

Department of Climate Change, Energy,  
the Environment and Water  
Nature Repair Market Bill –  
Exposure Draft Consultation

# submission

March 2023





# Department of Climate Change, Energy, the Environment and Water

## Nature Repair Market Bill – Exposure Draft Consultation

### **submission**

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The Carbon Market Institute (**CMI**) welcomes the opportunity to provide this submission to provide feedback to the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) on the Nature Repair Market Bill – Exposure draft (**draft Bill**), which opened for consultation on 10 January 2023.

CMI is an independent member-based institute that promotes the use of market-based solutions and supports best practice in decarbonisation to limit warming to 1.5°C. CMI's 150-strong membership includes organisations from across the entire carbon value chain, including primary producers, carbon service providers, legal and financial institutions, technology firms and emissions intensive companies.

CMI's Board annually updates the CMI Advocacy Policy Positions in consultation with, but independent of, members. Our positions include supporting policies aligned with Australia's fair share of effort to achieve the high-ambition Paris Agreement goal to limit warming to 1.5°C, evolving Australia's carbon markets to guide investment and opportunities in the transition, and ensuring rigorous governance, integrity and disclosure on carbon crediting.<sup>1</sup> CMI also administers the Australian Carbon Industry Code of Conduct, which was established in 2018 to promote and steward consumer protection and market integrity.<sup>2</sup>

CMI has consulted with its members in developing this submission, many of whom provided a submission into the first-round consultation. There is considerable consensus of views with CMI Members and external key stakeholders around the proposed market, under the Bill. However, the positions put forward in this submission are CMI's view, independent of members, and do not represent any CMI individual, member company or industry sector.

CMI welcomes the opportunity for further discussion and to be directly involved in further co-design of a climate and biodiversity framework.

### **Strategic Outlook**

CMI welcomes the work the Government has commenced to tackle the biodiversity crisis and nature degradation that we are experiencing globally, but particularly in Australia where the threat to our ecosystems

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<sup>1</sup> Carbon Market Institute (CMI) 2021, 'Advocacy Policy Position Statement 2021', <https://carbonmarketinstitute.org/app/uploads/2021/12/CMI-Advocacy-Policy-PositionsUpdated-Dec-2021-004.pdf>.

<sup>2</sup> More information can be found on the Code website: <https://carbonmarketinstitute.org/code/>.



and native flora and fauna species continues to increase, as evidenced by the 2021 State of the Environment Report.<sup>3</sup> CMI is supportive of a Nature Repair Market (NRM) that:

- provides a market value framework for biodiversity and nature-positive outcomes;
- directs private finance into nature repair, biodiversity and ecosystem services, in addition to public funds and policies with clear biodiversity outcomes; and
- provides a market signal for the integration of nature impact and biodiversity risk assessment into private sector decisions.

CMI considers the NRM has the potential to become a significant investment framework to facilitate environmental repair and conservation and to reward participants for their environmental stewardship. A recent [PwC Report](#) exploring a “Nature-positive Australia: The Value of an Australian Biodiversity Market” concluded that a biodiversity market could unlock \$137 billion in financial flows to advance Australian biodiversity outcomes by 2050.

The Australian Government is demonstrating leadership in having ambition to develop a comprehensive and advanced nature investment framework. However, designing a complex nature-positive market should not be rushed. Design requires consideration of the policy context and interaction with existing complimentary legislation such as the CFI Act and carbon market, as well as the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). Design of legislation, governance and market details should be underpinned by a foundation of broad stakeholder engagement, co-development and supporting, iterative public consultation. The market should not be considered a silver bullet, and continued Government focus on and investment in conservation, restoration and protection of species and ecosystems is important. CMI highlighted this point in its previous submission stating that due consideration should be given to alternative policy levers, grant schemes, or conservation finance mechanisms as alternatives to market-based mechanisms.<sup>4</sup>

The proposed NRM is just one component of a broader Nature Positive Plan (the Plan), released by the Government in December 2022.<sup>5</sup> The Plan builds on Australia’s existing environmental policy suite with:

- the creation of national environmental standards for environmental impact assessment;
- establishment of a federal Environmental Protection Agency;
- expansion of the water trigger;
- improved opportunities for partnerships with First Nations Peoples;
- reform of the current environmental offsets scheme; and
- increased transparency for data pertaining to projects as an additional assurance of integrity.

Within this, the NRM is proposed to operate in tandem with the domestic carbon market, which was recently the subject of the independent Chubb Review, which made key recommendations to improve its transparency and enhance integrity. If linkages between biodiversity and carbon markets are unclear, there is a risk of setting up competing environmental markets, leading to destabilisation and loss of participant and investor and consumer confidence. If implemented effectively, however, these market frameworks can facilitate a new era of investment in the Australian landscape to address the twin climate and biodiversity crises, while delivering important co-benefits for remote and Indigenous communities.

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<sup>3</sup> Department of Climate Change, Energy, the Environment and Water (DCCEEW) 2021, ‘State of Environment Report’, <https://soe.dcceew.gov.au/>.

<sup>4</sup> CMI 2022, ‘Australian Government National Biodiversity Market Consultation submission’, <https://carbonmarketinstitute.org/app/uploads/2022/09/National-Biodiversity-Market-CMI-Submission-Sep-2022.pdf>, p. 3.

<sup>5</sup> DCCEEW 2022, ‘Nature Positive Plan: better for environment, better for business’, <https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>.



CMI also highlights some ambiguity in the government's framing of the purpose and intent of the NRM that will need to be clarified to ensure its design best serves the intended policy outcomes. The NRM has consistently been framed in the consultation materials as a voluntary scheme that can provide opportunities to attract additional investment in biodiversity and environmental improvements across Australia in the context of reversing damage reported in the latest State of the Environment Report. While the Government has recently indicated that biodiversity certificates issued under the proposed Nature Repair Market (NRM) scheme could be eligible for use as biodiversity offsets under Commonwealth approvals. This is a different conception to the framing to date and the consultation materials and exposure draft legislation do not mention the word 'offset' or related terminology.

CMI remains highly supportive of the intent and potential of the proposed NRM and is available to discuss the above recommendations and be an active participant in the development of what could be a world-leading scheme.

## Key Recommendations

### Market Intent

The stated overarching objective of the Australian Government's NRM is to facilitate investment in projects that protect, manage and restore nature by businesses, organisations, governments and individuals. The stated objectives of the NRM are:

- to encourage investment in biodiversity and drive environmental improvements across Australia.
- to 'reward' landholders who protect, manage or restore local habitat.
- to create a credit (biodiversity certificate) that can be sold to businesses, organisations, governments and individuals, thus driving investment in nature.

Additionally, the market is intended to operate in parallel with the existing carbon market, thus encouraging projects with carbon sequestration and biodiversity outcomes. CMI believes that land and or nature-based climate solutions stand to benefit from, and should align with, biodiversity conservation and ecosystem stewardship responsibilities and incentives.

In CMI's previous submission – one of our clear considerations was that the proposed Market should have an improved, clear and defined purpose and clarity on the relationship between this proposed national market and state-based biodiversity offset schemes.<sup>6</sup> We note that these aspects are still not resolved in the documentation provided under the current consultation. Whilst the draft Bill provides market design elements to develop a tradeable certificate as well as the supporting provisions (Independent Nature Repair Market Committee, Methodology Determinations, integrity standards, register, assurance and compliance framework), it is not evident under what programs or schemes that NRM-issued, tradeable instruments may be used. CMI understands that the Government is now looking at biodiversity certificates created under the NRM legislation to be accepted units as biodiversity offsets (pending EPBC Act reform) and for the NRM Bill to provide a legislative framework for biodiversity offset schemes. This intention has not been communicated to date, in the first, nor current consultation. This means stakeholders such as us can and will only respond to the official communications and market intent as stated within. CMI has consistently viewed this market as a nature-positive market, that is, going beyond damage limitation towards ecosystem enhancement. The

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<sup>6</sup> CMI 2022, 'Australian Government National Biodiversity Market Consultation submission', <https://carbonmarketinstitute.org/app/uploads/2022/09/National-Biodiversity-Market-CMI-Submission-Sep-2022.pdf>, p. 3.



interaction with biodiversity offsets alters our perspective on the market and will most likely affect participants' willingness to enter into this market – both on the voluntary demand and supply side.

**Key Recommendation 1: The Australian Government should clarify its intention for the NRM in respect to legislation for, and interaction with biodiversity offset schemes. If it is intended to use the tradeable instruments created through the NRM Bill as offsets for Commonwealth approvals, this must be communicated to stakeholders and a subsequent consultation held on that basis.**

### **Carbon Market Alignment**

The NRM is proposed to sit parallel to the ACCU market (which sits under CFI Act). The draft Bill mirrors the CFI Act. There are therefore many similarities, including: scheme administered by the Minister and the Clean Energy Regulator (CER); Integrity Standards that methodologies must meet; permanence & Eligible Interest Holder consent obligations; oversight by an independent committee; relinquishment/ reversal provisions; a central registry – CER Biodiversity Market Register.

The CFI Act will require various changes as a result of the Chubb Review recommendations. Since the NRM is being modelled on the ACCU market and CFI Act, it would be prudent to undertake a similar, consecutive review of the draft NRM Bill to ensure it reflects relevant changes to the CFI Act and is consistent with integrity enhancement recommendations.

Moreover, although the draft NRM Bill mirrors the CFI Act, there are critical differences in this market and its draft legislation that raise issues regarding the fundamentals that underpin market-based mechanisms, namely demand, liquidity and integrity. These three matters are addressed in the following sections of this submission.

As stated in a letter addressed to Min. Bowen and Min. Plibersek and co-signed by CMI on 10 February 2023, we believe that a single Act for both markets would have been the optimal policy instrument. However, in the absence of a single Act, and in the event the Government wishes to pursue this draft Bill:

**Key Recommendation 2: Every effort should be made to ensure alignment and streamlining between the NRM Bill and CFI Act and avoid overlap with other schemes such that a) additionality requirements are not compromised, b) there is facilitation of possible participation in both schemes requiring minimisation of duplication of administrative processes and associated costs, and c) methods created in sub-ordinate legislation are distinct and clearly differentiated between the two schemes and d) fungibility between units created under the two schemes be properly considered (eg. provision for stapling).**

### **Demand Sources and Drivers**

As CMI asserted in our first submission considerations, a National Biodiversity Market that intends to connect private sector investors with Australian landholders (including First Nations, conservation groups and farmers) should be accompanied by an analysis of the current and projected market demand and a clear, stable, and long-term demand signal.<sup>7</sup> These CMI concerns remain.

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<sup>7</sup> CMI 2022, 'Australian Government National Biodiversity Market Consultation submission', <https://carbonmarketinstitute.org/app/uploads/2022/09/National-Biodiversity-Market-CMI-Submission-Sep-2022.pdf>, p. 3.



Whilst we acknowledge that companies are, as stated in the NRM Draft Bill Factsheet, “increasingly looking for ways to achieve positive outcomes for nature” and the Taskforce for Nature-Related Financial Disclosures (TNFD) framework will be a prominent driver for investments in nature, these are nascent. It is not clear to what extent companies would invest in nature outcomes alone, or would prefer them ‘packaged’ with carbon as nature-based solutions. Biodiversity credit markets are increasingly on the international policy agenda and the Kunming-Montreal Global Biodiversity Framework provides a strong market signal.<sup>8</sup> To date however, there have only been a few nature-positive market transactions globally. CMI believes most demand sources will be looking to source products that are stacked, or multiple issuance products. To respond to this demand in the Australian market, comparability and fungibility of carbon and nature units will be necessary.

It is understood, from additional information provided to CMI at a Ministerial Roundtable, that the biodiversity offsets compliance market may be a source of demand for the NRM, but as this has not been communicated publicly or included in consultation documents, we will therefore not provide comment. However, we note that further detail or examples of demand drivers that the Government envisages for the proposed NRM would support the public consultation and market development process. Additionally, the Commonwealth government biodiversity offsets compliance scheme currently piggybacks on top of state based offset schemes - biodiversity impacts under the EPBC Act (which generally overlap with state listed species) are addressed under state approvals and state offset agreements. It could therefore be argued that this would diminish this potential demand source.

**Key Recommendation 3: The Government should commission a thorough analysis of demand and supply scenarios for the NRM, as well as stimulus options to encourage market participation.**

### **Liquidity**

In a major divergence from the CFI Act framework, the draft Bill outlines issuance of a single biodiversity certificate per registered project. These certificates will include fundamental information such as project type and duration, location, stewardship/ practice change activities, initial condition and expected outcomes and it is intended that they will be updated to reflect monitoring, reporting and verification (MRV), and/or project changes. CMI considers there may be a risk that the single issuance approach may result in an illiquid market that does not respond to market demand and private investment requirements.

Commercialising nature repair, nature-positive projects would likely require unitisation of a certificate to ensure fungibility with other markets such as carbon, and also to ensure availability over time. Whilst the draft Bill refers to a consistent biodiversity improvement measurement mechanism in the form of a ‘biodiversity assessment instrument’, there is currently no detail on this. However, this instrument might provide a unitisation mechanism that should be stipulated in the Bill, if that is the intention.

**Key Recommendation 4: The Government should review the single-issue tradeable instruments outlined in the draft Bill to ensure that this model lends itself to market liquidity, responds to market demand (link with above recommendation), and aligns with financial market and trading principles. Bill changes to allow unitisation should be considered.**

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<sup>8</sup> The Kunming-Montreal Global Biodiversity Framework was agreed to at the 15<sup>th</sup> meeting of the Conference of Parties on the UN Convention on Biological Diversity (COP15). See: UN Convention on Biological Diversity 2022, ‘COP15: Final text of Kunming-Montreal Global Biodiversity Framework’, <https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>.



## **Integrity**

Carbon and related biodiversity markets will lose investor and community support if not clearly linked to the outcomes for which they are created, including helping to limit global warming, reversing deforestation and biodiversity conservation. They will also be scrutinised and criticised if not underpinned by high scheme integrity – both in terms of governance and environmental integrity. Private investors, as potential buyers of NRM certificates, will be looking for third-party independent assurance of outcomes against defined and measurable standards and methods. This will also be required by emerging international reporting frameworks such as TNFD.

The draft Bill contains many integrity measures, similar to the CFI Act, such as Biodiversity Integrity Standards, methods as legislative instruments, register and reporting requirements. CMI believes that there are several additional transparency and accountability guardrails that should be embedded in the scheme alongside metrics, measures and reporting and verification standards compatible with other schemes. These include:

- A) NRM scheme certification that is based on high-integrity assessments of improvement in environmental outcomes, not merely activities that assume these outcomes will take place. Anything less than this is unlikely to attract private sector investment at the scale required to provide a genuine basis for reversing the ongoing decline of biodiversity in Australia.
- B) Mandatory third-party, independent audits to assure the integrity of the tradeable certificates in this scheme. The draft Bill stipulates that audits are not currently mandatory, but rather that the CER ‘may’ require an audit. There may be scope for addition of an audit optionality mechanism that would permit self-audit, alongside mandatory audit. However, distinction between certificates with different certification and assurance levels should be made available to market participants in a highly transparent manner.
- C) Transparent, proponent-led method development, in alignment with the Chubb Review recommendation 5 that recommends ACCU method development move to this approach. Proponent-led and co-developed methods and measurement standards can draw on the significant scientific and professional expertise in Australia. They can also better respond to demand and regional priorities - encourage scale and innovation, whilst minimise costs and maximise scope.
- D) As with Recommendation 6 of the Chubb Review, the Biodiversity Integrity Standards in the NRM Bill should be supplemented with Scheme Principles that assure their consistent interpretation and application.
- E) Provision for third-party accreditation for assurance purposes.
- F) Provision in the legislation for a national platform to share data, along with associated transparency requirements, reiterated in the Chubb Review recommendation 4. As stated in CMI’s first submission, a successful, high-integrity market would benefit from the development of co-ordinated and ideally integrated systems that deliver national datasets with respect to ecosystem-based biodiversity enhancement, agricultural productivity, and carbon abatement of a quality sufficient to inform good decision making. Access and application of high-quality data is essential to facilitate rigorous impact measurement and verification<sup>9</sup>.

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<sup>9</sup> CMI 2022, ‘Australian Government National Biodiversity Market Consultation submission’, <https://carbonmarketinstitute.org/app/uploads/2022/09/National-Biodiversity-Market-CMI-Submission-Sep-2022.pdf>, p. 4.



- G) Inclusion of First Nations participation and consent recommendations as made in the Chubb Review under recommendations 11 & 14, specifically that Free Prior and Informed Consent (FPIC) principles should be integrated into the legislation and the Australian Government should support capability and capacity building for First Nations participation.

**Key Recommendation 5: The Government should review options for increased transparency and integrity to the current draft Bill including (as detailed above), a) outcomes-based assessments rather than activities-based, b) additional audit requirements, c) proponent-led method design, d) Scheme Principles to sit alongside Integrity Standards e) accreditation measures for certificate certifiers, f) data standards and improved accessibility through a national platform g) FPIC principles integration plus Indigenous scheme participation support.**





## Annex

CMI provided a [submission](#) into the first round of consultation – the National Biodiversity Market consultation – in September 2022. In this submission, **CMI's final recommendations were:**

### **a) Consideration of and alignment with the ACCU review recommendations**

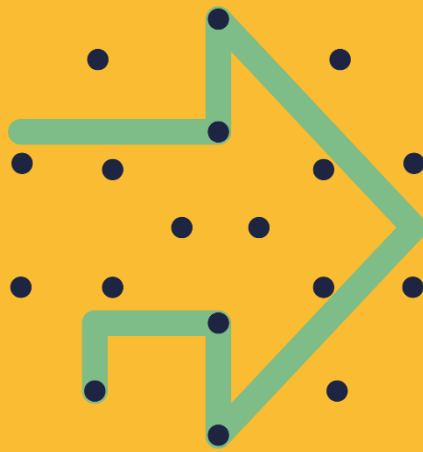
The Independent Review of Australian Carbon Credit Units – Final Report: Recommendations and Findings (Chubb Review) was publicly released on Monday 9<sup>th</sup> January. Whilst the review found the ACCU scheme fundamentally well-designed and 'sound', scheme improvements in the form of recommendations were provided. As the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) provides the model on which the draft Bill has been drafted, it appears that a misalignment in timing of drafting has resulted in Chubb Review recommendations not being fully considered for incorporation. CMI believes this is a missed opportunity and could result in scheme inefficiencies or indeed inconsistencies with the legislation that it mirrors, the CFI Act. Concern centres specifically around the disparity between the draft Bill and the implementation of Chubb Review recommendations that will bolster scheme integrity (as outlined in the section on Integrity, below).

### **b) A comprehensive and inclusive co-design process to develop the framework**

Whilst the Government will have undertaken two rounds of consultation, and flags further work in 2023, it is not clear how feedback provided has shaped the framework and the NRM Bill has been very much government-driven rather than making provision for co-design. It has been indicated that this Bill provides framework legislation and that co-design elements will be incorporated in the development of the subordinate legislation, scheme elements and market design. *CMI strongly encourages the government to set out a process to engage with stakeholders and embed collaborative co-design in the development of these elements, going forward.*

### **c) A comprehensive and timely consultation process that allows for continuous and inclusive stakeholder engagement, feedback and inclusion of recommendations.**

In our first submission, CMI expressed concern around the initial process of consultation, particularly with landholders and Traditional Owners who were newly included within the proposed scheme. We welcome the extended and open consultation during this second round. However, CMI's recommendation extended to a need for timely consideration of and response to feedback from consultation and it is not clear to what extent the over 200 submissions from the first-round consultation have been treated, nor feedback incorporated into the draft Bill. CMI prepared a list of Considerations in its first submission. The majority of these have not been fully addressed and will be referenced in the issues section outlined below.



## for more information please contact

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The Carbon Market Institute is at the centre of climate change policy and business in Australia. Independent and non-partisan, we bring business, policy makers and thought leaders together to drive the evolution of carbon markets towards a significant and positive impact on climate change.

Engaging leaders, shaping policy and driving action, we're helping business to seize opportunities in the transition to a low carbon economy.

