environmental conditions imposed on major projects have a negligible effect on whether the clearing of threatened species habitat was ultimately approved by the Environment Minister of the day.[23]

Such research directly calls into doubt the environmental benefits delivered by the existing development approvals process. Frustratingly, these failures are acknowledged by the current government's Nature Positive Plan which describes the EPBC Act as "ineffective" and "inefficient," with "poorly enforced compliance."[24] Despite this, the government has demonstrated little willingness to actually safeguard existing habitat over the interests of industry or developers. Rather, streamlining the approvals process for extractive industry is an explicit priority of the Nature Positive Plan.[25] The protection of remaining habitat must mean by necessity that land clearing by extractive industries (mining and forestry) and agriculture is curtailed.

[20] Greber, J., 2022, Logging native forests in Victoria costs more money than it makes, https://www.afr.com/policy/energy-and-climate/logging-native-forests-in-victoria-costs-more-money-than-it-makes-20221114-p5by4s

[21] State of the Environment Report, 2021, https://soe.dcceew.gov.au/biodiversity/outlook-and-impacts

[22] Greber, J., 2023, Plibersek downplays Santos gas as safeguard talks continue, https://www.afr.com/policy/energy-and-climate/plibersek-downplays-santos-gas-expansion-as-safeguard-talks-continue-20230221-p5cmbw

[23] Maitz, N.M., Taylor M.F.J., Ward, M.S. & Possingham, H.P., 2022, Assessing the impact of referred actions on protected matters under Australia's national environmental legislation, Conservation Science and Practice, https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1111/csp2.12860, pp.1-14.

[24] DCCEEW, 2022, Nature Positive Plan: better for the environment, better from business, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf

[25] DCCEEW, 2022, Nature Positive Plan: better for the environment, better from business, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf

Putting the NRM in context

Since forming government in 2022, the Labor Party has been at pains to stress its environmental credentials. At the UN Oceans Conference in June 2022, Tanya Plibersek stressed "under the new Australian government, the environment is back – front and centre."[26]

The government has made a number of high-profile, public commitments since taking power, including joining the "Leaders Pledge for Nature,"[27] setting a goal of "no new extinctions"[28] and committing to protect 30% of Australia's terrestrial and maritime areas for conservation by 2030 (a commitment sometimes referred to as "30 by 30").[29]

The government's vision for domestic biodiversity policy, meanwhile, is set out in the Nature Positive Plan which was released in late 2022. The key elements of this plan include: [30]

- Implementing select recommendations from the 2020 Samuel's Review into the EPBC Act;
- The creation of a new Commonwealth regulator, the Environmental Protection Authority (to manage EPBC Act approvals);
- The creation of new National Environmental Standards (including a new Biodiversity Offsetting Standard);
- The creation of an Independent Trust (modelled on the NSW Biodiversity Conservation Trust) to manage conservation payments; and

[26] Murphy, K., 2022, 'Tanya Plibersek declares environment "is back front and centre" in Australia at UN ocean conference', https://www.theguardian.com/environment/2022/jun/27/tanya-plibersek-declares-environment-is-back-front-and-centre-in-australia-at-un-ocean-conference

[27] Leaders' Pledge for Nature, https://www.leaderspledgefornature.org/wp-content/uploads/2021/06/Leaders_Pledge_for_Nature_27.09.20-ENGLISH.pdf

[28] Cox, L., 2022, '"Show us the money," environment groups say after Labor sets goal of preventing any new extinctions', The Guardian, https://www.theguardian.com/australia-news/2022/oct/05/show-us-the-money-environment-groups-say-after-labor-sets-goal-of-preventing-any-new-extinctions

[29] Women's Agenda, 2022, Tanya Plibersek's 30 per cent conservation pledge as more species on extinction list, https://womensagenda.com.au/latest/tanya-pliberseks-30-per-cent-conservation-pledge-as-more-species-on-extinction-list/

[30] DCCEEW, 2022, Nature Positive Plan, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf

- The creation of a "Nature Repair Market" to "deliver benefits for landowners, investors and the environment, by encouraging investment in restoration activities to deliver clear, measurable biodiversity outcomes."[32]

The creation of a voluntary market to privately fund biodiversity conservation is a fundamentally flawed approach to conservation policy. The attempt to mobilise private capital as a substitute for direct public investment in conservation gives the impression that the government is merely trying to outsource spending on environmental protection to the private sector.

Worryingly, the Nature Positive Plan makes little mention of the fact that both federal and state governments continue approve and directly subsidise activities that destroy threatened species habitat or that they routinely authorise activities such as land clearing which are at odds with protecting existing native species habitat.

There is a strong irony in the government justifying the need for the NRM by claiming that it cannot afford to fully fund conservation without private capital while directly subsidising the expansion of extractive industries like coal and gas projects which are contributing to biodiversity extinction in the first instance.[33]

Whatever the merits of the NRM, in the absence of meaningful action to reduce pressures and direct public investment in conservation activities it will do little on its own to address biodiversity decline. The lack of provisions for the required investment in the Plan mean that the prospects for Australian biodiversity are unlikely to deviate from their current trajectory. Insofar as the government continues to support policies which subsidise the removal of threatened species habitat, it remains complicit in encouraging the processes actually causing species extinction.

Given the federal government's lack of commitment to the measures most needed to safeguard biodiversity, it is difficult not to see bold announcements such as the pledge to halt extinctions or the "30 by 30" goal as anything other than tokenistic declarations which are not supported by credible, underlying policy. As goals, they actually contradict the government's broader policy agenda, which continues to be characterised by underfunding conservation, rubber-stamping habitat removal to make way for unsustainable industries

[32] DCCEEW, 2022, Nature Positive Plan, https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf, p.22

[33] Albanese, A. & Plibersek, T., 2022, Joint media release: Biodiversity certificates to increase native habitat and support Australian landholders, https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-biodiversity-certificates-increase-native-habitat-and-support-australian-landholders

and a lack of accountability with respect to poor environmental outcomes like species extinctions.[34]

[34] Ritchie, E., Evans M.C. & En Chee, Y., 2022, Labor's plan to save threatened species is an improvement – but it's still well short of what we need, https://theconversation.com/labors-plan-to-save-threatened-species-is-an-improvement-but-its-still-well-short-of-what-we-need-191845

Nature Markets

LIMITS OF MARKETS

In The Australia Institute's previous submission on the proposed NRM (entitled "Shorting the Environment") we outline why creating a functioning market in biodiversity asset classes is a fraught exercise.[35] Specifically, we flagged a number of potential issues with the proposed NRM, including the following:

- That biodiversity values are not fungible and individual credit types are difficult (if not impossible) to exclude in isolation from other, situated landscape features;
- That biodiversity values are inherently difficult to measure and that any market would suffer from high transaction costs (associated with project verification and audit). Alternatively, the reliance on cheaper assessment methods (such as desktop assessments or the use of modelling) risk undermining measurement integrity by sidelining the rigour of in-field assessments by qualified ecologists. High transaction costs make sites expensive to measure and discourage supply (i.e. landowners will struggle to get their land appraised and earn credits); and
- That the conservation of biodiversity is a public good and that private sector demand is unlikely to materialise in the absence of regulatory incentives.

Our previous submission also drew attention to the limited success of environment markets in Australia, especially that of the NSW market in biodiversity credits introduced in 2017.

The experience of NSW in attempting to create a biodiversity credit market (called the Biodiversity Offsets Scheme, "BOS") hardly sets an encouraging precedent. The BOS was intended to enable transactions in biodiversity between developers (clearing land) and direct payments to landowners for undertaking conservation work, similar to what is proposed for the NRM.

However, in the five years of its operation, the BOS has been subject to several high-profile failures, including allegations of rorting by both consulting ecologists and state government

[35] The Australia Institute, 2022, Shorting the Environment, https://australiainstitute.org.au/wp-content/uploads/2022/11/P1300-Shorting-the-environment.pdf

developers.[36] [37] These allegations prompted a Parliamentary Inquiry into the integrity of the Scheme; the resultant report concluded that "the design of the [Scheme] deviates markedly from best practice", and that "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."[38]

A 2022 NSW Auditor General's report found the scheme had not been effectively designed and that the "effectiveness of the scheme has also been limited."[39] Crucially, a functioning market is essential to the scheme's success, but the planned biodiversity market has failed to materialise due to low levels of landowner participation. This has created the "risk that biodiversity gains made through the Scheme will not be sufficient to offset losses resulting from development."[40]

Our prior submission further discussed the ongoing integrity issues that frustrate the operation of the national carbon market, including ongoing doubts as to the reliability of certain methods used to generate ACCUs and consequently, the extent to which these ACCUs represent real abatement.[41]

GOVERNANCE CONCERNS

At the time of this public consultation, many important aspects of the operation of the proposed NRM have not been articulated in detail by the government and thus remain

[36] Cox, L., 2022, 'Enormous sum of money': $40m windfall from NSW environmental offsets sparks call for inquiry, https://www.theguardian.com/environment/2021/apr/16/enormous-sum-of-money-40m-windfall-from-nsw-environmental-offsets-sparks-calls-for-inquiry

[37] Cox, L., 2022 NSW government seeks to use national park management to offset Warragamba Dam wall project, https://www.theguardian.com/australia-news/2022/dec/28/nsw-government-seeks-to-use-national-park-management-to-offset-warragamba-dam-wall-project

[38] NSW Legislative Council Portfolio Committee No. 7, 2022, Integrity of the NSW Biodiversity Offsets Scheme, https://www.parliament.nsw.gov.au/lcdocs/inquiries/2822/Report%20No.%2016%20-%20PC%207%20-%20Integrity%20of%20the%20NSW%20Biodiversity%20Offsets%20Scheme.pdf

[39] Auditor General of NSW, 2022, Effectiveness of the Biodiversity Offsets Scheme, https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

[40] Auditor General of NSW, 2022, Effectiveness of the Biodiversity Offsets Scheme, https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

[41] The Australia Institute, 2022, Shorting the Environment, https://australiainstitute.org.au/wp-content/uploads/2022/11/P1300-Shorting-the-environment.pdf

unclear. While the draft Bill provides the legislative "backbone" of the proposed market, exactly how the market will work in practice largely remains unknown.

The draft Bill has been modelled on existing legislation, the Carbon Credits (Carbon Farming Initiative) Act, which underpins the Australian carbon market. The carbon market facilitates the exchange of hundreds of millions of dollars' worth of carbon credits (ACCUs) on an annual basis. This trading mostly takes the form of government purchases of credits from private vendors in periodic reverse auctions. Despite growing corporate net zero commitments in Australia, the voluntary market in ACCUs remains a stubbornly small proportion of overall trading volume.[42] [43]

Over the period of its operation, the carbon market has faced repeated questions about its integrity. These questions have cast a long shadow over the adequacy of existing governance arrangements and the extent to which the carbon abatement signalled by issued credits is genuine.

The principal regulator of the proposed NRM will be the Clean Energy Regulator ("CER"), the same body responsible for regulating the Australian carbon market and which has experienced repeated governance failures in doing so. Indeed, the CER has been described as "a case study in poor governance," by a former Chair of the Emissions Reduction Assurance Committee ("ERAC"), the committee charged with providing independent advice on the integrity of carbon abatement methods authorised for use in the carbon market.[44]

Given the similarities in market architecture between the Carbon Credits (Carbon Farming Initiative) Act and the draft Bill, there are certainly grounds to suspect that the latter will suffer from the former's integrity shortcomings. At the very least, it suggests that the purported integrity safeguards in the model legislation (such as the Nature Repair Market Committee and the Biodiversity Integrity Standards) are inadequate.

This section sets out some of these concerns about the CER's governance and the need for regulatory consistency and integrity in assessment methodologies.

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[42] Koob, F.S., 2022, Net-zero doubles for top 200 firms, but investors want more detail, 25th July 2022, Sydney Morning Herald, https://www.smh.com.au/business/companies/net-zero-doubles-for-top-200-firms-but-investors-want-more-detail-20220722-p5b3rp.html

[43] Wood, T., Reeve, A. & Ha, J., 2021, Towards net zero, Practical policies to offset carbon emissions, Grattan Institute, https://grattan.edu.au/wp-content/uploads/2021/10/Towards-net-zero-Practical-policies-to-offset-carbon-emissions.pdf

[44] Morton, A., 2022, Australia's carbon credit scheme 'largely a sham', says whistleblower who tried to rein it in, https://www.theguardian.com/environment/2022/mar/23/australias-carbon-credit-scheme-largely-a-sham-says-whistleblower-who-tried-to-rein-it-in

Independence and transparency

The CER performs multiple duties in the carbon market. These duties include being the government's main purchaser of ACCUs (under a mandate of acquiring lowest cost abatement), being involved in developing carbon measurement methodologies, and acting as the principal regulator of the carbon credit industry and the carbon market.

These various mandates often conflict, placing the CER in the position of pursuing multiple, conflicting responsibilities simultaneously. These conflicting responsibilities were highlighted by the recent Chubb Review into the Integrity of ACCUs, which found that "the multiple roles of the CER … [result] in potential conflicts of interest and [risk] reduced confidence in scheme arrangements and governance."[45]

The CER also has a close relationship with the small but vocal carbon credit industry in Australia. Given the CER's multiple functions and general importance to the carbon market, this close relationship is inappropriate and undermines confidence in the integrity of the market.

There are multiple examples of the CER failing to act independently, including:

- The flawed "industry co-design" approach to method development (recommended by the King Review) enables the inappropriate influence of vested interests in shaping key elements of method development. Freedom of Information requests by The Australia Institute into the development of the controversial Carbon Capture and Storage Method from 2020-2021 show the CER collaborating with the fossil fuel industry on the method, while actively excluding independent and critical stakeholders.[47]
- High profile "revolving door" appointments with industry figures which give the impression of regulatory capture within the carbon offsets industry.[48] Examples include:
    - The appointment of David Byers by former Energy Minister Angus Taylor to the chair of ERAC. Mr Byers had previously worked as a lobbyist for the oil and gas industry;

[45] Chubb I. et al., 2022, Executive Summary Final Report Recommendations and Key Findings: Independent Review of Australian Carbon Credits, p.4

[47] The Australia Institute, 2022, Come Clean, https://australiainstitute.org.au/wp-content/uploads/2022/03/P1192-Come-clean-CER-and-fossil-fuel-influence-Web.pdf

[48] The Australia Institute makes no allegation of improper or illegal conduct by any individual. We instead wish to draw attention to the issue of perceived conflicts of interest and the effect this has to the perceived independence of regulatory agencies.

    - The appointment of Ariadne Gorring and Dr Steve Hatfield-Dodds to the panel of the Chubb Review. Mrs Gorring is associated with the climate finance advisory firm Pollination and Dr Steve Hatfield-Dodds is a partner of Ernst and Young, another firm with interests in providing advisory services adjacent to the national carbon market; and
    - The appointment of Grant King and Susie Smith to the board of the Climate Change Authority. Both Mr King and Mrs Smith have extensive experience working as executives in the Australian fossil fuel industry. The fossil fuel industry is well represented in member organisations within the Carbon Market Institute (Australia's carbon offset industry peak organisation).
- Instances where the CER or its staff have appeared to intervene in public inquiries. For example, during the Chubb Review's operation, the CER's Executive General Manager, Shayleen Thompson, directly contacted the Wentworth Group of Concerned Scientists regarding their submission. According to reporting by The Guardian, a "robust" conversation took place between Ms Thompson and Dr Celine Steinfield (a Wentworth Group director) regarding the Wentworth Group's criticism of the Human Induced Regeneration method. This apparent confrontation was subsequently described by Senator David Pocock as "troubling and inappropriate."[49] Even if the discission had been cordial, the simple fact that executive staff at the CER see it as appropriate to engage in back-channel communications in response to criticism offered by independent scientific organisations during an independent review of the integrity of ACCU methods is concerning. It further suggests a culture in which dissent and criticism is not tolerated and suppressed.
- Bizarrely, the CER is a member of the Carbon Market Institute, the peak industry group advocating for the interests of Australia's carbon offset industry.
- The CER still has not published the findings of a review into the Avoided Deforestation Method. The public consultation period for the review closed on 9 October 2019.[50]

The overall impression provided by the CER is that it is deeply aligned with the expansion and commercial success of the domestic carbon offset industry, and is not sufficiently

[49] Morton, A., 2022, David Pocock criticises official's 'inappropriate' conduct after she confronted scientific group over carbon credit evidence, https://www.theguardian.com/australia-news/2022/dec/02/david-pocock-criticises-officials-inappropriate-conduct-after-she-confronted-scientific-group-over-carbon-credit-evidence

[50] The Australian Conservation Foundation & The Australia Institute, 2022, Questionable integrity: Non-additionally in the Emissions Reduction Fund's Avoided Deforestation Method, https://australiainstitute.org.au/wp-content/uploads/2021/09/ACF-Aust-Institute_integrity-avoided_deforestation_report_FINAL_WEB.pdf

independent to operate as an effective regulator. This perception is worsened by the secretive way that the CER operates, the revolving door between individuals within the carbon industry and appointments to public boards and the ways in which the CER has attempted to avoid scrutiny and silence critics.

This problem is worsened by the CER's competing mandates to both act as a regulator of the carbon market, and to maximise the generation of carbon credits to supply polluting industries with cheap offsets, thereby simplifying the political challenges associated with decarbonisation.[51] Achieving these goals simultaneously appears to have come directly at the expense of market and regulatory integrity.

Expertise and responsibility

The CER was established "for administering legislation that reduces greenhouse gas emissions and increases the use of renewable energy."[52]

In its 2022-2026 Corporate Plan, the CER acknowledged a second organisational goal, namely "the administration of market-based mechanisms that incentivise the preservation and improvement of diverse ecosystems."[53]

The responsible Minister for the NRM Bill, should it become legislation, will be the Minister for the Environment. Important elements of the scheme, therefore including the development of Biodiversity Assessment Instruments, will be the responsibility of the Department of Climate Change, Energy, Environment and Water (DCCEEW) and the Nature Repair Market Committee, both of which advise the Minister for the Environment. Bizarrely however, under the model proposed, the responsibilities associated with actual market management and compliance enforcement will lie with the CER, which reports to the Minister for Climate Change and Energy.

[51] Morton, A., 2022, Australia's carbon credit scheme 'largely a sham', says whistleblower who tried to rein it in, https://www.theguardian.com/environment/2022/mar/23/australias-carbon-credit-scheme-largely-a-sham-says-whistleblower-who-tried-to-rein-it-in

[52] Clean Energy Regulator, 2019, Our role, https://www.cleanenergyregulator.gov.au/About/Pages/Accountability%20and%20reporting/Corporate%20plans/Corporate%20Plan%202019-23/Our-role.aspx

[53] Clean Energy Regulator, 2022, 2022-2026 Corporate Plan 'Our Role', https://www.cleanenergyregulator.gov.au/About/Pages/Accountability%20and%20reporting/Corporate%20plans/Corporate%20Plan%202022-26/Our-role.aspx#1

While the NRM forms part of the Nature Positive Plan under the Environment Minister, to a significant extent, actual implementation of the policy and the operational management of compliance will fall onto a government agency operating within a different portfolio.

The CER currently consists of two principal divisions, the Scheme Operations Division (which manages purchasing under the Emissions Reduction Fund and the Safeguard Mechanism) and the Scheme Support Division (with responsibilities for compliance, corporate management and policy development). Notably, the organisational structure of the CER is currently not structured to manage a nation-wide biodiversity market. It is further unclear what ─ if any ─ expertise in ecology, biodiversity policy or conservation is held within the CER.

The proposed design introduces the risk that the administration of the market and key responsibilities will be divided between multiple portfolios and across government departments. The division between design and development of methods (to DCCEEW) and project registration and compliance enforcement (to the CER) is particularly concerning given the replication of a governance model which has failed ensure integrity within the existing carbon market.

The establishment of a voluntary NRM shared between the Environment and Climate Change & Energy portfolios is a muddled approach to implementing environmental policy that does not appear to neatly align individual Departmental responsibilities with relevant expertise or experience.

Consistency

On the 24th January, DCCEEW held a public consultation seminar at which fundamental design elements of the NRM were outlined. During this seminar, it was stated openly that the Bill was an example of 'coat-hanger' legislation, namely that a significant amount of detail relevant to the Bill will be contained within delegated legislative instruments rather than the legislation itself. This approach to legislation has been criticised by the Australian Law Reform Commission, which specifically highlights the Carbon Credits (Carbon Farming Initiative) Act as a high-profile example of legislation that delegates much law-making authority beyond the Parliament, in this case to the Minister and regulators.[54]

[54] Australian Law Reform Commission, 2016, Examples of laws that delegate legislative power, ALRC Report 129, 17 Delegating Legislative Power, https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-

While delegating law making authority to the executive allows the development of rules with sufficient complexity and flexibility to support the formation of markets, this approach also has significant weaknesses. The principal drawback is that the flexibility offered to the Minister and regulatory agencies to develop rules governing the market can mean that market rules can be subject to significant change in response to developments within the market or regulatory fiat. Concerningly, in the carbon market, there have been multiple instances where major changes to market rules have been made in the absence of public consultation.

Repeated and/or inadequately signposted changes to market rules can have significant impacts on market conditions and commodity prices. One such change is former Energy Minister Angus Taylor's decision to enable carbon offset providers to walk away from government contracts with the Emissions Reduction Fund. This resulted in a sudden decline in ACCU prices in early 2022, as contract holders broke their contracts with the government to take advantage of higher spot prices. Notably, this change resulted in significant book-profits for incumbents within the carbon offset industry.[55]

Notwithstanding benefits to existing interests, market commentators at the time noted the long-term damage of such Ministerial interventions, which include undermining price stability and consequently, the ability of proponents to plan projects (many of which are credited over years, if not decades).[56] [57]

We note that the draft Bill would leave the fledgling market in Biodiversity Certificates vulnerable to similar, abrupt interventions by the Minister or regulators. Precedent in the carbon market suggests that this will be an ongoing risk.

encroachments-by-commonwealth-laws-alrc-report-129/17-delegating-legislative-power/examples-of-laws-that-delegate-legislative-power-2/

[55] Mazengarb, M., 2022, How Angus Taylor handed a $1.3 billion windfall to carbon traders, Renew Economy, 8th March 2022, https://reneweconomy.com.au/how-angus-taylor-handed-a-1-3-billion-windfall-to-carbon-traders/

[56] Mazangarb, M., 2022, Taylor walks away from Emissions Reduction Fund, carbon prices to plunge, Renew Economy, 4th March 2022, https://reneweconomy.com.au/taylor-walks-away-from-emissions-reduction-fund-carbon-prices-to-plunge/

[57] Durie, J., 2022, John Durie: Angus Taylor's new big carbon market changes mean big emitters can't lose, https://www.smartcompany.com.au/business-advice/politics/john-durie-angus-taylors-carbon-market-big-emitters/

Issues with the NRM

Who's buying?

To date, the government's case for the necessity of the NRM has emphasised the need to attract private sector "investment" in conservation initiatives. However, the factors that would motivate private sector spending towards biodiversity conservation have not been explained.

The government has justified the need for a private conservation market on the basis that it is insufficiently resourced for the spending required for conservation. Private sector demand is therefore framed as a necessary additional resource needed to deliver positive outcomes for biodiversity. To support this argument, the government has pointed to the Taskforce on Nature-Related Financial Disclosures (TFND), alleged corporate interest in investing in biodiversity and optimistic projections on the potential economic value of environmental markets. With respect to the latter, a recent report by PricewaterhouseCoopers, entitled "A Nature-Positive Australia," claims that financial flows in Australian biodiversity markets could reach $137 billion by 2050.[58] Detail on the modelling relied on to justify this prediction has not been made public.

Generally, private actors invest money in projects that offer the prospect of meaningful financial gain. Such projects rarely involve private landowners' conservation efforts, for the simple reason that improving or safeguarding native habitat does not generate profit.

Ensuring sufficient liquidity is one of the core challenges facing biodiversity markets and has proven to be a significant obstacle even in (compulsory) compliance markets such as the NSW BOS, where developers are forced to purchase offsets to compensate for cleared land.

Multiple commentators have expressed scepticism that the private sector will be willing to "invest" money into biodiversity outcomes. For its part, the government claims that private demand is significant but has failed to substantiate these claims.[59] It is notable that in the

[58] PwC, 2022, A nature-positive Australia: The value of an Australian biodiversity market, https://www.pwc.com.au/environment-social-governance/nature-positive-australia-value-of-australian-biodiversity-market.html

[59] Cox, L., 2022, Albanese outlines plan for nature restoration market prompting calls for more urgent action, https://www.theguardian.com/environment/2022/aug/27/albanese-outlines-plan-for-nature-restoration-market-prompting-calls-for-more-urgent-action?CMP=share_btn_tw

NSW BOS, which also allows for the voluntary purchasing of credits, that voluntary, private sector "demand" is effectively non-existent.

Government purchasing of Biodiversity Certificates to provide the market with a reliable source of demand is likely going to be necessary to provide certainty to would-be suppliers of Biodiversity Certificates (i.e. landowners).[60] We note that the model legislation presented by the government contains similar purchasing provisions as provided in the Carbon Credits (Carbon Farming Initiative) Act, and this would presumably allow the government to purchase certificates off the open market, either through reverse auctions or other means in a fashion similar to the Emissions Reduction Fund. To date however, the government has not committed to a fixed level of expenditure in the new biodiversity market. This implies that, if detractors of the scheme are correct and private demand is lukewarm – that little to no capital will be directed towards biodiversity conservation activities by the NRM.

The government's focus on attracting private investment to biodiversity is made even more perplexing by the fact that the original scoping study into "the potential for a national biodiversity services trading platform"—carried out by Frontier Economics in 2020—highlighted the likely need for ongoing intervention to support the formation of a biodiversity market. In Section 7.3, when discussing a proposal for a "market exchange," the study stresses the following (emphasis added):

> "The success of this option would be contingent on capturing sufficient liquidity to ensure the biodiversity services market is able to operate efficiently. *This is likely to require the participation of large stakeholders, including governments purchasing biodiversity services and compliance demand*." p.80 [61]

Frontier Economics explicitly advised that the government committing to certain financing models (for example through standing price offers) would likely be necessary to reduce uncertainty for market participants on the supply side in any sort of exchange model where property rights are assigned to biodiversity values.[62]

The other reliable source of demand identified by the study was a compliance market model, where developers are forced to purchase "offsets" to compensate for land they

[60] Cox, L., 2023, Labor plan for nature repair market rehashes old proposal and risks failure, experts say, https://www.theguardian.com/australia-news/2023/feb/06/labor-plan-for-nature-repair-market-rehashes-old-proposal-and-risks-failure-experts-say

[61] Frontier Economics, 2020, Biodiversity services platform scoping study, Frontier Economics, 2020, Biodiversity services platform scoping study, p.80

[62] Frontier Economics, 2020, Biodiversity services platform scoping study, Frontier Economics, 2020, Biodiversity services platform scoping study

clear. While the government has at times shyly admitted that the NRM will have an offsetting function, the government has mostly been at pains to stress that their goal with the NRM is not to create a national offset market.[63]

The existence of purchasing provisions within the model legislation indicates some acknowledgement that public spending may be necessary on the demand side to prompt any sort of viable exchange in Biodiversity Certificates. It is thus difficult to understand the government's silence on any commitment to fund the market, and its inability to substantiate its confidence in private sector demand for bespoke Biodiversity Certificates, notwithstanding public criticism.

In a webinar hosted by the Climate Market Institute on the 17th February 2023,[64] Anthony Bennie (Division head of the Biodiversity Markets and Economics of Ecosystem Services Division within DCCEEW) outlined three possible methods of creating demand:

1. Co-directed demand for biodiversity benefits with carbon, in regard to which, Bennie argued that biodiversity co-benefits already attract reliable price premiums for ACCUs traded on the carbon market generated by certain methods;
2. Business and philanthropic sector buyers, particularly considering increasing financial disclosures pertaining to business risk and assessments of organisational footprints; and
3. The NRM operating as a marketplace for biodiversity offsets. Bennie advised that the NRM provided the means to support a future offsets exchange, and using the repair market to facilitate offsets trading would be a future decision for regulators.

With respect to the first source of demand mentioned by Bennie, it is worth noting that the "stacking" of multiple ecosystem services (in this case carbon and biodiversity) is often assumed to be a straightforward process that offers landowners the opportunity to diversify income streams while securing multiple environmental benefits. However, there remains the potential for negative interactions between the existing carbon market and the proposed biodiversity market.

Since biodiversity cobenefits are one of the most promoted cobenefits associated with carbon sequestration projects, the monetization of biodiversity values in a separate market potentially imperils the price premium currently paid for certain ACCUs that are advertised on the basis of their biodiversity cobenefits. If this leads to price drops for ACCUs associated

[63] The government hints in the Nature Positive Plan that the Nature Repair Market could be used to offset land clearing 'with the permission of the [forthcoming Federal] EPA' for example.

[64] Carbon Market Institute, 2023, The Australian Nature Repair Market framework, https://carbonmarketinstitute.org/event/carbon-conversations-2023/

with certain projects (such as future blue carbon projects), the separate monetization of stacked ecosystem services (in this case carbon and biodiversity) may limit such projects' economic viability. Currently, carbon projects with biodiversity cobenefits enjoy an ACCU price premium without the additional compliance and measurement costs that would be associated with the registration of a project on a parallel biodiversity market. The introduction of a secondary biodiversity market means that monetizing biodiversity on private land will incur additional compliance costs and will require proponents to navigate two markets simultaneously, potentially selling carbon and biodiversity values to different purchasers.

The current proposal lacks detail

As discussed above, a the design of the proposed NRM Bill ensures that many market rules and parameters can be defined in regulatory instruments outside of legislation. These include issues as fundamental as the individuals appointed to the NRM Committee (NRMC), the development of specific methods (and their requirements) as well as the design of the Biodiversity Assessment Instrument(s).

Outstanding uncertainties include:

(1) How will the NRM interact with existing, state-based biodiversity compliance markets like the NSW BOS? What provisions will be in place to prevent double counting? What risk is there that state-based markets will undermine supply in the national NRM (or vice-versa)?[65]
(2) Will the forthcoming National Biodiversity Offsets Standard (flagged in the Nature Positive Plan) enable developers to offset their biodiversity impacts through the purchasing of biodiversity certificates on the NRM? If this is the case, how will this be implemented?
(3) How will the NRM interact with the existing Australian carbon market? The design of the NRM in addition to comments within the provided factsheets indicate that the two are intended to work in tandem.[66] However, many carbon projects depend on

[65] For example, if price incentives are better for landowners in existing state-based biodiversity markets, there will be no incentive to sell their biodiversity value on the NRM. Conversely, price changes in certain biodiversity assets over time could lead to withdrawal from one market, as participants seek arbitrage opportunities, for example by cancelling contracts on one market and registering their property elsewhere. There is precedent for widespread cancellation of established contracts in the carbon market, for example when amendments to market rules resulted in rapid depreciation in ACCU prices in March 2022.

[66] DECCEEW, 2022, Overview of the Nature Repair Market Bill, https://storage.googleapis.com/files-au-climate/climate-au/p/prj23a6fb56d20875fa57e91/public_assets/Factsheet%20-%20Overview%20of%20the%20Nature%20Repair%20Market%20Bill.pdf

purported biodiversity cobenefits to attract premium ACCU prices. Will the creation of a parallel market in biodiversity values undermine this co-benefit premium?

(4) What are the specific methodology determinations that the government is considering? How will biodiversity benefits be measured? No detail on proposed methods or assessment methodologies has been released. The limited guidance available is that example projects could include activities such as restoring native vegetation, fencing, removing invasive species and protecting native grasslands.[67]

(5) To what extent will Biodiversity Assessment Instruments be reliant on in-field assessments (both as part of initial site assessment, but also compliance)?

   (i) In the event that in-field assessments are necessary, can the government provide insight as to the likely costs of assessment and the impact of these costs to market participation?

   (ii) If in-field assessments are a minor or optional part of the assessment approach, how will the assessment instrument verify that on-site biodiversity benefits are being realised?

(6) Will any accreditation be required for consultants providing biodiversity assessment services to market participants?

(7) Will Biodiversity Certificates be classified as financial products under the Corporations Act 2001? Further, under what circumstances will providing advice to market participants in the NRM require an Australian Financial Services Licence?

Biodiversity assessments

To what extent the NRM is effective and/or can operate with the necessary degree of integrity will depend greatly on the specific assessment methods developed and approved to manage biodiversity projects.

The factsheet accompanying the draft Bill lists a range of measures to ensure the integrity of the NRM, including the formation of an independent NRMC and legislated Biodiversity Integrity Standards. Other measures include mandatory updates by the Environment Minister to Parliament and various reporting obligations on the part of proponents. The NRM will be subject to reviews every five years, although it is not clear which agency will be deputised with this responsibility at this point.[68]

[67] DCCEEW, 2022, Overview of the Nature Repair Market, https://storage.googleapis.com/files-au-climate/climate-au/p/prj23a6fb56d20875fa57e91/public_assets/Factsheet%20-%20Overview%20of%20the%20Nature%20Repair%20Market%20Bill.pdf

[68] A similar, review process is required by the Carbon Credits (Carbon Farming Initiative) Act. Under legislation, these reviews are undertaken by the Climate Change Authority.

It must be noted that similar safeguards have proven insufficient to ensure that the assessment methodologies developed within the carbon market are effective or credible. This is largely because the design of the legislation specifically delegates so much authority to the Minister (and regulators).

In particular, the pressure to keep measurement costs down for project proponents and consultants has resulted in a preference towards modelling, as opposed to in-field measurement. As evaluations of biodiversity values are likely to require more fieldwork and in-field expertise than those used for carbon accounting, there will be significant pressure on those developing the Biodiversity Assessment Instrument to minimise measurement costs so as to encourage landowner participation. However, the specialised knowledge required to conduct in-field ecology assessments will likely require the employment of consultants to certify surveys, putting upward pressure on the compliance costs faced by proponents.

Notably, high costs associated with biodiversity assessment have had the effect of reducing landowner participation in other biodiversity markets, in particular the NSW BOS which continues to languish without sufficient stewardship (offset) sites to meet compliance demand for offsets.

It is currently unclear at this stage how many biodiversity assessment methodologies will be developed or what form assessment instruments will take. The experience of the carbon market however is illustrative:

- Of the 39 available methods currently approved to generate ACCUs in the carbon market, only three method categories[69] have been responsible for generating the significant balance of credits generated since the commencement of trading.[70]
- All three of these methods have been subject to criticism regarding their additionality (namely, to what extent the carbon abatement delivered by these activities would have occurred in the absence of carbon crediting). This has led the former Chair of the ERAC to describe the market as "largely a sham" and "a fraud on the environment, a fraud on taxpayers and a fraud on unwitting consumers."[71]

[69] The word categories is used to refer to different versions of the same fundamental abatement activity. For example, carbon credits have been issued to landfill gas projects under three versions of the landfill gas method.

[70] These key method types include landfill gas, human induced regeneration and avoided deforestation. Collectively, they account for over 70% of credits issued to date.

[71] Morton, A., 2022, Australia's carbon credit scheme 'largely a sham', says whistleblower who tried to rein it in, The Guardian, 23rd March 2022, https://www.theguardian.com/environment/2022/mar/23/australias-carbon-credit-scheme-largely-a-sham-says-whistleblower-who-tried-to-rein-it-in

- Notwithstanding the Chubb Inquiry into the integrity of ACCUs, significant doubts remain as to the integrity of many methods within the carbon market. These doubts have the potential to significantly undermine any climate gains reported under the proposed Safeguard Mechanism.[72]

Without further detail on the types of methods that will be used to generate Biodiversity Certificates, it is impossible to provide feedback on specific integrity issues that may be arise when assessing biodiversity "gains" at project sites. Again however, the carbon market provides a cautionary example of the weaknesses of this legislative architecture. Namely, there is little to safeguard the integrity of endorsed measurement methods in the case that regulators are insufficiently conservative. Unfortunately, the government's ambition for the NRM and the inherent challenges associated with balancing the cost of biodiversity measurement with market participation mitigate against this conservatism.

[72] Macintosh, A., Butler, D., Evans, C.M., Waschka, M., & Ansell, D. 2003, Tortured recommendations, incomplete and unsubstantiated findings: an analysis of the report of the Independent Review of Australian Carbon Credit Units, https://law.anu.edu.au/sites/all/files/analysis_of_the_report_of_the_independent_review_of_australian_carbon_credit_units_final_150223.pdf

Conclusion

The NRM is a confused approach to conservation policy and falls far short of what is necessary given the magnitude of Australia's current biodiversity crisis.

Assuming private demand for Biodiversity Certificates materialises, the NRM may in some cases, incentivise biodiversity conservation on private land. However, there is significant reason to doubt that the Bill will work effectively to improve biodiversity outcomes in any meaningful sense.

This submission has drawn attention to three key deficiencies of the draft Bill, namely:

1. Creating a voluntary market in Biodiversity Certificates will do little to safeguard remaining biodiversity values in Australia, because it will do nothing to address the root causes of biodiversity decline. For Australian biodiversity to be protected, the government needs to act decisively to reduce the processes that lead to biodiversity decline in the first instance. This includes responding to threats such as climate change, reducing land clearing and ending subsidies for environmentally destructive activities. Simultaneously, the government should prioritise the direct funding of conservation programs and improved environmental compliance.
2. The draft Bill lacks clear and necessary detail on how core elements of the NRM will operate. This includes a substantiated explanation of demand sources (public and private) as well as information on the proposed Biodiversity Assessment Instruments and the sorts of biodiversity values which will be recognised by the scheme.
3. The proposed governance arrangements are confused and are broadly copied from those introduced by the Carbon Credits (Carbon Farming Initiative) Act to manage the Australian carbon market. These arrangements have done a poor job at both protecting the integrity of the carbon market and ensuring that the carbon market is providing meaningful environmental outcomes.
4. While providing incentives for landowners to conserve biodiversity on private land is important, there is no successful example of a voluntary market in biodiversity values resulting in improved conservation outcomes at a national level.

Given these deficiencies, it is difficult to see this legislation and the proposed NRM resulting in any meaningful changes to the entrenched trend of Australian biodiversity decline. For these reasons, we consider the draft Bill itself largely beyond repair. In the absence of policies that address the causes of Australian biodiversity loss directly, and the direct funding of conservation activities, Australia's fragile ecosystems risk being consigned to a similar status.