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A Joint Response to the Open Consultation by the Australian Government, Department of Climate Change, Energy, the Environment and Water

In relation to the Nature Repair Market Bill – draft legislation

by

NatureFinance

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Environmental Policy Innovation Center

Green Digital Finance Alliance

International Institute for Environment and Development (IIED)

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A joint response by NatureFinance, Crowther Lab | ETH Zurich, Environmental Policy Innovation Center, Green Digital Finance Alliance, International Institute for Environment and Development (IIED), Pollination, Pollination Foundation, Regen Network, rePLANET, Terrasos and The Landbanking Group GmbH

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The world stands at a crossroad for tackling the triple crises of climate change, biodiversity loss and sustainable development. There are positive signals from different international agreements and processes, most notably from the Convention on Biological Diversity (CBD) Conference of the Parties (COP) 15 in December 2022. There is growing interest and commitment from small and big corporates as well as the private finance sector to seriously address and include biodiversity considerations into their day-to-day activities. Action and solutions need to come from all angles.

We are therefore very encouraged by Australia´s leadership on advancing new, innovative means for channelling more, and especially private sector finance, to biodiversity conservation action. This voluntary effort on behalf of a sovereign government is a first of its kind – with the goal to go above and beyond, and turn the "do no harm" approach into one of creating added value in and by the natural systems. We congratulate Australia for embarking on implementing dedicated and diverse resource mobilization for biodiversity – on land and in the ocean.

Because Australia's commitment is a first of its kind, a lot of eyes – national and international– will be carefully observing this effort. We are grateful for the opportunity to provide our collective comments to the open consultation of the Australian government's Nature Repair Market Bill – draft legislation (the Bill). NatureFinance has convened a group of international actors, including project developers, researchers, and investors to comment on several key items considered critical for such a bill to be successful.

Jointly we look forward to working with the Australian government to strengthen its innovative and important Bill and successfully establish its landmark contribution to the international discussion around biodiversity credits and certificates. We are keen to engage with the Australian government beyond this consultation as there is a great benefit from collaborating with global experts and partners on ways to ensuring robust, international biodiversity certificate efforts.

Signed[1], in alphabetic order, by:

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[1] We would also like to thank Maxim Vergeichik for his valuable contributions.

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This consultation is of high relevance to the international work emerging on biodiversity credits. We welcome comments and suggestions that will enable us to continue to build out a broadly embraced approach to the design, governance and execution of effective, high-ambition performance nature credit markets. Please email Dorothée Herr at dorothee.herr@naturefinance.net

Key recommendations

This submission is structured around **key focus areas** – (1) purpose, (2) certification specification, (3) equity considerations, (4) market demand for certificates, (5) internationalization of markets and other (6) governance arrangements.

This submission´s core recommendations are summarized below. The extended submission discusses their technical details and arguments.

(1) Purpose - The Bill would benefit from highlighting **that equitable nature positive outcomes are an *indivisible* public purpose** of biodiversity certificates.

(2a) Certification specification - Single vs Unitised Certificates - In the present scheme, biodiversity certificates are issued on a per-project basis, irrespective of the actual biodiversity gains that have been made. Projects should instead generate credits as a result of measured and verified **per-unit enhancement and/or protection of biodiversity.**.

(2b) Certification specification: Success and Impacts - It is of great importance to determine success by focusing on **measured, assessed and verified biodiversity outcomes**. Biodiversity certificates will need multivariate approaches and metrics in their monitoring and reporting schemes which report on **ecosystem integrity**, while considering the interactions with the **societies** in and around them.

(2c) Certification specification: One-time Payment vs Results-based Approach - The currently envisioned, one-time upfront investment for a 25-year period is not providing an investor with sufficient security. We propose a **stepwise approach**, based on initial, up-front investment, coupled with results-based payments that reflect the needs and time horizons of the investor, project developer and biodiversity itself.

(3) Equity for First Nations and others -We recommend establishing **a transparent proponent-led process for developing and modifying methodology determinations**, with the Nature Repair Market Committee (NRMC), assuring the integrity of methods while the Department **provides technical, legal and financial capacity building and support for participants who otherwise may not be able to participate** (including First Nations peoples). Across the board, we recommend the Bill to facilitate the direct and early inclusion of indigenous knowledge into methodologies, practices and market governance so that their voices and perspectives are integral to the process and determinations.

We do see a need to improve the Bill to include a **clearer benefit-sharing mechanism with a majority of revenues reaching indigenous peoples and local communities (IPLCs)**. On this subject, we missed any reference to a **price floor**, which, if set properly, could ensure proper support to enable biodiversity management actions and outcomes, as well as the role of biodiversity´s stewards.

(4) Market Demand - Concerns are being raised around the Bill´s impacts being limited if there is **no strong signal provided to the demand side**. Whereas the Bill itself might not address this issue, Australia may wish to consider, and inform, about separate yet linked legislative efforts to stipulate the demand.

(5) Upscaling internationally - The Bill may also wish to be more specific on how the certificates produced under this scheme may relate to the development of **biodiversity credit markets** and interest from buyers elsewhere.

(6a) Other Governance – Oversight arrangements – As a new **Environment Protection Agency** has been proposed, it might be an opportunity to revaluate its role, and that of any other delegated certificate issuers, in this Bill.

(6b) Other Governance – Transparency - Provisions in the governing legislation should be amended to **maximise transparency, data access and data sharing**, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements.

The extended submission focuses on the following substantive areas, while building on the recommendations from the Chubb Review of the ACCUs[i] as well as other documentation[ii].

We understand the intent for this Bill to act as framework legislation, with subsidiary instruments to follow. Based on this, we provide specific recommendations for the Bill, and broader considerations for consecutive action.

1. Purpose

We recognize the fundamental goal of this Bill to facilitate the enhancement[2] **and** protection of biodiversity in native species, **and** ecosystems, in Australia.

We do however see a need to broaden the current Purpose Statement to include equity. The Bill would benefit from highlighting **that equitable nature positive outcomes are an indivisible public purpose**, implying that equity and nature positive outcomes are the singular, indivisible, public purpose of biodiversity certificates.

Furthermore, we emphasize that **social and economic equity** should be integral to the design and working of any markets, rather than being one potential goal and outcome driven by open market dynamics and purpose-led market actors.

Measuring ecological outcomes related to biodiversity conservation and recovery can only be framed through **a socio-ecological lens** that takes into account local ecological AND social processes. (see also Section 2.3). The **social, economic and legal dimensions of creating ecological outcomes** ought to underscore the Purpose Statement.

From a conceptual perspective, the Bill might still be seen as an "apologetic" answer for doing something wrong, where the opportunity is to boldly state that this is a **paradigm shift to creating added value in and by the natural systems**.

Operationally speaking, the Bill would forgo a unique opportunity to create a transformational mechanism unless it sets up the framing that a biodiversity certificate system should deliver measurable equitable nature positive (including ecological) outcomes, coupled with long-term certainty to investors and biodiversity custodians.

2. Certificate specification

As the international debate about biodiversity credits, and their respective markets, is highly confounded and where the same terminology means different things to different actors, we see a need to qualify with greater clarity, in which space this Bill is meant to operate. Based on a proposed taxonomy by NatureFinance (see Box 1) we interpret the Bill to fall primarily in the first category, but with the potential to allow for secondary trading and/or certificates (leaning towards the category on in setting) and with leaving some door open (ambiguity) on whether they can be accounted for and traded as offsets.

A conceptualization of the type of certificate in question will help define appropriate response and incentive measures (including on the demand side – see Section 4) for legislative and policy instruments to have the desired impact.

Box 1. Proposed Taxonomy[3]

- **Philanthropic claims/certificates**: the simplest version of biodiversity credits is the name given to a certificate/claim indicating that an entity has done something, generally involving a financial contribution/investment, to protect or regenerate a defined biodiversity landscape (including ocean). Here the credit provides the 'right to brag', but not to attribute the credit with a tradable financial value, or to assert its value as part of legal compliance requirements.

[2] The Bill could further be strengthened and define "enhancement" as the regeneration or restoration of ecological functions.

[3] NatureFinance (2023) Discussion Paper v1. Governing biodiversity credit markets.

- In-setting credits: there is a growing practice in investments in enhancing sustainable nature resource productivity, often along food value chains, by a financial institution or the commodity or brand buyer. Such investments are in the main, profit seeking and can be termed 'inset credits' that can be placed on a balance sheet as a financial asset, and potentially be traded if there are direct financial returns and/or the value chain linked financial returns are of transferable value to a third party.
- Regulatory (mandated) offsets: increasing numbers of countries have legislation requiring companies to compensate for any not-avoided land- or seascape damage associated with their operations. Biodiversity credits are then the certified proof that the business has complied with its regulatory requirements, effectively offsetting an associated legal and so also financial liability, but not providing a credit that can be monetarised through trade. What could however emerge is the potential, like in the carbon space, for auctions to emerge – thus entering a more competitive market space.
- Biodiversity-linked carbon offsets: of the many shortfalls in carbon offset markets, one is the current lack of a system-wide consideration of their broader biodiversity impact. In recognising that carbon credits linked to nature assets can enhance or unintentionally lead to the deterioration of biodiversity, a second generation of carbon credits are emerging that are incorporate biodiversity considerations, with an open question as to whether this will significantly alter the carbon credit valuation or/and lead to changes in the management of the underlying nature asset.
- Biodiversity offsets: the most difficult, and so contentious, are full-blown biodiversity offset markets, which may be voluntary or regulated. This approach would allow businesses to offset damage done to biodiversity, in some cases only after having applied the mitigation hierarchy[4], through their operations by buying and being able to trade credits related to improvements being made to comparable biodiversity landscapes elsewhere.
- Biodiversity financial assets: there is a growing demand by the global asset management sector for financial assets that can adequately value nature within portfolios and help diversify and mitigate climate and nature risks as portfolio management tools. This is as part of their efforts to try and meet ESG and impact investment criteria. Biodiversity credits, if properly designed, issued, valued, and traded (i.e. "securitised") could answer some of the needs of these fast growing asset management trends, and therefore become a new, significant financial asset class.

2.1. Biodiversity integrity standards

High level integrity principles, such as in the form of the biodiversity integrity standards (Section 57 of the Bill) are core to good governance. However, we do believe that the biodiversity integrity standards, as currently drafted, do not encapsulate the full depth of issues they could serve. Failing to do so will leave too much room for interpretation in the described follow-on steps, such as the development of methodology determinations.

We therefore recommend a review and strengthening of the standards to include, for example,

- Further clarity on what significant adverse impacts refers to. We also encourage not limiting the prevention of significant adverse impact on biodiversity on protected land only. This should apply to all biodiversity certificates and related projects (Division 3 - 57 (1) (b)).

[4] The mitigation hierarchy refers to the four steps that have to be followed in order: Avoid, then Minimise, then Restore impacted areas and finally Offset any impacts that remain.

2.2. Single vs unitised certificates

There are also stark concerns about the plans to issue a single certificate for each project, with implications for the market as a whole. A market requires a multitude of participants in order to take off and should allow for market dynamics including competition. The present scheme would prevent this.

,Biodiversity certificates are currently proposed to be issued on a per-project basis, apparently irrespective of the actual biodiversity enhancement and/or protection that have been made. **Projects should instead generate certificates as a result of measured and verified per-unit enhancement and/or protection of biodiversity .** It is of course an open question as to what should constitute a "unit" of biodiversity, but using a holistic, robust, standardised, and continuously updated metric be a suitable answer.

A single certificate would also mean that projects would need to be priced very differently because of their differing costs and conditions. Depending on the indicators of success (e.g. total number of hectares funded), this would quickly bias the market towards funding large scale projects over many thousands of hectares that might produce a relatively small biodiversity benefit compared to the same costs on a smaller scale project, but with potentially bigger biodiversity benefits.

There are also concerns that a single certificate, sold to a single purchaser, would favour larger corporates who are able to purchase the all-in-one biodiversity certificate, especially if the buyer retires their credit after initial purchase. Highly sophisticated brokers could also enter the market much easier than the general public, which may well have an interest to participate here.

At the same time, a one-time, upfront investment (by the initial purchaser) for a 25-year period is not providing an investor with sufficient security and is therefore unlikely to yield significant interest from the investment community (see section 4 on other demand related points). Coupled with the need for meaningful time horizons (section 2.4) required to measure biodiversity change, a mechanism needs to be developed that would require the investor to provide an up-front investment (to cover some of the initial cash flow problems), yet fulfil **continued payments based on results achieved**, within to-be-determined meaningful time horizons.

2.3. Measuring biodiversity improvements: success and impacts

Adopting the suggested broadened Purpose Statement (section 1), and, after analysing the suggested certification specification in the draft Bill, we propose a more nuanced, balanced way of how to measure success and impacts. While there is merit in taking a “management actions applied” approach, and thereby validating the investment made, it is of equal importance to determine success in terms of **measured, assessed and verified biodiversity outcomes**. The secured and awarded certificate would then speak to the effort (and investments made) and equally importantly, to the biodiversity outcomes (to be) achieved.

Directly attaching certificates to demonstrate enhancement and/or protection of biodiversity would:

(a) incentivise the use of high-quality or high-impact methods; and
(b) increase the overall value of the project over time, thereby encouraging projects to persist over the longer term.

It is paramount that that the Bill includes the clear guidance for *methodological determinations* and *biodiversity assessment instruments*, to guide appropriate monitoring that results in measured, assessed and verified biodiversity enhancement and/or protection.

As mentioned above, measuring ecological outcomes related to biodiversity conservation and recovery requires analysing different types of indicators that speak to ecosystem structure, composition and function, that ultimately inform ecosystem integrity. Additionally, delivering measurable ecological results can only be framed through **a socio-ecological lens** that takes into account local social AND ecological processes.

2.4. Measuring biodiversity improvements: Time Horizon

Setting meaningful **time horizons for monitoring and measuring ecological gains** is also critical. Whereas details could be left to the methodology developers, the Bill may nevertheless want to speak clearly to the need for the methodologies to incorporate clear ecological improvements.

Changes and impacts happen over time,where annual variations can frequently occur due to changing climatic conditions and changing baselines. Biodiversity certificates will need multivariate approaches and metrics in their monitoring and reporting schemes – metrics that will be influenced by ecosystem and project size, as well as the societies in and around them.

Annual ecological gains, as in the case of carbon where credits represent annual emissions reductions, are largely unrealistic and costly. To measure improvements and enduring impacts efficiently and effectively, biodiversity certificates need to include a permanence and durability features.

A currently open question is thus **what will happen with the project in question after the 25 years management timeframe**.

2.5. Tiered approach to certificate rating – based on IPLC involvement

A high level of integration of Indigenous Peoples and Local Communities (IPLCs) is core to many people´s expectations of this Bill (see section 3). One way of incentivizing this could be through price signals. This could be achieved, for example, by introducing a tiered approach that couples IPLC engagement with the rating and pricing of a certificate. Similar to the AAA rating applied in the bond markets, the Bill could stipulate "premiums" to the certificates, based on the initial, yet also continued engagement of IPLCs in the project. Such a system should than be coupled with ecological ratings. Overall, such an approach could well set the stage for the scalable quality of the certificates in secondary markets, creating the backdrop for ensuring the integrity, and price of certificates over time.

Such an approach could similarly open the possibility to lower interest rates from bond issuance, assuming there is a potential for certificates to act as underlying product for larger investments.

2.6. Development and review of methodology determinations

We recommend establishing **a transparent proponent-led process for developing and modifying, as soon as practicable, methodology determinations** with the NRMC, assuring the integrity of methods. The Department[5] provides support for participants who otherwise may not be able to participate, including First Nations peoples. Allowing stakeholders, including project proponents, to suggest and lead the development of methods will ensure the scheme involves a diverse breadth of methods and participants – see also section 3.

Methodological developments must continue to be supported by clear and compelling evidence that has been independently peer reviewed, preferably with scientific results that have been independently verified.

As the science and our understanding on the socio-ecological context around biodiversity, and the constant improvements on technology, for measurement, reporting and verification (MRV), and

[5] The Commonwealth department administered by the Minister for the Environment

financing means, are rapidly improving, the *methodology determinations*, as well as the *biodiversity assessment*[6] *instruments*, may need to very flexible, and not be locked in. Continued innovation needs to be encouraged rather than suppressed. The Bill could therefore explicitly refer to the regular review of such improvements and how these inform methodology determinations, biodiversity. Assessment instruments, and biodiversity outcomes and the underlying *methodology determinations* as well as *biodiversity assessment instruments*.

3. Equity

Equity – ranging from a fair deal to equitable distribution of benefits to the inclusion of stakeholder voices in all steps of the process – is key to good governance.

3.1. Further strengthening of Indigenous Peoples and Local Communities inclusion

We welcome, and endorse, the Bill´s approach to co-designing and using public consultation in different steps of the process, including on *biodiversity assessment instruments* and *methodologies*. We do however want to stress the need to go a few steps further, and suggest the Bill includes the direct inclusion of indigenous knowledge for methodologies and practices. We believe this Bill holds the opportunity to diversify the parameters of methodology and practices, breaking down embedded bias and siloed thinking on "consultations".

We therefore recommend establishing **a transparent proponent-led process for developing and modifying, as soon as practicable, methodology determinations**, with the NRMC, assuring the integrity of methods, while the Department **provides technical, legal and financial capacity building and support for participants who otherwise may not be able to participate**, including First Nations peoples.

The role of IPLCs as custodians of nature, and the stewardship for healthy species, ecosystem services, and biodiversity at large, including carbon, has been well documented[7]. Practices and knowledge, for example, on forest fire management techniques, has proven invaluable in the past[8].

We welcome in general the NRMC´s planned membership to be diverse. We would encourage not only a broad technical representation, but a minimum of two people from **First Nations Australian** with relevant expertise.

3.2. Comprehensive policy innovation for IPLCs

We also note that there will be a temporal lag on the intended financial flows via the issuance of certificates to any Indigenous-protected area through the current, government funding for protected areas. There is however the opportunity to develop a 5-10 year plan for returns, from market mechanisms to directly augment any government funding of Indigenous protected area programs. It is important that this additional mechanism is included in Australia's overall policy innovation and timeline.

3.3. Broadening the expertise

Examples from the U.S. biodiversity credit mitigation market show the added value of **regional, interagency review teams** to partake in the decision-making process. This would allow for a broader set of stakeholders – both from indigenous groups as well as technical ecologists – to participate. Such an

[6] Australia may wish to consider using measurement rather than assessment to imply the action of measuring outcomes by specific protocols.

[7] https://www.frontiersin.org/articles/10.3389/fenvs.2022.845178/full

[8] https://ecoevorxiv.org/repository/view/4324/

approach could bring a deeper understanding of the local circumstances of the projects in question to the table.

We also recognize the statutory authority of the NRMC, and similar to the suggestions of the Chubb Report, we suggest that the NRMC to receive adequate resources: these could include a dedicated Secretariat with diverse skills and experience hosted within the Department, but reporting directly to the Chair of the NRMC); appropriate remuneration; and unfettered access to all relevant information within the Department.

We further see an opportunity to ensure there is wide, and active reach of its public consultation efforts, to include **technical, ecology focused expertise.** These experts will be integral to the development of adequate methodology determinations, and to the overall success in terms of biodiversity outcomes that look at the big trees and small critters alike.

The full and early incorporation and engagement of numerous stakeholders and indigenous groups (from development of the Bill as well as in setting the parameters, impacts, standards, benefit sharing mechanism, amongst others) will also inform and enable greater **data coherence** (structure, harmonization and translation from MRV and biodiversity impact into assets) (see more on data in section 7.1).

3.4. Benefit sharing and price floor

We do see a need for the Bill to re-evaluate the need for a **clearer benefit-sharing mechanism with the majority of sales revenues going to IPLCs**. While the clause to ensure that a biodiversity certificate is not to be issued until the written consent of each relevant interest-holder has been obtained, clearly provides a direct voice, and potentially veto to local stakeholders and Indigenous Peoples, it may also be the case that some local stakeholders and Indigenous Peoples may well be ill-equipped to discuss and negotiate proper contractual agreements and discern what would be of benefit, or potentially harmful, to their communities in both the short and long term.

Furthermore, re-stating the proposed purpose statement to include a clear reference to the inseparability of equitable and nature positive outcomes of this Bill (see section 1), we believe it´s critical that prices are set in a way that the Bill achieves both equitable outcomes as well as provide for the viability of the underlying assets.

As we keep witnessing in the carbon markets, equitable distribution is seldomly achieved through open negotiations, given information asymmetries and different negotiations skills. Notwithstanding that there are well designed profit-sharing agreements at play in the carbon market, evidence suggests that contract-based benefit-sharing mechanisms remain marginal if on a voluntary basis only. We therefore suggest introducing a **price-floor** (fixed or formulated). We recognize that this is likely to have some implications on volume and liquidity of the market. Yet, aiming for an equitable, nature positive outcome, the importance of equity outweighs.

4. The demand for biodiversity certificates

4.1. The need to incentivize market demand

While there is clearly a surge in international interest into biodiversity credits/certificates the Bill´s efforts risk being limited if there is no strong signal provided to corporations. Without other measures, such as **mandatory disclosure of biodiversity related risk requirements to companies, taxes, levies or other financial instruments,** a significant demand, beyond altruistic behaviour of a leading few, as well as individual persons, may not materialise. Other measures would help to set clear signals towards the

aspired paradigm shift to creating added value in and by the natural systems, and not for offsetting intended future destruction of nature in the future.

Whereas the Bill itself might not address this issue (as other legislations often do not include the demand component often requiring additional legislation), Australia may wish to consider, and develop separate, yet linked, legislative efforts to stipulate the demand.

While the Bill currently leaves some ambiguity around the use of the certificates for offsetting, there might be higher potential demand from further groups like insetter, insurances or investors with the ambition to diversify their portfolio to which the Bill could take explicit reference to.

Whether offsets or not, the Bill may want to insert **some "buyers checks"** to ensure the additionality of the buyers (especially corporates) beyond other means of (corporate) biodiversity conservation and restoration strategies and efforts. This could support the Bill´s integrity and help protect the market from short-term interest of corporates.

4.2. Certificates as underlying products

For the certificates to truly contribute to the achievement of broader, international commitments from Australia, they ought to be linked to the financial needs of the potential stakeholders involved. This may mean that certificates need to be underwritten by long-term financial security (e.g. functional credit market, endowments, insurance schemes), their links to other finance instruments (e.g. ESG funds, debt) made clear, with clear legal guarantees (land titles and contracts, formal protection status). These features would create the conditions for long term stewardship and the durability and permanence of biodiversity projects. Further clarity on whether the project for which a certificate has been issued, **will be limited in accessing or actually be able to participate as part of other financial instruments, as underlying products for larger investment, would be crucial.**

5. Upscaling to international markets

5.1. National vs international market

The Bill is currently not very clear on whether any non-Australian individual, corporates or trusts are eligible for purchasing biodiversity certificates under this scheme.

If international buyers were able to buy certificates produced in Australia, it would certainly contribute to achieving the Bill´s outlined goal of promoting the engagement of market participants. However, it could also lead to unintended consequences.

If Australia choses to open up the purchase of certificates to external actors, there needs to be a clear indication on how certificates can be traded, or retired. Additionally, it then needs to be clear-cut as to which criteria apply: who can buy, considering which terms and what claim can the entity do.

Notwithstanding the demand side benefits (additional revenues for the enhancement and protection of biodiversity), a clear framework addressing the above points is needed to avoid the emergence or inappropriate trades, traders and/or claims. This will help to protect the integrity of the Bill´s goals. Regulated purchaser screening incorporating a mitigation hierarchy check and alignment with efforts such as the Science-Based Targets Network (SBTN)[9] would help regulators avoid reputational inconveniences such as those discussed in the context of carbon trading.[10]

[9] https://sciencebasedtargetsnetwork.org/
[10] https://www.acf.org.au/carbon-offset-limits-australia-and-kazakhstan-top-the-charts

5.2. Context of this Bill to other Australian efforts

Australia may also wish to specify that this effort, while distinct, is one of several to ensure Australia can meet its international biodiversity commitments and reach, for example, the 30x30 target.

Australia may also wish to make reference in the Bill on its broader engagement towards natural capital accounting[11], and how this Bill (and the underlying projects) will support such an endeavour.

6. Institutional oversight arrangements

Australia may wish to consider how it can support Australian-based project developers to compete for, and be front-runners, in supplying high integrity, equitable and nature positive outcome projects for emerging international activities.

Overseeing the development of this entire scheme, where the methodologies and projects are being approved by the same entity, however may generate a less competitive, less market-driven scheme. Having, in contrast, competitive providers (as well as other features such as quantifiable improvements in biodiversity over time) would improve market performance, while the regulatory oversight could focus on providing licenses to organisations to offer biodiversity certificates. There could be a series of organisations competing, in a transparent manner, whilst maintaining government required standards.

6.1. Environment Protection Agency

As a new **Environment Protection Agency**[12] [13] is being established in Australia, its role, and that of any other delegated certificate issuers, could be evaluated. As the Chubb report pointed out, it would be prudent for a trading scheme to separate the roles of scheme assurer, scheme regulator and related policy developments. A separation of these functions would enhance market confidence and transparency.

6.2. Litigation mechanisms

While the Bill is very detailed in terms of the administrative procedure for cancelling certificates (and projects underlying those certificates), it does not make any statement around possible disputes between proponents and holders of a certificate. **Any investor holding a certificate requires legal certainty about litigation mechanisms, presumably before an Australian law**.

7. Transparency

7.1. Data access and sharing

Provisions in the governing legislation should be amended to **maximise transparency, data access and data sharing**, while enabling protection of privacy and commercial-in-confidence information. These features would earn greater public trust and confidence in scheme arrangements above and beyond requirements of the already existing Data Availability and Transparency Act (2020).

The government could either work with existing or establishes its own platform for sharing environmental information held by different organisations and governments. In the later case, it should also develop an Application Programming Interface (API) so that researchers and other third parties can

[11] https://www.theguardian.com/australia-news/2022/dec/16/cop15-australia-us-commit-to-measuring-value-of-nature-and-reflecting-it-in-national-accounts
[12] https://www.theguardian.com/australia-news/2022/dec/08/tanya-plibersek-confirms-new-environmental-protection-agency-to-enforce-conservation-laws
[13] https://www.abc.net.au/news/2022-12-08/australia-environment-laws-federal-epa/101744044

review and analyse the data. This would make the scheme more transparent, and potentially more trustworthy, while informing how the scheme could continuously be refined.

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[i] Independent Review of Australian Carbon Credits Units (ACCUs). Executive Summary. Final Report. Recommendation and Key Findings. December 2022.

[ii] Terrasos - Biodiversity credits - an opportunity to create a new crediting framework. https://news.mongabay.com/2022/11/biodiversity-credit-market-must-learn-from-carbon-offset-mistakes-commentary/

NatureFinance (2023). 1st and 2nd submission to the Global Environment Facility Working group on innovative mechanisms to address biodiversity financing needs.