

Environment and Communications
Legislation Committee

Senate Inquiry: Nature Repair Market
Bill 2023 and Nature Repair Market
(Consequential Amendments) Bill
2023 [Provisions]

submission

June 2023





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The Carbon Market Institute (**CMI**) welcomes the opportunity to provide this submission to support the Senate Inquiry into the Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions] (**Senate Inquiry**), which were referred to the Environment and Communications Legislation Committee on 30 March 2023 for inquiry and report by 1 August 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.¹ CMI also administers the Australian Carbon Industry Code of Conduct, which was established in 2018 to promote and steward consumer protection and market integrity.²

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.

Strategic outlook

CMI supports the concept of a Nature Repair Market (**NRM**) and welcomes the Government's overarching Nature Positive Plan, including its commitment to reform the *Environment and Biodiversity Conservation Act 1999* (**EPBC Act**) in line with the recommendations of Professor Graeme Samuel AC's 2020 review (**Samuel Review**).³

CMI shares the Government's view that market-based initiatives have a role to play in repairing Australia's ecosystems, which the 2021 State of Environment Report highlighted is urgent.⁴ Accordingly, we are supportive of the intent and potential of the proposed NRM, particularly in contributing to the transition to a negative-emissions, nature-positive economy, in alignment with the carbon market.

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

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

³ Department of Climate Change, Energy, the Environment and Water (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>.

⁴ DCCEEW 2021, 'State of the Environment Report — Fact sheet', https://www.dcceew.gov.au/sites/default/files/documents/0.%20DCCEEW-SOE_factsheet_Overview.pdf.



Approached carefully, CMI considers that Australia's NRM could provide a world-first investment framework that mobilises finance to incentivise and reward scheme participants for delivering 'nature positive' outcomes—that is, outcomes that show a "measurable overall net gain in biodiversity".⁵ This model could serve as a blueprint for other markets.

However, we also recognise that environmental markets are not a silver bullet. They must be accompanied by public funding and regulations that prevent environmental degradation and support restoration. They also require appropriate safeguards to avoid perverse outcomes.

While CMI is supportive of the intent and potential of the NRM, we consider that legislating this scheme in its current form would be premature. This is because it remains fundamentally unclear how this market—as articulated in the Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 (together, '**NRM Bills**')—will deliver on its mandate of nature repair. We stress that the NRM will not attract investor and community confidence if it is not clearly linked to those 'nature positive' outcomes it is being created to serve.

CMI reiterates the concerns that we raised with the Government in the initial rounds of NRM consultation in [September 2022](#) and [March 2023](#).⁶ We do not consider that these issues have been resolved in the NRM Bills.

We recognise that the Government intends to undertake additional consultation to develop the NRM design, which will take time, and that certain detail may be articulated in subordinate rules and regulations. However, to ensure that this world-first market is also effective, it is important that particular elements - in particular, the legal status of tradeable credits to ensure effective interaction with other financial instruments - are clearly articulated in the overarching legislation.

CMI's recommendations, which we consider should be resolved before the Senate grants passage to the NRM Bills, are below.

CMI Recommendations

1. The demand drivers for the NRM are still ambiguous and should be clarified.

Although the NRM is slated to begin on 1 July 2024,⁷ CMI is not confident that the Government has provided sufficient evidence of short-to-medium-term drivers for the NRM.⁸ The Taskforce on Nature-related Financial Disclosures (**TNFD**) does signal a future demand driver.⁹ However, CMI does not consider the NRM will attract

⁵ See: EJ Milner-Gulland 2022, 'Don't dilute the term Nature Positive', *Nature Ecology & Evolution* (available at: <https://www.nature.com/articles/s41559-022-01845-5>).

⁶ CMI's previous submissions on the NRM can be accessed at: CMI's submission in full can be accessed at: (A) CMI 2022, 'National Biodiversity Market Consultation', <https://carbonmarketinstitute.org/app/uploads/2022/09/National-Biodiversity-Market-CMI-Submission-Sep-2022.pdf>; and (B) CMI 2023, 'Nature Repair Market Bill – Exposure Draft Consultation', <https://carbonmarketinstitute.org/app/uploads/2023/03/Carbon-Market-Submission-Nature-Repair-Market-Draft-Bill.pdf>.

⁷ DCCEEW 2023, 'Nature Repair Market', <https://www.dcceew.gov.au/environment/environmental-markets/biodiversity-market>.

⁸ While a 2022 report from PwC suggests that a nature positive market could mobilise \$137 billion for biodiversity outcomes by 2050, the report does not clearly state where voluntary demand for this market would come from in the near term. See: PwC Australia 2022, 'A nature-positive Australia - The value of an Australian biodiversity market', <https://www.pwc.com.au/government/A-nature-positive-Australia-The-value-of-an-Australian-biodiversity-market.pdf>.

⁹ The Government have cited the TNFD and PwC report as demonstrating demand for the NRM during Senate Estimates in May 2023 – see: Senate Environment and Communications Legislation Committee 2023, 'Senate Estimates', 23 May, https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/26894/toc_pdf/Environment%20and%20Communications%20Legislation%20Committee_2023_05_23.pdf;fileType=application%2Fpdf#search=%22committees/estimate/26894/0000%22, pp. 50-51 (More information on the TNFD is available at: Taskforce on Nature-related Financial Disclosures (TNFD) 2023, 'Developing and delivering a risk management and disclosure framework for organisations to report and act on evolving nature-related risks', <https://tnfd.global/>.)



sufficient near-term private investment to establish a scalable voluntary market. Even in the relatively more advanced Australian Carbon Credit Unit (**ACCU**) market, voluntary buyers (including cancellations resulting from state- and territory compliance schemes) only accounted for 1.5 million unit cancellations in 2022, with Commonwealth carbon abatement contracts funding the vast majority.¹⁰

If the Government wishes to set up the NRM before voluntary drivers like the TNFD have matured, CMI recommends considering short-to-medium-term incentives to drive demand and private sector engagement.

In particular, CMI recommends the Government clarify whether and when it would engage as a buyer in the NRM. We note that Part 6 of the NRM Bill permits Commonwealth funded NRM Certificate purchases.¹¹ CMI anticipates that this would provide a reliable early source of demand that would underwrite projects and reduce the risk profile for landholders and other stakeholders on the supply side. Commonwealth purchasing has also been the Government's historical approach to supporting the ACCU market under the former Emissions Reduction Fund (**ERF**) through reverse auctions.¹²

Other short-to-medium-term incentives to consider include:

- (a) Access to favourable capital, such as income-contingent government loans, and/or tax incentives;
- (b) Voluntary certifications that leverage the NRM, like Climate Active, allowing companies to demonstrate their nature-positive actions;¹³ and
- (c) Provisions to allow for the 'stapling' of NRM Certificates to ACCUs or carbon projects, to leverage existing carbon market demand and clarify the relationship between the ACCU market and NRM—which are supposed to operate "alongside" each other.¹⁴

2. Market design should prioritise unitisation of NRM Certificates to facilitate fungibility and to support market liquidity.

CMI recommends that the Government review the single-project NRM Certificate issuance model outlined in the NRM Bill to ensure its proposal supports market liquidity, responds to market demand, and aligns with the financial market and trading principles.

If the NRM is to drive private sector investments into nature positive projects at scale, NRM Certificates will require unitisation to ensure fungibility with other projects and markets, such as carbon, to enable a secondary market and tradability, and to ensure availability over time. The NRM Bill refers to a consistent biodiversity

¹⁰ Clean Energy Regulator (CER) 2022, '2022 market outcomes and tracking against estimates', <https://www.cleanenergyregulator.gov.au/PublishingImages/QCMR%20December%202022/QCMR-December-Quarter-2022-Infographic.pdf>.

¹¹ Nature Repair Market Bill 2023 (Cth), https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7014_first-reps/toc_pdf/23045b01.pdf;fileType=application%2Fpdf, p. 102.

¹² CER 2020, 'Auction format', <https://www.cleanenergyregulator.gov.au/ERF/Want-to-participate-in-the-Emissions-Reduction-Fund/Step-2-Contracts-and-auctions/auction-format>.

¹³ CMI notes that any such standard should clearly drive 'nature positive' outcomes, as opposed to provide a vehicle for private entities to compensate for degradation caused by company operations. Increasing scrutiny on the relationship between 'carbon neutral' claims and greenwashing in the context of voluntary carbon markets means this warrants careful consideration. For example, see: E Ormsher & P Greenfield 2023, 'Greenwashing era is over, say ad agencies, as regulators get touch' The Guardian, 16 May, <https://www.theguardian.com/environment/2023/may/15/greenwashing-era-is-over-say-ad-agencies-as-regulators-get-tough>.

¹⁴ DCCEEW 2023, 'Speech Introducing the Nature Repair Market Bill' (The Hon. Tanya Plibersek MP), <https://minister.dcceew.gov.au/plibersek/speeches/speech-introducing-nature-repair-market-bill>.



improvement measurement mechanism in the form of a ‘biodiversity assessment instrument’.¹⁵ However, detail on how this would operate in practice is still lacking.

As well as supporting robust market design and a liquid market, certificate unitisation over time may permit a consistent stream of finance over a project’s lifetime, corresponding to biodiversity outcome improvements. This could provide project proponents and landholders with a consistent financial incentive to manage their projects for maintaining and improving biodiversity outcomes over time.

3. The NRM should be established to align with the EPBC Act Environmental Offsets Policy reforms.

To support greater longer-term policy certainty for market participants, CMI recommends that the NRM Bill is amended to expressly prohibit NRM Certificates from being used as compliance offsets under the EPBC Act, or include a provision that allows project proponents to ‘opt out’ from selling into the offset market. This would give landholders and project developers confidence about the buyers their projects may service, and that their stewardship efforts are supporting nature repair, rather than ‘offsetting’ degradation.

The Government should also clarify its approach and timeline for reforming the EPBC Act Environmental Offsets Policy—which it has indicated would become a ‘net positive’ offsets policy—and ensure this is clearly articulated and understood by market stakeholders.

While the compliance EPBC Act offsets market would represent a potential demand driver for the NRM, CMI is not confident that this would lead to ‘nature positive’ outcomes under the current EPBC Act Environmental Offsets Policy.¹⁶ If NRM Certificates were used in this way, CMI considers there is a risk it could degrade the integrity and efficacy of the NRM and damage the market’s reputation, reducing participation and creating a barrier to social licence.

Reforming the Environmental Offsets Policy was a key recommendation of the Samuel Review, and the Government has committed to this in the Nature Positive Plan.¹⁷ Broader EPBC Act reform should ideally precede the NRM’s introduction such that the market supports the reform agenda. However, CMI understands that reforming the EPBC Act will be a lengthy process. If commencing the NRM before reforms, the Government should restrict NRM Certificates from being eligible as compliance offsets to protect the delivery of nature repair.

The Government has indicated that it could ringfence the eligibility of certain NRM Certificates as offsets under the EPBC Act by developing offset-specific methods. However, these methods would be rules under the NRM legislation that could be altered without parliamentary passage, including by ministers under future governments. To create greater certainty around the integrity and durability of ‘nature positive’ outcomes on the demand side, CMI recommends that the NRM Bill be amended to stipulate the intended integration and use of NRM Certificates from compliance use under environmental offset schemes before the Senate grants its passage.

¹⁵ Nature Repair Market Bill 2023 (Cth), https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7014_first_reps/toc_pdf/23045b01.pdf;fileType=application%2Fpdf, p. 82.

¹⁶ Department of Sustainability, Environment, Water, Population and Communities 2012, ‘Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy’, https://www.dcceew.gov.au/sites/default/files/documents/offsets-policy_2.pdf.

¹⁷ 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>.



4. The NRM should be sequenced following a clear articulation of the Chubb Review implementation plan to ensure alignment of incentives and high integrity outcomes.

While CMI supports the Government's intent to move quickly to implement a market-based solution that supports urgent nature repair, there is no clear reason why the NRM needs to be operational by 1 July 2024. This is especially the case, given remaining design ambiguity.

To ensure a high integrity framework is established, CMI considers that the NRM should not become operational until the recommendations of the Independent Review of ACCUs (**Chubb Review**) have been actioned, or until a clear Chubb Review implementation plan has been published. This will ensure that the NRM—which is based on the ACCU framework—can be established with the improved integrity and transparency arrangements that are currently being applied to the ACCU market at the outset.

CMI highlights that the NRM Bill is closely based on the *Carbon Farming Initiative (Carbon Credits) Act 2011* (CFI Act), which is subject to change as the carbon crediting framework is reformed following the Chubb Review.¹⁸ In particular, we note that the method development model under the CFI Act is currently in flux as it transitions to a proponent-led model.¹⁹

We appreciate that the Government has already allocated \$7.7 million for NRM establishment, including method development, in the recent 2023–24 Budget.²⁰ We caution that allocating funding for this may be premature, given the method development approach is subject to change following Chubb Review implementation.

5. Consultation has been limited, in both scope and timeframe—particularly given the Government is establishing what could become a global blueprint for nature positive markets—and further consultation should be undertaken, particularly with First Nations groups.

Finally, CMI notes that Government stakeholder consultation and collaborative input into market design has been limited—in both scope and timeframe. We recognise that the NRM framework is based on the proposal put forward under the previous model, which had been somewhat tested under the Carbon + Biodiversity Pilot program.²¹ However, given changes underway to the ACCU market, on which the NRM framework is based, following on from the Chubb Review, and considering that the Government is looking to establish the world's first voluntary biodiversity market, consultation has been relatively limited.

In particular, CMI notes that Indigenous and conservation project proponents were only integrated into the scheme in a second iteration of the proposed market. Those stakeholders have not had sufficient input into co-design nor full and respectful consultation. CMI therefore recommends that further targeted consultation on the NRM be undertaken, in particular to ensure the diverse expertise and perspectives of First Nations stakeholders have been appropriately canvassed and factored into the NRM Bills.

Moreover, public funding for extension services will be important to support farmers, First Nations people and other potential supply-side stakeholders to understand the NRM and make informed decisions about how and

¹⁸ Australian Government 2023, 'Independent Review of Australian Carbon Credit Units', <https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-exec-summary.pdf>.

¹⁹ See Recommendation 5 of the Chubb Review in: Australian Government 2023, 'Independent Review of Australian Carbon Credit Units', <https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-exec-summary.pdf>, p. 6.

²⁰ Australian Government 2023, 'Budget Paper No. 2: Budget Measures', https://budget.gov.au/content/bp2/download/bp2_2023-24.pdf, p. 77.

²¹ DCCEEW 2023, 'Carbon + Biodiversity Pilot', <https://www.dcceew.gov.au/environment/environmental-markets/agriculture-stewardship/c-b-pilot>.



whether to engage. This should be administered alongside the Carbon Farming Outreach Program to ensure linkages between the ACCU market and NRM are understood.²²

Concluding remarks

With appropriate clarification on the above issues and amendments to the NRM Bills to ensure a robust legislative framework, CMI is confident that Australia can establish a world-leading biodiversity market that supports nature positive outcomes.

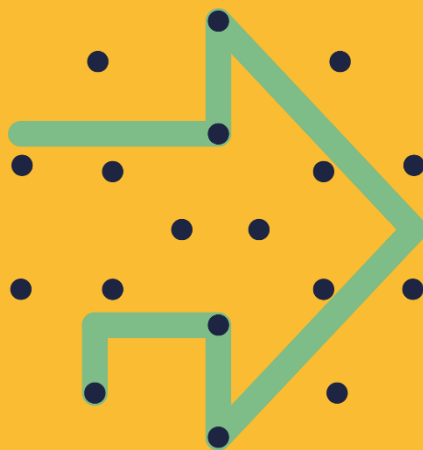
CMI is available to provide further evidence and discussion as part of a panel at a public hearing in support of this Senate Inquiry. In the meantime, please direct any questions about CMI's submission to Gabriella Warden, Manager, Research and Government Relations at gabriella.warden@carbonmarketinstitute.org.

Yours sincerely,

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²² The Government has committed \$20.3 million over 4 years to establish a Carbon Farming Outreach Program – see: DCCEEW 2023, 'Reducing agricultural and land sector emissions', <https://www.dcceew.gov.au/climate-change/emissions-reduction/agricultural-land-sectors>.



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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.



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