

Biodiversity Market Policy and Design Team  
Department of Climate Change, Energy, the Environment and Water  
Online submission, cc: [biodiversitymarket@DCCEEW.gov.au](mailto:biodiversitymarket@DCCEEW.gov.au)

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Dear Biodiversity Market Team,

**RE: Submission to A National Biodiversity Market**

The Australian Land Conservation Alliance (ALCA) welcomes the opportunity to provide a submission to the Government on its consultation on a proposed national biodiversity market.

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

## 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 eleven members are:

- Australian Wildlife Conservancy
- Biodiversity Conservation Trust NSW
- Bush Heritage Australia
- Greening Australia
- Landcare Australia
- Nature Foundation
- Queensland Trust for Nature
- South Endeavour Trust
- Tasmanian Land Conservancy
- The Nature Conservancy Australia
- Trust for Nature (Victoria)

ALCA land conservation efforts stretch across over 3 million square kilometres with more than 4,000 landholders. We have over 70,000 supporters and our combined annual turnover exceeds \$260 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 spillover 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.

## Delivering a high-quality market

ALCA welcomes a national biodiversity market that delivers high-quality, high-integrity, and positive outcomes for the environment.

ALCA recommends that we hasten slowly. While understanding the urgency of the need to drive finance for nature, taking time for deep engagement and design participation is strongly recommended. ALCA assumes that this will be its first opportunity for formal response and anticipates further consultation as the legislation and supporting frameworks are developed.

With this in mind, we note through our own consultation with members and broader stakeholders, that we share a view that extended and meaningful consultation is required including to ensure full participation and to maximise the opportunities that are generated for Australia's first nations people.

Barring a low-integrity, low-quality market, the worst possible outcome would be a failed biodiversity market. Direct Federal Government participation would significantly insure against that fate.

In pursuit of those objectives, ALCA recommends that the market – and where relevant, its underpinning legislation – be designed according to the following principles (noting that due to the short timeframe and limited information available, this list is not exhaustive):

### Principle 1: High-quality, high-integrity outcomes for the environment

The fundamental objective of the biodiversity market needs to be the delivery of high-quality, high-integrity, positive outcomes for biodiversity.

Biodiversity is uniquely complex. It requires target and indicator condition baselines, as well as change monitoring at appropriate scales. It will also require **site-specific management plans** to ensure that planned management activities are suitable and are monitored and audited according to site-specific conditions.

A quick example is that fencing off degraded habitat from livestock may regenerate naturally where a seedbank remains in the soil, but would require active restoration activities where there is no remaining seedbank<sup>1</sup>. Assessing and understanding underlying site-specific conditions will influence predicted outcomes. The auditing requirements for this example would then also be different.

Given the scope for systemic-level environmental changes induced by climate change and natural disasters, there also needs to be scope for **adaptive management**.

**Assurance of high-integrity outcomes can also be secured by adopting existing high-integrity schemes and programs, systems, and approaches.** One excellent example is the existing Federal accreditation and guidelines for conservation covenanting arrangements<sup>2</sup>.

### Principle 2: Directed towards nationally strategic biodiversity investments

Investments via the biodiversity market should be prioritised according to national strategic priorities for biodiversity.

This strategy should be guided by science and knowledge. Where possible, such a strategy should also incorporate current and updated biodiversity strategy and with the recognition of Indigenous rights and interests in biodiversity and of the biocultural value of biodiversity to indigenous people.

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<sup>1</sup> Example courtesy of discussions with the Wentworth Group of Concerned Scientists

<sup>2</sup> See: DCCEEW, <https://www.dcceew.gov.au/environment/biodiversity/conservation/covenants/how-to-apply#guidelines>

Accordingly, the objects of a biodiversity market act need to reflect this and should align with relevant objects of Australia's national environmental legislation.

Further, this also requires an outcomes-focused **national biodiversity investment strategy** (or similar document) that outlines the Government's strategy for utilising the market to maximise biodiversity outcomes in the national interest.

Two potential approaches for directing investments to maximise the national interest include:

- **Assigning a metric for biodiversity conservation outcomes** to certificates as a way of simplifying market signalling on which environmental outcomes are of higher biodiversity value and quality; and
- **Direct Government participation** in the market as an investor.

This will need to be supplemented – although not replaced – by significant Government investment in education regarding biodiversity market assets, costs (including project costs), and outcomes that enable both full participation of local communities and Indigenous organisations and informed participation from investors.

Ideally these – and potentially other approaches – would be used in combination rather than in isolation.

### **Principle 3: Clear positive outcomes for the environment**

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.

Unless there are significant net positive outcomes for biodiversity beyond the current approach to offsetting in Australia, **there should be no formal or legislated linkages to offsets markets**, whether Federal offsets markets (such as under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act')), State and Territory offsets markets, or international offsets markets.

**The Government should issue a clear statement of intent regarding the proposed interplay between a national biodiversity market and offsets markets.**

### **Principle 4: Ensures a premium for in-perpetuity protection**

The biodiversity market should be designed to ensure that it does not create a perverse disincentive for landholders to eschew in-perpetuity environmental protection that is currently delivered under conservation covenants (and their equivalents) across all State, Territory, and Federal jurisdictions.

In-perpetuity agreements on private land contribute to the Australia's international obligations for establishing a national reserve system and provide long term high-integrity public benefits.

**If applied, a metric for biodiversity conservation outcomes should reflect both the added value and security of in-perpetuity protection, as provided by conservation covenants.**

Existing conservation covenant holders should be able to access the market for management and restoration activities.

If existing covenantors are excluded from the market merely on the basis of additionality, **this will have a serious chilling effect on the future uptake of conservation covenants, crowding out voluntary covenanting, and penalising leaders in biodiversity management.**

It will be important to consider that conservation management activities (such as weed and pest control) are required to maintain ecological condition of areas protected under covenants, and to separate

consideration of security (the covenant) from required management activity to maintain and enhance ecological condition when considering approaches to additionality.

The policy response from both the Victorian government (in the Victorian offsets market) and New South Wales government (in the NSW biodiversity offsets scheme and NSW Biodiversity Trust programs<sup>3</sup>) has been to recognise and neutralise the potential for perverse outcomes by enabling participation for existing conservation covenant holders in emerging biodiversity markets.

### **Principle 5: Prefer longer term environmental outcomes**

**The Government should seek to drive a market preference for longer-term rather than short-term environmental outcomes.** Meaningful biodiversity outcomes take time to realise.

This should be reflected in any metric for biodiversity conservation outcomes and by the Government's biodiversity investment strategy that would guide direct Government participation in the market.

**The biodiversity market should adopt minimum terms of at least 25 years**, in line with the Australian carbon market, noting the need for adaptive management (as referred to in Principle 1).

### **Principle 6: Enhance accountability and transparency**

Where possible, 'frontload' principles and measures that enhance accountability and transparency into the biodiversity market legislation proper rather than in the protocols, regulations, and delegated instruments. This includes containing **a clear object to deliver high-integrity environmental outcomes within the objects of the act in any biodiversity market legislation.**

**A program of direct Government participation in the market may also be important to drive and enhance accountability;** Government will inevitably be held to a higher standard if it is directing government funds for the purchase of biodiversity certificates in the market, in addition to its role as regulator.

Protocol design – and especially final draft protocols – should be required to go through a public consultation process.

There should be a public register of projects and certificates.

**There should be a presumption that information relating to biodiversity (including management activities) will be published on this register** – such as the location of threatened species – **except where it fails a public interest test, as determined by an independent expert advisory committee.**

Recommendations, guidance, and decisions from any independent expert advisory committee need to be published, along with the Ministers response to that advice (albeit noting Principle 8 which seeks governance at arms-length from Ministerial intervention).

Any independent expert advisory committee must not only be independent but also perceived to be independent.

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<sup>3</sup> See: Part 11, *Biodiversity Assessment Method*, NSW Department of Planning, Industry & Environment, 2020; <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/biodiversity-assessment-method-2020-200438.pdf>; and: *Existing Obligations* (Conservation Management Program), NSW Biodiversity Conservation Trust, October 2019; <https://www.bct.nsw.gov.au/sites/default/files/2019-10/Existing%20obligations%20CMP.pdf>

**Protocols and methodologies adopted under the biodiversity market should be subject to regular review** led independently to (although with access to) the expert advisory committee, and according to publicly available timelines.

**Embedding adaptive management from the outset into protocols and methodologies** will help mitigate the uncertainty created where revisions to protocols and methodologies are found to be required.

Biodiversity outcomes will also require independent verification. ALCA notes that it expects there also to be independent oversight from the Australian Securities and Investments Commission (ASIC) on matters relating to its role as the integrated corporate, market, financial services and consumer credit regulator, for example, on issues such as 'greenwashing'<sup>4</sup>.

### **Principle 7: Non-discriminatory market access**

As a general principle, **market access should not be fettered except where it is in the clear national interest** (for example, market participation by a hostile foreign power). To be clear, this means that **the legislation should adopt an agnostic, non-discriminatory approach to the classes of landholders who will be able to supply the market.**

ALCA notes the view of the Indigenous Carbon Industry Network that identifies potential perverse outcomes that could result from the development of a market design that may limit access, benefit, participation or recognition of values for Aboriginal and Torres Strait Islander people, landholders and organisations.

### **Principle 8: Governance at arms-length from political intervention**

It is recognised that Parliament retains primacy regarding the legislative and regulatory operation of any legislated Australian biodiversity market.

**However, a biodiversity market should be regulated with standards of probity at arms-length from Ministerial intervention.**

In practice, this includes (as above) that any independent expert advisory committee must not only be independent but also perceived to be independent.

It also means, where appropriate, delegating Ministerial authority to independent officers or committees, rather than a Minister acting on the advice (or against the advice and without a statement of reasons) of independent officers or committees.

### **Principle 9: Direct Federal Government participation**

**Direct Federal Government participation in the market as a purchaser of biodiversity certificates could be an important way to mature and stabilise an Australian biodiversity market.** Direct participation provides a clear signal of government confidence to invest.

Direct participation also leads to increased Government accountability (as per Principle 6 above), as well as allows the Government to help shape and direct the market according to national strategic priorities for Australian biodiversity outcomes (as per Principle 2 above).

Direct Federal Government participation could also help insure against the possibility of market failure.

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<sup>4</sup> See: ASIC, <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>

### **Principle 10: Reduce complexity without compromising on integrity**

Biodiversity – and securing outcomes for biodiversity – are inherently complex. However, as long as the market does not compromise on delivering high-integrity, high-quality outcomes for the environment (Principle 1), complexity should be reduced where possible.

The biodiversity market must therefore carefully thread a path between the downside to biodiversity outcomes from reductionism versus the upside from keeping transaction costs as low as possible to encourage market volume.

Reduced complexity also improves accessibility, as well as reducing the reliance of the ultimate suppliers in the market upon brokers and aggregators that increase their transaction costs.

Development and investment in tools to support baseline assessment, monitoring, assurance and validation will also be required.

### **Principle 11: Incorporate lessons from the carbon market review**

ALCA understands that draft biodiversity market legislation will continue to closely resemble the Australia's carbon market legislation (the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)).

Therefore, **it is highly prudent to await the recommendations of the Independent Review of Australian Carbon Credit Units**, due to be handed down to Government by 31 December 2022, so that relevant recommendations can be incorporated into the legislative design of the biodiversity market legislation.

### **Principle 12: Hasten slowly**

Again, ALCA reiterates the importance of avoiding a failed biodiversity market. This means being cautious and methodical in the design of the market and its legislation.

For many stakeholders, this short, two-week consultation is the first opportunity they have had to engage on the many technical issues that a biodiversity market generates. **ALCA encourages the Government to take all stakeholders – big and small – on a journey of genuine co-design, including, at minimum, the opportunity to make public comment on exposure draft legislation.**

Thank you again for the opportunity to contribute to the Government's development of a biodiversity market. ALCA looks forward to ongoing engagement with the Government as it progresses this work.

**Australian Land Conservation Alliance**