

Inquiry into the Nature Repair Market Bill
c/o Committee Secretary
Senate Standing Committees on Environment and Communications
Parliament House
Canberra ACT 2600
By email: ec.sen@aph.gov.au

1 June 2023

Dear Senate Standing Committee,

RE: Nature Repair Market Bill and Consequential Amendments Bill Inquiry

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Senate's Environment and Communications Legislation Standing Committee on its consultation on the *Nature Repair Market Bill 2023* (the 'Bill') and *Nature Repair Market (Consequential Amendments) Bill 2023*. ALCA is Australia's peak body for private land conservation; we represent organisations that conserve, manage, and restore nature on privately managed land to the collective benefit of all Australians.

Protecting our environment is, fundamentally, a public good from which all Australians benefit. A nature repair market should not be a replacement for substantive Government social investment.

However, the chronic and structural underfunding by both State and Federal governments combined with the sheer scale of the need for investment in our nature is so great, that private sector assistance – and a nature repair market that seeks to facilitate that investment – is welcomed.

The State of Finance for Nature released by the UN Environment Programme in 2021 states that if the world is to meet its climate change, biodiversity, and land degradation targets, it needs to close a USD 4.1 trillion financing gap for nature by 2050¹.

ALCA's members – and the private land conservation sector, including Aboriginal and Torres Strait Islander led initiatives – are among the best-positioned to deliver on both the complexity and integrity that will be required from successful biodiversity projects under a nature repair market. As noted in the 2021 State of Environment Report²:

*“By increasing the extent and diversity of habitats protected, **private land conservation** is increasingly playing a very important role in achieving effective and long-term conservation outcomes.”*

*“Continuing to expand the role of **Indigenous land and sea management** – including Indigenous Protected Areas (IPAs) within the National Reserve System – will be fundamental to improvements in the state of the environment.”*

We support the passage of the Bill through the Parliament, albeit with recommendations for amendments that would substantively improve the legislation.

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

¹ *State of Finance for Nature: Tripling investments in nature-based solutions by 2030*, United Nations Environment Programme, World Economic Forum, Economics of Land Degradation, 2021; <https://www.unep.org/resources/state-finance-nature-2021>

² p16 & p162; <https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-overview.pdf>

Context: The Nature Crisis

The accelerating nature crisis facing our nation must be urgently addressed if we are to prevent a sharp decline in Australia's social and economic wellbeing.

Whilst the nature crisis is less well-known than the parallel, albeit interconnected, climate crisis, it is just as serious for our society and economy. A recent report has confirmed Australia's trajectory towards the collapse of ecosystems³ and we have seen the largest documented decline of biodiversity than any other continent in the world⁴.

More broadly, according to the World Economic Forum:

"Humanity has already wiped out 83% of wild mammals and half of all plants and severely altered three-quarters of ice-free land and two-thirds of marine environments. One million species are at risk of extinction in the coming decades – a rate tens to hundreds of times higher than the average over the past 10 million years...."

*Human societies and economies rely on biodiversity in fundamental ways. ...over half the world's total GDP – is moderately or highly dependent on nature and its services."*⁵

Using the same methodology, **approximately half of Australia's GDP has also been demonstrated as having a moderate to very high dependence on nature**⁶.

The scale and devastation that the unfolding nature crisis will have upon our collective wellbeing will dwarf all but the very biggest issues facing our nation and will rival them in importance. As per the British Government's Dasgupta Review:

*"We are facing a global crisis. We are totally dependent upon the natural world. It supplies us with every oxygen-laden breath we take and every mouthful of food we eat. But we are currently damaging it so profoundly that many of its natural systems are now on the verge of breakdown."*⁷

The key findings of the Federal Government's 2021 State of Environment Report highlight the seriousness of the nature crisis as specific to Australia:

*"Overall, **the state and trend of the environment of Australia are poor and deteriorating as a result of increasing pressures from climate change, habitat loss, invasive species, pollution and resource extraction. Changing environmental conditions mean that many species and ecosystems are increasingly threatened. Multiple pressures create cumulative impacts that amplify threats to our environment, and abrupt changes in ecological systems have been recorded in the past 5 years.***

***...Our inability to adequately manage pressures will continue to result in species extinctions and deteriorating ecosystem condition, which are reducing the environmental capital on which current and future economies depend. Social, environmental and economic impacts are already apparent.**"*⁸

Indeed in 2021, Australian scientists confirmed evidence that already 19 of Australia's ecosystems have either collapsed or are collapsing⁹. Yet, despite this clear trajectory towards social, economic and environmental decline, Australia's Federal Budget response continues to be muted.

³ See: Bergstrom et. al, 'Combating ecosystem collapse from the tropics to the Antarctic', *Global Change Biology*, 2021; <https://onlinelibrary.wiley.com/doi/10.1111/gcb.15539>

⁴ See: DCCEEW; <https://www.dcceew.gov.au/environment/biodiversity/conservation>

⁵ See: World Economic Forum, *Nature Risk Rising: Why the Crisis Engulfing Nature Matters for Business and the Economy*, January 2020; <https://www.weforum.org/reports/the-global-risks-report-2020>

⁶ See: Australian Conservation Foundation, *The nature-based economy: How Australia's prosperity depends on nature*, September 2022; <https://www.acf.org.au/how-australias-prosperity-depends-on-nature>

⁷ See: p1, Dasgupta, P. *The Economics of Biodiversity: The Dasgupta Review*, HM Treasury, Government of the United Kingdom; <https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

⁸ See: 2021 State of Environment Report; <https://soe.dcceew.gov.au/overview/key-findings>

⁹ As above, n3

Priorities for legislative amendments

In its submission to the exposure draft Bill consultation, ALCA provided significant detail on desirable amendments, including a line-by-line mark-up of the Bill itself¹⁰.

Instead of replicating that detail here, ALCA has focused on six important amendments that have yet to progress in the ongoing evolution of the Bill:

1. A *Biodiversity Investment Strategy* instrument

The policy intent of the Bill and the Nature Repair Market that it creates have not yet been clearly articulated. Whilst the Bill clearly seeks to establish a market mechanism that can help finance Australian biodiversity projects and Australia's international environmental commitments, it is unclear what specific policy intentions or priorities that the Government intends for the market to deliver upon.

Further, whilst the potential for direct Government participation is clearly described in the Bill, there is no guidance on how the Government could or would intend to use the market to further its priorities, nor any clear mechanism on how those policy priorities would be transmitted in practice from elsewhere in the environment portfolio (or indeed, other portfolios) into direction for participation in the market.

It is also unclear if the Government intends to use the Nature Repair Market to augment its other policy aims and portfolio funding, or to substitute them with private financial flows.

In short, the Nature Repair Market appears broadly framed as 'a good idea for biodiversity', but without any clear signal or statement in the Bill as to specifically what good outcomes for biodiversity it will leverage and deliver in practice. Given the complexity of biodiversity projects, there is also a heightened chance of market failure due to 'information gaps' – namely, gaps in available knowledge and expertise between buyers and sellers.

One way to approach this issue is to strengthen the objects of the Act.

However, recognising that the avenue for amending the objects in Parliament may be narrow, ALCA recommends an amendment to adopt a *Biodiversity Investment Strategy instrument* that would provide guidance on intended Government policy priorities, providing an avenue for their articulation into the market that maintains flexibility and responsiveness for Government.

Specifically, the purpose of the legislative instrument would be to allow the Government to:

- Provide a means with which to clearly articulate policy into the nature repair market so that the market retains the potential to be a responsive tool for Government, rather than wholly separate to Government;
- Provide additional clarity – as well as collation in a digestible format for the market – of the Government's public policy intentions;
- Provide a form of forward guidance to market as to potential Government direction for future rounds of Government procurement in the market;
- Provide the Government with some capacity to shape the direction of the market via its signalling effect – e.g. what investments the Government perceives as more or less valuable, or lower and higher priority, which other purchasers may draw guidance from – without amounting to heavy-handed intervention in the market; and
- By virtue of being a legislative instrument rather than being enacted in the head legislation, maintain the Government's ability to be responsive, flexible, and relevant to the policy priorities of the Government of the day.

¹⁰ See: <https://alca.org.au/alca-submission-on-the-exposure-draft-of-the-nature-repair-market-bill/>; it is fair to say the Government has adopted a number of ALCA's recommendations in this submission in the final Bill.

2. Encourage participation of rural, remote, and Indigenous communities in the market

Recommendations 14 and 15 from the Independent Review of ACCUs should be adopted in the operation of the Nature Repair Market. Specifically, Recommendation 14 recommends that:

“The Australian Government should continue to support the capacity and capability of rural and remote communities, including First Nations Australians, to participate in and benefit from the ACCU scheme”¹¹

The easiest way to remedy this issue is to provide a ‘participation’ function for the Regulator, namely, a new subsection against section 219 (‘Miscellaneous functions of the Regulator’); for example:

l) to encourage participation, including of Aboriginal persons or Torres Strait Islanders, in the market for:

(i) biodiversity certificates; or

(ii) other certificates, units or credits (however described, and whether issued under a law of the Commonwealth, a State or a Territory, or in some other way) that relate to biodiversity projects.

3. Ensure the Regulator cannot be both the purchaser and issuer of biodiversity certificates

The Bill currently provides the Secretary of the Department the power to delegate their powers to an official of the regulator (section 224). This does not demonstrate good governance, as it allows for the potentially invidious scenario where the Regulator would register, issue, and purchase the same certificates. Further, it is in direct contravention to Recommendation 1 of the Independent Review of ACCUs:

“The respective roles of scheme assurer, scheme regulator and related policy development should be clear, undertaken by visibly separate bodies, and each function resourced sufficiently to play its role effectively in administering the scheme...”¹²

This issue would likely be remedied by excluding the power of the Secretary to delegate the powers they are given under section 79 (Biodiversity conservation contracts).

4. Replacing Greenhouse and Energy Auditors with Biodiversity Auditors

The Bill currently seeks to utilise greenhouse and energy auditors to audit biodiversity projects.

ALCA recognises that utilising existing greenhouse gas auditors is legislatively simpler, and that it can be expected that there will be auditors who can operate across both the carbon market and nature repair market.

However, greenhouse gas auditors do not automatically possess the skills required to audit biodiversity projects. Instead, the Bill should contain a separate registration scheme for biodiversity auditors to guarantee that they possess expertise specifically relevant to the monitoring and assessment of biodiversity.

Relying on the greenhouse gas auditor registration scheme – which serves a distinct and separate purpose to support for the nature repair market – may appear preferable in the short-term, but it is not a tidy nor preferable outcome over the longer term, where there are likely to be increasingly divergent requirements and thus a need to keep the registration schemes separate. Creating a legislative divorce

¹¹ pIV, <https://www.dceew.gov.au/sites/default/files/documents/independent-review-accu-final-report.pdf>

¹² pXII, Ibid.

of the auditor registration schemes later down the track will be much messier than setting it out separately from the outset.

It is thus better to create a separate registration scheme within the Nature Repair Market Bill, but to provide the means for provisional cross-registration until such time as the biodiversity auditor registration scheme matures, and its particular, distinct requirements become more apparent and necessary.

The creation of a biodiversity auditor registration scheme would require a replication of ss75-75A of the *National Greenhouse and Energy Reporting Act 2007* in an appropriate location within the *Nature Repair Market Bill*, but obviously reframed for biodiversity.

Another possibility is to look at updating section 221 [*Rules may provide for voluntary accreditation of advisers etc.*], however ALCA views this provides insufficient clarity in the head legislation and thus not a preferred approach.

5. The review of the Act should also include the Act's objects

Currently, the five-yearly reviews of the Act (section 226) do not allow for the contemplation of the objects of the Act themselves (section 3).

It should be recognised that the legislation – and the market it seeks to stand up – is a global pioneer. On this basis alone, it is wholly appropriate that any review of the Act should also contend with potential improvements to its objects.

This would be most easily addressed by the following (or similar) amendment to section 236 (a new subsection (2)(a) that would precede the existing subsections):

(a) the extent to which the Objects of the Act are appropriate;

6. Exclude offsets from the Nature Repair Market

Environmental offsets are compensatory mechanisms and are used to facilitate land clearance and destruction of native vegetation and habitat. They are fundamentally inconsistent with Objects of the Act, and with the assumed intent of a market focused on 'nature repair'.

For these primary reasons, **ALCA does not support the inclusion of environmental offsets in the Nature Repair Market.**

The intention to allow – at minimum – Commonwealth environmental offsets within the Nature Repair Market is a cause of serious concern. As noted in ALCA's September 2022 submission to consultation on the national biodiversity market:

"Offsets markets are not always designed to deliver net positive outcomes for the environment and thus the inclusion of offset arrangements within the biodiversity market may run contrary to the delivery of high-quality, high-integrity, and positive outcomes for the environment."¹³

This is especially the case because the *Nature Repair Market Bill* itself is largely silent on the issue of how offsets will be treated in the market. ALCA has considerable concern that if, by design or default, offsets are allowed and invited to dominate the Market, they may significantly skew both the purpose the market serves, and the biodiversity outcomes that the market delivers.

¹³ See: <https://alca.org.au/alca-submission-on-a-national-biodiversity-market/>

Assuming that the Government decides to proceed with allowing environmental offsets within the Market, ALCA recommends:

- that the name of the Bill (and the relevant terms within it) be revised to the National Biodiversity Market Bill to more accurately reflect the market that this would create¹⁴;
- a delay in implementing environmental offsets in the Market for at least 3 years to allow teething problems – especially regarding any concerns with integrity – the chance to resolve first, as well as the opportunity for impending reforms to the *EPBC Act* to settle out, especially as they may significantly alter the context for offsets;
- Public consultation on exposure draft environmental offsets standards before they are promulgated, including how the Government intends for any like-for-like hierarchy to be implemented in the Market; and
- Noting the general policy failure of offsets markets to deliver on their promise of achieving even a status quo outcome for nature, a serious premium requirement for offsets to ensure that the Nature Repair Market genuinely facilitates a net positive outcome for nature. This premium should take into account the issues in other environmental offsets markets related to delays between land clearance and restoration outcomes, policy slippage, and other distinctly sub-optimal outcomes for nature they create.

Thank you again for the opportunity to contribute to the Committee's inquiry into the *Nature Repair Market Bill 2023* (the 'Bill') and *Nature Repair Market (Consequential Amendments) Bill 2023*.

ALCA and its members look forward to the possibility of assisting the Committee further in its deliberations in the Inquiry.

Australian Land Conservation Alliance

¹⁴ Also in alignment with Government policy as regulated by ASIC, see: *Information Sheet 271*; <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>

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 fifteen members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- EcoGipps
- GreenCollar
- Greening Australia
- Landcare Australia
- Nature Foundation
- 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 \$280 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.