National Farmers Federation

31 May 2023

Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Environment and Communications Legislation Committee,

RE: Nature Repair Market Bill

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to Committees on Environment and Communications regarding the Nature Repair Market Bill 2023.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the length and breadth of the supply chain. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF has been a longstanding advocate for mechanisms which recognise and support the stewardship work of Australian farmers. Australian farmers manage more than half of Australia's landmass. Linking farmers with investors who will partner with them to invest in environmental protection is a significant step forward in how we protect and care for our country. This needs to be a voluntary program where farmers can choose to engage.

The NFF supports the proposed Nature Repair Market Bill and recognises the opportunities it will offer to farmers and landholders in contributing to ecosystem services and participating in a broader marketplace.

The Bill provides a critical step towards achieving sustainable and resilient ecosystems in Australia. We, however, have some concerns about the proposed Bill.

Scope
The NFF considers that it is paramount the principal focus of the Bill is stewarding outcomes on farmland. In addition to that, public land agencies which already have an obligation of managing for biodiversity should not be able to access the same benefits as farmland or create an income stream as a result of implementing this Bill.

While we understand other tenures may be under consideration, there are some risks that, at least in the early stages of a developing market, they may overwhelm the agricultural sector. That is not to say that there may be a case for some other tenures. Land that is set aside for conservation purposes should not be able to participate, but public owned landed that is used for stock routes could be a reasonable participant.

On these latter areas NFF will be keen to understand the underlying case for their inclusion. We encourage acknowledgement that farmers are able to manage for multiple values, increased biodiversity, food/fibre production, carbon sequestration, they can all be compatible.

Additionality
For avoidance of doubt, the NFF maintains its position that the inherent additionality provisions that apply to the Emissions Reduction Fund (ERF) and its subordinate methodologies must not transfer to this Bill. The task for carbon is to reduce its presence in the atmosphere. International accord requires an additionality to apply. No such test nor rationale applies in the scope of biodiversity. Consistent with the terms of the EPBC Act 1999, 'maintain or improve' objective or indeed of this Bill, 'enhance or protect', both inherently recognise a value in existing habitat, biodiversity presence or similar. It is therefore logically inconsistent to require methodologies to only address or be available to additional attributes.

Any argument that existing habitat is not of value ignores the landscape facts, which were most recently articulated in the independent, comprehensive, and evidence-based assessment, such as the findings presented in the State of the Environment Report.

Such an argument also underplays the private commitment of a landholder to manage habitat as a land steward without any regulatory obligation to do so.

That said, should an investor choose to only invest as a market participant, in an 'additional' outcome, then (?) that is a different discussion. We would maintain our view that additionality should not apply, the key point is that the framework of the legislation should NOT artificially limit what market participants are able to or prepared to invest in, it should be for the market to decide.

Consistency and Interoperability
As this legislative process is considered, there are a range of jurisdictional and other markets, also largely nascent, being developed in this area. For example, the NSW Biodiversity Conservation Trust has a framework for identifying biodiversity attributes and attributing a value plus the NSW Government has recently released

its Natural Capital Statement of Intent[1] to establish such a market. Consistency with, and interoperability of, those processes with this Bill will need to be worked through. This market is too confined at present to allow too much complexity (see 'fungibility' below).

Fungibility
The Bill currently contemplates the development of methodologies that report biodiversity performance. There is some considerable risk in that they will present to the market as substantially different products.

As the market develops, we believe there is an important development and transitional step that should require that the protocols outcome is presented to the market as a common metric. The clear example is the ERF, where whatever the methodology, and whichever greenhouse gas that is being managed, they all present to the market as a CO2e via an Australian Carbon Credit Unit. The same should be designed for this process, at least in the development and early operational phase.

A certificate is not a market
Simply developing a certificate does not in and of itself create a market. While work on foot by the ANU is a useful precursor to a market, the bilateral way in which it operates will soon become too confined. This process needs vision and time, and much more consultation than has been allowed. There is a significant design discussion to happen that needs to include how to develop a stepwise approach to the evolution of a market from a bilateral to a multilateral model and importantly one that the finance sector is comfortable in participating. It will need to allow for the evolution of types of attributes, of single or multiple (e.g., carbon, habitat, species richness) attribute products and for a competitive set of demand side participants to act competitive marketplace. Serious discussion needs to be had around the development of an ASX style platform that embraces these attributes and can allow broadening to cover the full suite of environmental and societal demands so an E(nvironmental) and S(ocial) marketplace. These are the emerging pressures that our markets are seeking to assert. We need to both balance those demands but also seek to design for the opportunity to access the supposed multibillion dollar marketplace that is evolving and translate that value back to where it is principally delivered, i.e., inside the farm gate.

The market will provide signals around what it regards as important, and suppliers can choose to design more precise product offering to meet this emerging demand. NFF will be keen to participate in this future market development. For its part, agriculture already has well established product differentiation processes in for example, the red meat and grains sectors. These were developed over time, not

[1] https://www.environment.nsw.gov.au/research-and-publications/our-science-and-research/our-research/social-and-economic/natural-capital

designed up front in a narrow and developing market. But they need to be critical design considerations.

Income Tax Treatment

Income Tax Assessment Act 1997 Primary Producer Definition

A primary producer is an individual, partnership, trust, or company operating a primary production business. As defined under the Income Tax Assessment Act (ITAA), a primary production business is a business that meets either one of the following conditions:

- Cultivates or propagates plants and/or fungi or their products or parts in any physical environment.
- Maintains animals to sell in the future.
- Manufactures dairy produce from raw material produced by the business.
- Conducts operations to catch fish, turtles, dugong, beche-de-mer, crustaceans or aquatic molluscs.
- Conducts operations to take or culture pearls or their shells.
- Plants or tends trees in a plantation or forest intended to be felled.
- Fells trees in a plantation or forest.
- Transports trees or their parts that the business felled in a plantation or forest to the place: a) Where they are first milled or processed, b) Where they will be transported to another place to be first milled or processed.
- *Creates eligible carbon or biodiversity credits within the boundaries of the enterprise*.

We propose this as a consequential amendment in the Nature Repair Market (Consequential Amendments) Bill 2023 to the ITAA.

Data

A key concern will be how we go about developing the necessary data and information to underpin this process. Common spatial data sets that are accessible to supply (landholder) participants that are updated in a timely manner will be an important attribute. While some work has been done to develop the carbon plus biodiversity pilot, there will be new and novel attributes that will also need this problem solved. This will be an important role for government to facilitate in consultation with industry. NFF recognises the budget provision for an Environment Information Australia (EIA) and recommends that we are closely consulted in this development.

Offsets

Environmental offsets are governed largely by requirements in the EPBC Act. Current discussions in that paradigm include the opportunity for the proponent to contribute to a 'trust', in the event that they cannot identify offsets within the parameters of the standards (still draft). It will be important for these offsets to be able to have a level of price discovery beyond a 'black box' approach. It might, for example, be a useful benchmark or more advantageous to purchase the offset in an open market rather than by unbalanced bilateral negotiation (or even worse, government determining price unilaterally). In any event the narrowing of eligibility of the use of biodiversity 'products' should not be artificially limited, the market, as it matures, will be able to express a view on the underlying intrinsic value of offsets (or indeed other attributes) in the context of broader biodiversity credits.

As stated below in the explanatory memorandum we agree they should be able to participate in a voluntary market once one is done/created/developed.
"The Nature Positive Plan, released by the government in December 2022, outlines that biodiversity offsets should only be used following demonstration of attempts to avoid and mitigate harm. The Government intends to legislate and strengthen the 'offsets hierarchy' and identify Areas of High Environmental Value where development generally will not be allowed. If a development has impacts to matters of national environmental significance that cannot be avoided or mitigated, the project proponent will need to take compensating action that will deliver a net gain for the imperilled plants or animals. A National Environmental Standard for Environmental Offsets will be made under law to provide certainty and confidence in this approach. Projects certified under the Nature Repair scheme won't be used as offsets – unless and until – they meet the new MNES and Offsets standards."
Explanatory memorandum page 237

Once certified they should become eligible to participate in a market beyond the proposed trust.

Conclusion
While the NFF supports the progression of this Bill ? we do so in the context of seeking to ensure that perverse outcomes are not embedded in the framework. (In that respect NFF encourages the Department to consider the findings of the recent NSW Audit Office's *Effectiveness of the Biodiversity Offsets Scheme*[2]*.)* To reiterate, it is NFF's view that this legislation must first and foremost address the needs of the farm sector, others can follow. The opportunity and priority should be to develop this for the agricultural sector.

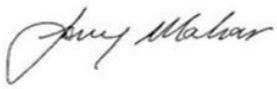
The NFF urges the government to take a careful and consultative approach ensuring that the draft nature repair markets bill is properly designed. There is also a need to ensure that the development of a market is treated as a separate process and that the learnings of the pilots (underway by ANU) are used to inform the further development of a market proposal. In the view of NFF, there is a clear

[2] https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme

role for government to collaboratively design, steward, facilitate and prove a maturing market to encourage greater demand side participation that can provide appropriate market signals to the supply side and fully test if there really is a will to invest in these outcomes by the community.

Please do not hesitate to contact Warwick Ragg, wragg@nff.org.au or 02 6269 5666 in the first instance to further discuss these important matters.

Yours sincerely,



TONY MAHAR

Chief Executive Officer