



16th September 2022

Dear Biodiversity Market Policy and Design Team,

Re: Submission on the National Biodiversity Market

The Federation of Victorian Traditional Owner Corporations (the Federation) is a state-wide body advocating for the rights and interests of Victorian Traditional Owner Corporations. We welcome the opportunity to make a submission to provide feedback on the National Biodiversity Market (NBM) and its potential opportunities and impacts on the interests of Victorian Traditional Owners.

Victorian Traditional Owners have a strong commitment to extending their ability to be leaders in activities that enable them to put into practice their cultural obligations to care for Country. While it has been recognised that biodiversity or carbon markets have the potential to be a source of financing for their work healing Country, some Traditional Owner groups have expressed concerns as to whether such an approach is aligned with the ethos of Caring for Country especially where it is based on offsetting environmental degradation in another location and resulting in no net improved environmental health.

This submission highlights a range of measures that could be incorporated into the design of the National Biodiversity Market mechanism that would enhance outcomes for Country and for Traditional Owners in extending their ability to manage Country in a way that meets their cultural obligations, and to avoid potential perverse outcomes of further limiting these aspirations.

We strongly encourage the involvement of Traditional Owner representatives be involved with the design of the different components of NBM. The Federation would welcome the opportunity to support further Traditional Owner input into the design of the NBM. For further clarification, please contact Daniel McIntyre at daniel.mcintyre@fvtoc.com.au

Yours sincerely

James Hackel

Manager, Natural Resource Management and Economic Development
Federation of Victorian Traditional Owner Corporations

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Submission on the proposed National Biodiversity Market

The Federation of Victorian Traditional Owner Corporations (the Federation) is a state-wide body advocating for the rights and interests of Victorian Traditional Owner Corporations. We welcome the opportunity to make a submission to provide feedback on the National Biodiversity Market (NBM) and its potential opportunities and impacts on the interests of Victorian Traditional Owners.

Victorian Traditional Owners have a strong commitment to extending their ability to be leaders in activities that enable them to put into practice their cultural obligations to care for Country. While it has been recognised that biodiversity or carbon markets have the potential to be a source of financing for their work healing Country, some Traditional Owner groups have expressed concerns as to whether such an approach is aligned with the ethos of Caring for Country especially where it is based on offsetting environmental degradation in another location and resulting in no net improved environmental health. There are a range of measures that could be incorporated into the design of the National Biodiversity Market mechanism that would enhance outcomes for Country and for Traditional Owners in extending their ability to manage Country in a way that meets their cultural obligations, and to avoid potential perverse outcomes of further limiting these aspirations.

Key recommendations:

- Include Traditional Owner representatives on the independent technical advisory committee which advises the minister in the design of protocol determinations, including being able to advise on differing regional Traditional Owner interests.
- Conduct knowledge sharing activities to enable Traditional Owners to determine strategies to engage with the National Biodiversity Market in a culturally safe way and based on the principles of self-determination.
- NBM Protocols should include options which are aligned with Indigenous land management practices not solely biodiversity outcomes.
- Invest in the design of legal mechanisms to be used in conservation projects which enhance rather than inhibit Traditional Owner access to and ability to manage Country.
- Incentivise project proponents engaging in the NBM to partner with Traditional Owners in projects via inclusion of a description of Traditional Owner participation, benefits and outcomes as an attribute of the project on its Biodiversity Certificate, enabling a premium price for projects demonstrating best practice.
- Empower Traditional Owners to be involved with overseeing and implementing compliance and assurance mechanisms.

Victorian Traditional Owners have developed the *Cultural Landscapes Strategy*¹ (CLS) to set out a framework and pathways to lead the planning and management of Country in line with their cultural obligations to care for Country. Their rights and obligations, aspirations, capacities and strategies to practice self-determination in the revegetation and healing country sector are further set out in the *Right Plants Right Way*² report. They have been actively building capacity to play a lead role in conservation efforts through developing co-management plans for conservation areas with government agencies, establishing environmental services businesses, nurseries, starting ranger programs, and growing the skill base of Traditional Owner personnel in the Caring for Country/conservation sector through engaging in a range of training and education initiatives. Engaging in environmental restoration and biodiversity conservation work is seen as an opportunity to heal Country, increase access to land and provide opportunities for Traditional Owner community members to live and work on Country.

Two key challenges for Traditional Owners in these efforts have been the reliance on short term government funding contracts and the exclusion from the governance of programs. The short term contract funding imposes a significant administrative burden and inhibits capacity building, retention of suitably qualified staff and long-term planning. While the exclusion from the governance and design of these programs results in objectives and outcomes being sought that do not align with Traditional Owners worldview, objectives for caring for Country and often prevent the undertaking of cultural practices and the ability to maintain and care for Culture and Country. The combination of questions around cultural safety and financial sustainability present a significant deterrent to wider Traditional Owner utilisation of these mechanisms.

Biodiversity markets as well as carbon markets offer an opportunity to gain long term reliable resourcing for Caring for Country work which leads to both protection of biodiversity and cultural landscapes. Engaging in these markets can be complex and require access to technical, financial, legal and scientific advice. Targeted awareness activities including training and education programs should be resourced to enable Traditional Owners to build capacity and strategies to engage with these opportunities in culturally safe ways. Project proponents accessing the NBM should be incentivised to partner with Traditional Owners in the development and implementation of projects, including in project site selection, the design of conservation management plans, procurement of related goods and services, and in delivery and monitoring of management activities. One option is via inclusion of a description of Traditional Owner participation, benefits and outcomes as an attribute of the project on its Biodiversity Certificate, enabling a premium price for projects demonstrating best practice.

The consultation document does not clarify the benefits for the buyers of biodiversity certificates. It is assumed that biodiversity certificates may be purchased to offset negative ecological impacts of a development at another location, and potentially for other purposes. Some Traditional Owner Groups have also expressed concerns regarding the concept of offsetting, and whether this is

¹ <https://www.fvtoc.com.au/cultural-landscapes>

² Right Plant, Right Way available at <https://www.anpc.asn.au/resources-page/7340-2/>

consistent with their Caring for Country obligations as it may not result in a net benefit in regard to healthy Country. Some of these concerns could be addressed by creating a register of buyers of biodiversity certificates, including documenting their motivation for purchasing and their environmental sustainability credentials, enabling producers of biodiversity certificates to select who they sell them to, as well as contracting options for defining the terms of the transaction.

Victorian Traditional Owners face differing set of challenges in having land rights recognised than in other parts of Australia due to the history of land dispossession and systematic attempts to dismantle culture, and the resultant high proportion of the state being covered by freehold title. There is a mosaic of different levels of recognition of land rights amongst Victorian Traditional Owner Groups through the *Native Title Act 1993*, *Traditional Owner Settlement Act 2010* and *Aboriginal Heritage Act 2006*. These rights can be expected to continue to evolve during the lifetime of projects that access the National Biodiversity Market. This has resulted in Victorian Traditional Owners having limited access to land that can be used for commercial purposes and to exercise their cultural obligations to care for Country, for example through the establishment of IPAs. As evidenced by research undertaken for the Victorian Government's BushBank program³, the majority of land that will be eligible for interventions to enhance biodiversity conservation outcomes would be on privately owned land. Often legal mechanisms which are used to establish conservation initiatives on this tenure type, such as conservation covenants limit Traditional Owners access to and ability to manage Country. Therefore, we encourage innovative approaches to ensure projects accredited under the NBM scheme enhance rather than inhibit Victorian Traditional Owners' ability to access and manage Country including developing new conservation legal mechanisms. Indigenous land management practices should be included in NBM protocols, as there is a risk that protocols could be so stringent that they result in inhibiting Traditional Owners access to Country and practicing cultural obligations. For projects taking place on Crown land, Traditional Owners should be considered as the landholder, with rights equivalent to that of owners of freehold title land in relation to the scheme.

This submission has pointed to some issues and strategies for designing the National Biodiversity Market in a way that accounts for the diverse circumstances of Traditional Owner groups around Australia and enhances Indigenous leadership in efforts to heal and care for Country. This is not an exhaustive assessment, due to the short amount of time to made available to prepare submissions. We strongly encourage the involvement of Traditional Owner representatives with the design of the different components of NBM and the implementation of the compliance and quality assurance systems. The Federation would welcome the opportunity to support further Traditional Owner input into the design of the NBM.

³ <https://www.environment.vic.gov.au/bushbank>