

Wilderness Society Key Points on Nature Repair Market Exposure



Introduction

Wilderness Society thanks the Department of Climate Change, Energy, the Environment and Water for this opportunity to provide feedback on the Nature Repair Market's exposure draft. This submission not only represents the view of Wilderness Society, but also of the 3690 people who have supported it.

Wilderness Society welcomes the Government's stated goal of protecting and restoring nature. The situation is dire: biodiversity decline has been larger in Australia than in any other continent in the last 200 years¹. Thus it is absolutely essential and urgent to reverse biodiversity loss in Australia.

The Nature Repair Market as proposed is risky, and a diversion from other key policy reform and funding requirements to restore and protect nature in Australia.

Wilderness Society believes the Nature Repair Market as proposed is not an appropriate means to protect and restore nature, and in fact risks perpetuating biodiversity loss in Australia.

We are concerned that there is an ulterior purpose to the Bill's primary purpose of establishing a voluntary nature repair scheme, and that is to create a type of nationalised biodiversity offset platform. While the Government has said that they do not intend to use this as an offsets market, they have also made it clear that if a state or federal environmental regulator believes the system could be used to secure offsets, or methodology utilised to determine what is required, then that is their prerogative and they have the ability to do so. This means that the secondary or ulterior purpose of the scheme, to facilitate a standardisation of offsets across the country, could become the dominant purpose.

In addition to this, there are a range of potential unintended or perverse consequences from these sorts of schemes that could significantly impact on the Government's role in environmental regulation and investment.

We do not support the passage of this Bill as is, and urge Government, if it is to proceed with the proposed Nature Market Repair scheme, to only do so after first undertaking a wider series of reforms that:

1. Explicitly preclude offsets in the scheme.

¹ [Biodiversity conservation - DCCFEW](#)

2. Prioritise the passage of the reforms to the EPBC Act that enshrine strong, enforceable environmental standards and community rights. And that these reforms deliver an end to broad-scale ecosystem destruction and degradation.
3. Set baselines for landholders' environmental duty of care, environmental protection regulations, public financing of environmental protection and repair, and for corporations' obligations to be 'nature positive', i.e. recognising the interconnectedness between nature and society, while enhancing the positive benefits that nature provides to humans and minimising the negative impacts of human activities on the environment. These baselines must also have clear projections of their improvements (i.e. tightness of environmental standards, or increase in public funding) to ensure that the presence of the market does not freeze the improvement of standards.
4. Establish integrity requirements for existing offset frameworks to ensure that when used, they deliver genuine environmental outcomes and limit financial misconduct such as fraud, insider trading and misuse of government information.
5. Develop a national accounting standard for collating and reporting on public expenditure on nature conservation, management and restoration. Publish annual data on public expenditure on conservation of local, state and Commonwealth government.
6. Articulate the Commonwealth government's obligations regarding nature conservation in regards to Matters of National Environmental Significance (MNES) (for example World heritage, endangered species) and sets aside appropriate and responsive levels of funding to meet those obligations.
7. Place a clear obligation on public servants that a nature repair market cannot be relied upon to deliver a public good outcome where a clear government obligation already exists.

In addition, any major corporation operating within or financing activities in Australia should be required, through amendments to the Corporations Act, to carry out their operations and financing in a way that is 'nature positive'. (By 'nature positive' we mean taking actions to halt and reverse impacts on nature, as per the Global Goal for Nature²). This includes evidence of companies demonstrating genuine efforts to reduce their impacts, as well as providing appropriately detailed provisioning in annual reports/accounts for securing biodiversity gains.

Therefore, Wilderness Society strongly recommends the Government deliver on key, reliable and urgent nature policy reforms and funding in the first instance, before proceeding with complex and less reliable market-based mechanisms like a Nature Repair Market. We call upon the Government to reconsider plans for this Bill. As it currently stands, if this Bill is introduced to Parliament as is we would not encourage Parliamentarians to support its passage.

² <https://www.naturepositive.org/>

What we do support about the Nature Repair Market Bill

Constitutional matters - extending the Commonwealth's biodiversity powers

Although it is not clearly stated, but is implied in the drafting, the Nature Repair Market is not just for MNES, it is designed for all biodiversity. This is a major extension of previous Commonwealth public statements on the scope of the Commonwealth Head of Power regarding biodiversity and as outlined in the Intergovernmental Agreement on the Environment.

At no place in the Bill does it reference “Matters of National Environmental Significance” and it also highlights a range of activities such as tree planting and ecosystem reconstruction that would be unlikely to relate to existing MNES therefore the Commonwealth is clearly seeking to stretch beyond its usual remit in biodiversity matters. The Commonwealth does need to extend its powers for the environment in many forms, but there are many more direct, reliable and impactful ways for it to do so than via a risky ‘nature repair market’.

Key Concerns about the Nature Repair Market Bill

The Government has a core responsibility to protect nature in the interest of all Australians

Various stakeholders can help improve the state of Australia's nature: businesses, civil society groups, individuals and governments at all levels. However, the Commonwealth Government has a unique responsibility to draw red lines by creating the legal framework around nature protection. This framework is a basis for other stakeholders to know what they can or cannot do in relation to Australia's environment.

Wilderness Society is concerned that the Government is choosing to progress the Nature Repair Market before completing other key, urgent and substantial measures that are priority foundations to reverse biodiversity loss, especially halting habitat loss. These measures must precede the creation of the Nature Repair Market. They include:

- reform of the EPBC Act,
- creation of an independent EPA,
- effective species recovery plans,
- reinforced compliance,

- expanding Commonwealth funding for biodiversity conservation, management and restoration.

Until these policy and funding foundations are created, funded and fully enforced, any 'nature repair market' lacks credibility.

A 'nature repair market' cannot carry the responsibility to protect and restore nature. Indeed, it would be problematic to delegate that responsibility to private sector participants whose inherent ultimate interests remain to generate income and profits, rather than act in the general interest (for example, by conserving nature). That's why Governments must carry the bulk of the responsibility to improve the state of Australia's nature.

If a 'nature repair market' is created in the absence of strong and well-funded policies and institutions, and well-enforced nature laws, it could actually perversely obstruct future nature policy developments. Indeed, higher environmental mandatory standards would raise the baseline for landholders to protect nature - therefore potentially depriving market participants of income streams under a Nature Repair Market. For this reason, the Nature Repair Market as proposed risks perpetuating environmental decline.

Funding for nature protection is also a key concern. Governments cannot rely on tools like the proposed Nature Repair Market to fund biodiversity protection. Any market-based mechanism must be complementary to ambitious direct Commonwealth funding for biodiversity conservation, management and restoration, and not used as a substitute. Biodiversity funding must be expanded as a key priority to be likely to limit nature loss.

A market in the absence of clear objectives or any caps or limits on environmental damage

At no place does the Bill for the proposed Nature Repair Market indicate what specific environmental objectives such a market ought to deliver. An environmental market based instrument needs to be about securing a specific outcome in order to be priced accordingly and evaluated. There is no clarity about what this market is intending to achieve and, at best, it appears to provide a mechanism for habitat loss trade-offs.

Absence of any baselines and the risk that the proposed Nature Repair Market would freeze baselines

To conduct any market, clear baselines are needed that are informative and measurable at project and system levels. In the case of a 'nature repair market', cross-sector stakeholder understanding of the following would be essential:

- Basic expectations of landholders in regards to environmental management and repair
- Overall obligations on a company or financier to be 'nature positive'
- Regulatory constraints on the key drivers of deforestation
- The required level of public financing that is currently and will be spent on biodiversity conservation, management and restoration
- The specific obligations on governments to finance and/or carry out environmental 'repair' in all circumstances.

Also, the establishment of a market places pressure downward on all the baselines in ways that are likely to lead to overall weaker environmental outcomes. To address the biodiversity crisis, it is imperative that all these baselines continue to rise. Yet the history of these market-based schemes is that they work to undermine them. For instance, a government may be reluctant to raise land clearing standards because it would reduce the 'additionality' for the biodiversity market participants, and Treasury would be reluctant to fund an environment department to undertake environmental repair themselves because there is an expectation that the market would do it. And likewise, corporations and landholders would be less willing to voluntarily improve their environmental standards because of the potential hope of a market paying them to do so at a later date.

Nature Repair Market not pricing nature at all

There may be a role for establishing a genuine price on nature, but only if it was a tool applied in addition to strong and rising regulatory standards and public finance. However, an environmental market is not likely to be the most effective path to price nature.

It is a problem that there is no transparent and explicit financial consequence for the destruction of nature. There is a clear lack of serious public financing for nature conservation, management and repair. Around 0.5% of GDP should be the target for government expenditure. A simpler and more transparent approach to achieving this would be through taxation, levies, fees or penalties. Overall the required quantum of conservation funding should be able to be raised from general government revenue, and there are other ways that would approximate a price on nature and achieve the revenue raising needs.

The range of options to do this are broad and the wider literature has previously canvassed:

- An environmental repair increment added to existing minerals and petroleum resource levies.
- An environmental repair increment added to the existing Research and Development levies. This could be tailored so that the higher impacting industries

pay a higher levy, It could be based on the current level of impact or, more equitably, based on the historic and current impacts.

- Environmental consumer taxes on specific damaging products (eg beef, timber/woodchips, cotton, almonds) that are lowered when the environmental performance improves.
- A specific tax, fee or penalty that is paid for all legally carried out environmental harm at the moment of damage. Currently there is no directly paid price for impacting nature. To work as a 'price on nature' this would need to apply after a full environmental approval is secured. It could not be in lieu of an approval process and is not meant for illegal impacts.

The drafting of this Nature Repair Bill indicates that the Commonwealth Government believes it has the powers through the combination of the External Affairs powers (using the Biodiversity Convention) and Corporations powers to establish a biodiversity market, so it is clearly within the Commonwealth's remit to establish broad or targeted environmental taxes if the Government wanted to appropriately put a price on nature.

Nature offsets are a dangerous path to legitimising continued nature destruction

There is important concern over the potential of the proposed Nature Repair Market to be used for biodiversity offsets in the future. As flagged above, while the Government has said that they do not intend themselves to use this as an offsets market, they have also made clear that if an environmental regulator (state or federal) thinks the system could be used to secure offsets or use the methodology to determine what is required, then that could proceed. Wilderness Society does not support biodiversity offsets and strongly warns against their potential to encourage further nature destruction. By financialising the destruction of nature, offsets allow destructive players to continue business as usual and "offsetting" their impacts on nature, thus engaging in dangerous greenwashing.

Some biodiversity impacts cannot be offset in a credible way - for example, the destruction of a last pocket of habitat for a critically endangered species simply cannot be "cancelled out" by nature restoration or preservation projects elsewhere.

Consultation with First Nations

The government's initiative to seek the contributions of First Nations people in the development of nature repair initiatives is welcome, however the intent for inclusivity while First Nations rights and interests remain poorly recognised within existing environment and heritage regulations across the continent of which First Nations communities hold custodianship, is ultimately hollow. First Nations Australians must have the right to full and effective participation at every stage of any action that may affect them directly or indirectly. Information on the likely impact of any activities must

be disclosed in advance, and time requirements for these processes are respected and led by First Nations people.

Additional matters

The value of biodiversity is not something that can be determined by economic metrics alone. It is inherently irreplaceable, incomparable and non-fungible. Previous efforts to establish some sort of market mechanism have unequivocally had an impact on the wider political and policy framework to protect or restore nature. And those impacts are rarely fulsomely considered in the policy design. Here are some examples:

- The establishment of biodiversity offset schemes have reduced governments' ability to draw red lines on development approval decisions - this may have actually expanded the development footprints of proposals compared to under former regimes without offsets.
- The creation of expectations among industry or business sectors that seeking permission to carry out an activity (such as clearing bushland) is a process everyone has to get through but is not one where there are limits to certain activities or where there could be anything other than an approval outcome.
- Increasing environmental degradation and species extinction is met with an absence of policy responses involving improved regulation or increased expenditure—in other words, discussions of markets crowd-out the policy agenda.
- Industry is able to argue it is maintaining social licence even with increasing environmental damage because a flawed 'offsetting' equation provides a veneer of respectability to their actions—in simple terms, greenwashing.
- There are circumstances where specific environmental market intervention has not been stable in the face of political influence. When in the carbon credit and biodiversity credit spaces the 'price' being paid to compensate for the damage is considered by the payer to be too high, then it occurs that the payer lobbies for a loosening in the market to screen out their participation, or to increase 'supply' to flood the market/lower the price.
- The mere presence of placing market value on biodiversity may enable environmental improvement in the locations where the certified works have been carried out but the mechanism itself undermines all other policy tools in ways that are rarely acknowledged, i.e. without inherent and genuine interest in nature conservation as driving national conservation policy development. Ignoring this fundamental value renders any budget focused on wellbeing as artificial and tokenistic.
- Monitoring and transparency: Biodiversity repair markets require thorough and transparent monitoring and verification systems to ensure that the promised

outcomes are achieved. Publicly available information and systems of monitoring add to the unnecessarily complex scheme.

- Equity concerns: Biodiversity repair markets may exacerbate existing social and economic inequalities. For example, communities living in or near degraded ecosystems may be excluded from participating in these markets, which could limit their access to financial benefits.

Conclusion

Overall, while biodiversity markets have the potential to play a role in restoring biodiversity, it is a complex solution fraught with concerns that ultimately serve as a distraction to the clear solutions of tackling climate change and biodiversity loss. The most recent State of the Environment Report makes clear that the key policy reform agenda needs to be reform of the EPBC Act, heritage laws, better recognition of First Nation rights and institutional reform to bring in an independent EPA, better resourcing and delivery of species recovery and threat abatement plans, improved compliance to reduce deforestation, and increased overall government funding on biodiversity conservation, management and restoration and First Nations led management of Country.

The proposed national repair market approach risks diverting governments, industry, business and the community from this core agenda. With a limited legislative schedule we would be disappointed to see reform on this being brought ahead of other, more important and more effective, options, and indeed perhaps precluding them

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