

## Invitation to Comment on Proposed Biodiversity Market

Response from the Centre for Resources, Energy and Environmental Law (CREEL) and Melbourne Climate Futures (MCF), Melbourne Law School, the University of Melbourne

Thank you for the opportunity to comment on the proposed biodiversity market. This is a short response given the limited time to comment.

We are concerned that a market for biodiversity offsets may simply be a way to salve the conscience of government while other development proceeds to destroy habitat and species.

We believe that the key question asked of this proposal should be: why use a market mechanism rather than other mechanisms, for example, stewardships payments that can be more directed?

We believe that this proposal could be seen as the government substituting private sector minimal contributions (noting this is voluntary not mandatory for landholders) for their responsibilities for arresting biodiversity decline in accordance with their International obligations under relevant Treaties. Markets are a form of regulation, not an alternative to regulation. We believe this will end up costing the government just as much as a stewardship program, by the time compliance is factored in.

Our other key concerns with the proposal are:

1. **Additionality** – whether biodiversity activities done in relation to the market ‘really are a new project’. This is particularly tricky with restoration and replanting projects. It is also an area that requires significant monitoring and compliance, with flow-on impacts for what resources are devoted to this issue: including who will do the compliance checks, especially on private land; access to private land issues; baseline information on species also an issue as information on many species is sparse so it is difficult to know the overall contribution to enhancing biodiversity outcomes.
2. The ‘like for like’ problem, that is, how do you ‘offset’ endangered species at a realistic level. It should not descend into just tree planting: this is a key problem with the ‘Greening Australia’ formula. What is the criteria for determining how individual projects contribute to overall impacts i.e. decreasing species loss, and how is that calculated? Additionally, the transparency of regulator processes is key.
3. How will government prevent third parties from gaming the system, as happened in New South Wales?
4. How will offsets would keep pace with biodiversity loss – there is always a lag time, and experience in the Victorian grasslands shows that there can be considerable lag between even commencing the offsets and the clearance of habitat. The experience of vegetation clearance in Victoria also shows how difficult it is to ‘offset’ one type of loss against another type of gain. Metrics will be crucial here, but biodiversity exists in relationship to place, not merely abstract measurements of percentages of species, level of endangered-ness, level of ‘intactness’ of habitat.

Finally, we direct policymakers to a report commissioned by the Birrarung Council on how to re-think concepts of ‘net gain’ so that (1) it includes acknowledgement of cultural landscapes and (2) it is

forward looking (i.e. geared towards achieving a future vision) rather than mired in the arithmetic of the present-day baseline and demonstrating marginal 'improvement' on that (<https://www.water.vic.gov.au/birrarung-council/current-projects>).

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