

Nature Repair Market team
Department of Climate Change, Energy, the Environment and Water
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8 October 2024

Dear Nature Repair Market team,

RE: Submission on legislative rules for the Nature Repair Market

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the consultation on legislative rules for the Nature Repair Market.

The Australian Land Conservation Alliance (ALCA) is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

The land conservation efforts of ALCA's seventeen member organisations have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$325 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding, and using nature-based solutions to tackle climate change.

Please note that ALCA is happy for this submission to be published in full.

Commentary

ALCA iterates three top-level principles to help guide the Government's contemplation of legislative rules, namely – and noting the tensions between them – balancing the following three objectives for biodiversity projects and certificates:

- High integrity;
- High quality; and
- Low transaction costs.

Further, in providing recommendations, ALCA notes that the Nature Repair Market is still in a nascent stage of the development, and that our views (and the views of our members) will develop further as the different elements of the market infrastructure mature. ALCA has focused its responses upon the questions of particular pertinence to its member organisations.

Should existing projects be eligible to participate in the Nature Repair Market?

Yes, existing projects, including carbon projects, should be eligible to participate in the Nature Repair Market.

Do you agree that each registered project must include activities beyond those required under a Commonwealth, State or Territory law?

Yes – each registered project must include activities beyond those required under a Commonwealth, State or Territory law.

Further, there should be flexibility under the Market’s legislative rules to be able to adopt either:

- a general approach to activities beyond those required under law plus any method-specific requirements; or (alternatively),
- method-specific requirements only.

Do you agree that the specified information should be mandatory at the application stage?

Regarding “*Information on relevant Indigenous knowledge and values relating to biodiversity and cultural heritage that have been, or are intended to be, incorporated in the project, as appropriate*”, it should be clarified that this information should only be disclosed to the extent that it is culturally appropriate to do so, and with consent from the relevant Aboriginal and Torres Strait Islander peoples.

Material risks, such as climate risk, should also be disclosed.

As a related issue, where project applications are sought through a Government procurement process, a staged EOI process could be considered to help overcome barriers to landholder participation, i.e. only requiring simple information at an expression of interest stage, and delaying heavier information requirements under the legislative rules until an application needs to proceed.

In what ways could the project plan facilitate the registration and implementation of a biodiversity project?

Project plans provide space for additional detail to be provided by proponents on what should happen in a project and who the main delivery agents are. They should be used to help demonstrate the quality and feasibility of a biodiversity project, enabling a reviewer to assess both the likely quality of results from the proposed activity and the level of risk involved.

The legislative rules should seek to balance the need for clarity regarding project requirements with the need to allow innovative and adaptive approaches to market methods.

While the legislation does not mandate that all projects must have project plans, indicating that method-specific project plan requirements are likely, insofar as it is possible, ALCA encourages setting a common minimum standard within the legislative rules for information required in project plans.

In addition to what may be required for Project Registration (i.e. objectives, planned activities and monitoring requirements), ALCA recommends requiring:

- A statement on whether the proposed management actions are accepted practice in a particular location, or whether they are innovative;
- Where actions are accepted practice, reference/s to previous projects and/or local experience using these techniques should be provided; and
- Where actions are innovative, the proponent should include a justification for the use of a new technique and the references and expertise that will be applied to provide assurance of outcomes.

Consideration should also be given to the threshold at which project plans would need to be updated, and the process for approval and reapproval.

Should the listed project types be excluded from the Nature Repair Market?

Yes, the project types listed in the Discussion Paper should be excluded from the Market.

Projects on land that has been illegally cleared/degraded/drained should be excluded from the Nature Repair Market if it is:

- under the same ownership; or
- is owned by related entities; or
- is owned by related individuals (i.e. relatives).

Projects on land that has been illegally cleared/degraded/drained but is now under the ownership of unrelated entities should not be excluded from the Nature Repair Market.

Limitations should certainly apply where the land is currently subject to legal action in relation to (alleged) illegal activities on the land.

However, given the difficulties facing proponents in the carbon market in determining whether a particular clearance was illegal or not, and, due to privacy concerns, constraints upon Government in sharing whether a property is subject to legal action or not, the legislative rules for the Nature Repair Market should provide an avenue for proponents to understand the status or the nature of any confirmed (or alleged) illegal clearances so as to enable compliance.

Should registered projects be required to transition to new or varied methods? What exceptions, if any, should be allowed?

ALCA is concerned that the requirement to transition to new or varied methods could create risks for project certainty, planning, and costs.

For example, if participants are required to negotiate an upfront payment to cover project costs prior to the issuance of a Biodiversity Certificate, and the method is then varied, there is a risk that any resulting cost increase would result in the participant not being able to deliver the required project outcomes.

ALCA suggests that the following options be contemplated:

- Allowing applications for exemptions to the new method, based on whether it would result in material financial hardship; or
- New methods can only be applied if the Minister can demonstrate that it will not result in any material increase in project costs or obligations.

Further, a requirement to transition to a new method should only occur where it can demonstrate improved outcomes for biodiversity, and with a suitable transition period.

What specific project attributes should be included on a Biodiversity Certificate?

ALCA recommends that the Government review the *National standards for the practice of ecological restoration in Australia*¹ and the attributes the document outlines to inform the selection of project attributes. We suggest particular consideration of attributes to describe the biodiversity outcome in terms of:

- Area protected, managed, or restored;
- Improved landscape connectivity resulting from the project/certificate; and
- Improvement of biodiversity condition resulting from the project/certificate.

Do you agree with the proposed certificate information to be included on the Register?

The certificate information should also include the project permanence period, and the project's location (at least general location), total area, and ecosystem type(s).

Do you agree with the proposed requirements and contents of an audit report at the time of certificate issuance?

To the extent that it is reasonable, there should be a harmonisation of the auditing requirements with existing schemes to reduce transaction costs.

Additional comment: Multiple certificate issuances

The Act generally provides for the single issuance of a biodiversity certificate for the duration of the project (s67(2)(a)). However, section 67(2)(a)(ii) creates an exception to this where the Regulator agrees to subsequent issuance of certificates. Whilst the Revised Explanatory Memorandum to the original Bill notes that the issuance of multiple certificates is intended to apply only in 'limited circumstances'², these limitations are not included in the Act itself, and the Act itself is of legal paramountcy.

¹ https://www.seraustralasia.com/standards/NationalStandards2_2.pdf

² "...in limited circumstances where a biodiversity certificate for a project has previously been relinquished and the project proponent can demonstrate that sufficient remediation activities have been taken to restore the biodiversity outcome for the project, the Regulator would be able to agree that an application for a new certificate can be made"; see: p88, Revised Explanatory Memorandum; https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7014_ems_69661cb2-d146-4e06-8611-853b830255d9/upload_pdf/Revised%20EM_23045.pdf

If the Market legislative rules proceed on the presumption that only one certificate can ever be issued per biodiversity project, it could limit the accessibility and the biodiversity outcomes of the Scheme.

Specifically, negotiating a certificate price that will cover the costs of the project for the entire permanence period may require a high-level of financial sophistication and risk management which may limit participation in the Market, and would be contrary to Object 3(c) (and section 219(ja)) of the Act. Further, biodiversity benefits are achieved through active management and financing, and one-off activity periods and certificates could struggle to create long-term incentives to lock-in these outcomes.

However, ALCA recommends that DCCEEW's Nature Repair Market team further consider the advantages and disadvantages of multiple certificate issuance, and, at this early stage of market development, simply retain flexibility in the legislative rules to allow time for the issue to be fully explored, and as methods are developed.

Thank you again for the opportunity to provide a submission on the Government's consultation on legislative rules for the Nature Repair Market. If you have questions regarding the submission, please do not hesitate to contact ALCA via michael@alca.org.au (Mr Michael Cornish, Policy Lead).

Yours sincerely,



Dr Jody Gunn
Chief Executive Officer
Australian Land Conservation Alliance

About the Australian Land Conservation Alliance

The Australian Land Conservation Alliance is the peak national body representing organisations that work to conserve, manage, and restore nature on privately managed land. We represent our members and supporters to grow the impact, capacity, and influence of private land conservation to achieve a healthy and resilient Australia.

Our nineteen members are:

- Arid Recovery
- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nari Nari Tribal Council
- Nature Foundation
- North Australian Indigenous Land and Sea Management Alliance
- NRM Regions Australia
- Odonata
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)
- World Wildlife Fund - Australia

ALCA member land conservation efforts have influenced over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$325 million. Together ALCA and its members address some of the most pressing conservation issues across the country, including restoring endangered ecosystems, building the protected area estate, tackling invasive species, expanding private conservation finance, and funding and using nature-based solutions to tackle climate change.

Through their active land management, ALCA member organisations are deeply embedded in rural communities and economies, providing jobs, securing significant regional investment, and safeguarding remaining native habitat, with its many positive spill-over effects for community, wellbeing, and food security. We seek to demonstrate the role and value of private land conservation as a cornerstone of the Australian economy.

Some ALCA members are statutory entities; the views expressed in this submission do not necessarily represent the views of the Government administering those statutory entities.