Environmental Defenders Office

Defending the Unburnt:

Discussion Paper - Opportunities to expand and enhance environmental stewardship

October 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law.

Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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This report is produced as part of our Defending the Unburnt collaboration with WWF-Australia.
Read more:

https://www.edo.org.au/unburntsix-mainpage/

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations Peoples. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from First Laws so that together, we can protect our environment and First Nations' cultural heritage through Western law. We recognise that their countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

A Note on Language

We acknowledge that there is a legacy of writing about First Nations without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. Where possible, we have used specific references. More generally, we have chosen to use the term "First Nations". We acknowledge that not all Aboriginal and Torres Strait Islander peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

One:
Executive Summary and Key Opportunities

In the wake of Australia's 2019-2020 bushfires, the protection of unburnt habitat has become an urgent priority.

Much of the land that survived the bushfires is now a vital refuge for biodiversity, particularly threatened species. Six priority landscapes have been identified by WWF-Australia in Queensland, New South Wales and Victoria as requiring immediate protection. These areas will be key to securing the future of many threatened species and ensuring important ecosystem services are sustained while impacted landscapes recover. This can take between 10 and 120 years after bushfire, depending on the severity of the fire and extent of impacts on individual populations.

In collaboration with WWF-Australia, the Environmental Defenders Office (**EDO**) is working to ensure that our laws are used to adequately protect these priority areas from further impacts, including impacts from inappropriate development, land clearing, and logging.

Detailed mapping of the six priority landscapes reveals that a significant proportion of the land is privately owned. Landholders in these areas are in a unique position to contribute meaningfully to bushfire recovery and ensure these priority landscapes are protected and managed for their biodiversity values.

EDO has published the following guides outlining current opportunities for landholders:

- **Defending the Unburnt: A guide to private land conservation for landholders**,[1] which outlines various options available to landholders wanting to enter into private land conservation as a way of protecting unburnt landscapes with important conservation value.
- **Defending the Unburnt: Carbon market opportunities for private landholders – a guide**,[2] which looks at carbon sequestration opportunities (e.g. carbon farming) that may be available to landholders to retain vegetation in the landscape in the priority six unburnt areas.

This new **Discussion Paper, Defending the Unburnt – Opportunities to expand and enhance environmental stewardship**, explores opportunities to expand and enhance environmental stewardship to protect priority unburnt areas, including:

- Prioritising and investing in the protection of unburnt areas through private land conservation;
- Enhancing opportunities for First Nations stewardship;
- Aligning opportunities with broader, global initiatives and goals; and
- Ensuring market-based stewardship mechanisms deliver genuine environmental outcomes.

Our analysis finds that:

- **Existing frameworks, such as private land conservation and First Nations land management, could accommodate increased investment and scaling up, with a policy focus on priority unburnt areas.** While these mechanisms are currently available, an increase in investment and targeted outreach by governments could see an increased uptake of these stewardship mechanisms and lead to improved outcomes for priority unburnt areas.

- **Government-led uptake of these forms of environmental stewardship would have the added benefit of contributing to broader, global initiatives and goals for conserving biodiversity and reducing emissions.** These include the High Ambition Coalition for Nature and People's goal of protecting at least 30 percent of the world's land and ocean by 2030, which it hopes to ratify through potential agreement at the 15th Conference of the Parties to the Convention on Biological Diversity (CBD); the *Glasgow Leaders' Declaration on Forests and Land Use* commitments, including to conserve and restore forests; and the *Leaders' Pledge for Nature*, aimed at reversing biodiversity loss by 2030.
- **Market-based stewardship mechanisms (both carbon and natural capital markets) present both an opportunity and a risk.** On the one hand, market-based mechanisms could drive an increased uptake in environmental stewardship in two ways: by providing additional pathways for landholders to benefit from setting aside land for carbon sequestration or conservation, and by providing access to new, private investment where government funds may be limited. On the other, significant concerns have been raised about the integrity of market-based mechanisms, particularly offsets-based markets, and their ability to deliver genuine environmental outcomes.

Ultimately, increased investment in non-market-based stewardship options by governments, targeted at priority, unburnt areas is likely to be the simplest and most effective way for environmental stewardship to contribute to Defending the Unburnt and deliver genuine environmental outcomes.

While the focus of this Discussion Paper is on protecting priority unburnt landscapes and opportunities for private landholders, the analysis and recommendations are likely to have broader application to landscapes and opportunities across all of Australia, including public land.

Key Opportunities

Given that bushfire recovery will continue in the medium to long-term, this Discussion Paper identifies the following key opportunities for both Federal and State governments to expand and enhance environmental stewardship opportunities, with a particular focus on Defending the Unburnt (see 2.1 below):

- **Opportunity 1: Utilise existing private land conservation frameworks to protect priority unburnt areas, including by:**
  a) Providing new funding and capacity to drive an uptake in private land conservation, targeted at protecting priority unburnt areas; and
  b) Aligning private land conservation priorities with bushfire recovery strategies.
- **Opportunity 2: Enhance opportunities for First Nations involvement in caring for Country, by:**
  a) Building capacity for First Nations to engage in existing private land conservation schemes;
  b) Building capacity for First Nations Peoples to engage in existing carbon farming programs;
  c) Enabling First Nations to lead the design and implementation of new environmental stewardship programs;
  d) Using shared governance models to enable cooperative decision-making between First Nations and Commonwealth, State and local-level government in the management of protected areas;
  e) Respecting the contribution that First Nations' knowledges are making to address environmental challenges in unburnt areas;
  f) Recognising First Nations benefits as part of co-benefit schemes; and
  g) Enabling land to be returned to First Nations ownership and management.
- **Opportunity 3: Align opportunities for environmental stewardship with broader, global initiatives and goals, including:**
  a) The protection of at least 30 percent of the world's land and ocean by 2030 (High Ambition Coalition for People and Nature 30 x 30 goal);
  b) Halting and reversing forest loss and land degradation by 2030 (*Glasgow Leaders' Declaration on Forests and Land Use*); and
  c) Reversing biodiversity loss by 2030 (*Leaders' Pledge for Nature*).
- **Opportunity 4: Ensure market-based stewardship mechanisms deliver genuine environmental outcomes. In particular market-based mechanisms must include:**
  a) Integrity standards based on best-available science;
  b) Robust and effective provisions for monitoring, reporting, auditing, compliance and enforcement; and
  c) Strict limits on offsets: Offsets should only be used in limited circumstances and only after all other mitigation measures in the mitigation hierarchy have been exhausted. There should be clear guidance on what impacts are so unacceptable that they should not be allowed and cannot be offset.

Two: Background

2.1 Defending the Unburnt

2.1.1 Impacts of the 2019-2020 bushfire season

The bushfire season of 2019-2020 was unprecedented in terms of scale, intensity and duration in Australian bushfire history. Around the country, 33 lives were lost,[3] an estimated 417 people died due to smoke inhalation,[4] more than 3,000 homes burnt down,[5] and property and infrastructure was destroyed. The bushfires also had a devastating impact on our natural environment. Significant ecosystems and landscapes were decimated, including World Heritage-listed National Parks,[6] ancient rainforests[7] and even waterways, following post-fire flooding.[8] An estimated 830 million tonnes of greenhouse gases were emitted.[9]

While it is difficult to estimate the exact number of native animals impacted by the fires, some experts originally predicted it could be as many as 800 million in New South Wales and one billion nationally,[10] with more recent analyses suggesting as many as three billion nationally.[11] Similarly, while difficult to measure, it is estimated 3 – 7.2 billion trees were burned.[12]

In New South Wales, bushfires burnt over 5.52 million hectares of land.[13] The fire ground in New South Wales covered approximately 7% of the state, including 2.7 million hectares in national parks (37% of the New South Wales park system), and the habitat of more than 293 species of threatened animals and 680 species of threatened plants.[14] In Victoria, bushfires impacted more than 1.5 million hectares.[15] Analysis indicates that 244 species have more than 50% of their modelled habitat within the burnt area, including 215 rare or threatened species and nine ecological vegetation classes (EVCs) with more than 50% of their extent burnt.[16] More than 7 million hectares were burnt in bushfires in Queensland,[17] the impacts from which are still under assessment.[18]

2.1.2 Why defending intact and unburnt areas of high conservation value is critical for the recovery of species, communities and landscapes

Unburnt areas are essential for:

- providing habitat, food, shelter and refuge for wildlife;
- assisting in recovery of burnt areas by acting as a source of individuals for recolonisation;
- providing future climate change refugia;
- delivering important ecosystem services including storing forest carbon and rain making; and,
- building landscape resilience.

However, unburnt areas that are not already protected (e.g., in national parks or reserves, or by conservation agreements on private land) remain at risk from key threats, including a warming and drying climate, expanding urban and industrial development, agricultural activity, infrastructure development, and commercial logging operations.

Protecting priority unburnt areas will help impacted ecosystems and landscapes to recover and ensure our remaining natural areas thrive. This is the case notwithstanding record-breaking rains received over much of southeastern Australia in the two-and-a-half years since the 2019-2020 bushfires ended. Vast areas of regrowing forests burnt during the bushfires remain highly impacted and have not been recolonised by wildlife to pre-fires levels. Indeed, burnt areas that have since experienced major rainfall events due to the La Nina weather pattern have experienced significant sediment erosion.[19]

In considering the impacts of the 2019-2020 bushfires on wildlife, it has been suggested that the time required for recovery of threatened and fire sensitive species ranges from around 10 – 120 years, depending on the severity of the fire and extent of impacts on individual populations. Further, recovery will require long term or permanent protection of unburnt fire refuges in large patches linked by corridors.[20] Our priority should be to protect these critical areas, and ensure robust environmental laws are in place that protect biodiversity, and natural ecosystems and landscapes.

Landholders in these areas are in a unique position to contribute meaningfully to bushfire recovery and ensure these priority landscapes are protected and managed for their biodiversity values. Ongoing environmental stewardship of both recovering areas and unburnt refugia is important to long-term recovery.

2.1.3 Identifying unburnt landscapes

As part of its Bushfire Response Framework, WWF-Australia identified six priority landscapes for habitat protection and restoration spanning Queensland, New South Wales and Victoria.[21] That work has been endorsed by WWF's Eminent Scientists Group, comprising some of Australia's leading and most distinguished conservation scientists. The priority areas, covering nearly 5.8 million hectares, warrant enhanced legal protection due to their significance for threatened species and ecosystems as a result of the bushfires.

In total, the six priority landscapes are home to at least 62 plant and 21 animal species, and 18 ecological communities, listed as threatened under national environmental laws. Endangered koalas and greater gliders are found in all six areas, while most of the other threatened species, including the long-footed potoroo, the peppered tree frog, the Blue Mountains water skink and the Clarence River cod, are only found in one or a few of the landscapes. Eighteen of the Federal Government's recently announced 100 priority species occur within the six landscapes.[22] Threatened plants, largely unique to these areas, include the Bordered Guinea Flower, New England Gentian, and the Swamp Mint-bush. Threatened ecological communities include the critically endangered Southern Highlands Shale Forest and Woodland, which had declined by up to 90% of its original pre-European extent even before the bushfires.

Figure 1. Six priority landscapes identified by WWF-Australia, with examples of iconic wildlife in each that requires stronger protection after the fires.

2.2 Environmental stewardship

Environmental stewardship has been described as follows:

> **"The term environmental stewardship has been used to refer to such diverse actions as creating protected areas, replanting trees, limiting harvests, reducing harmful activities or pollution, creating community gardens, restoring degraded areas, or purchasing more sustainable products. It is applied to describe strict environmental conservation actions, active restoration activities and/or the sustainable use and management of resources. Stewardship actions can also be taken at diverse scales, from local to global efforts, and in both rural and urban contexts".[23]**

Examples of environmental stewardship include the restoration of a local patch of bushland by a Bushcare group, environmentally sustainable land-use practices of a farmer, caring for Country by First Nations, or management of a conservation area by the relevant landholder or land manager.

Environmental stewardship hinges on three central elements: key actors, motivations and capacity; and who is involved in environmental stewardship depends on the scale and complexity of the issue.[24] In the context of Defending the Unburnt, stewardship actions are likely to involve multi-stakeholder partnerships that may include public authorities and funding bodies, non-government organisations, local communities, individual landholders and First Nations.

Existing stewardship mechanisms such as private land conservation and biodiversity or carbon markets provide some scope for landholders to access support to protect unburnt landscapes. EDO has published the following guides outlining current opportunities:

- *Defending the Unburnt: A guide to private land conservation for landholders* outlines various options available to landholders wanting to enter into private land conservation as a way of protecting unburnt landscapes with important conservation value.[25]
- *Defending the Unburnt: Carbon market opportunities for private landholders - a guide* looks at carbon sequestration opportunities (e.g. carbon farming) that may be available to landholders to retain vegetation in the landscape in the priority six unburnt areas.[26] There may also be opportunities for landholders to have projects recognised for both carbon and biodiversity benefits that they may deliver (co-benefits).

However, existing mechanisms are unlikely to drive the needed uptake of environmental stewardship to protect priority areas. For example, funding for private land conservation is limited and unburnt areas are not identified as a priority for investment; some mechanisms (such as Commonwealth conservation agreements) are underutilised; and environmental markets (such as biodiversity offsetting or carbon markets) have limited application to protecting priority unburnt areas, and are also unlikely to deliver the genuine biodiversity outcomes needed to conserve these important areas.

Increased investment in environmental stewardship opportunities is something that is supported by a wide variety of stakeholders.[27]

This Discussion Paper, **Defending the Unburnt – Opportunities to expand and enhance environmental stewardship**, considers opportunities to expand and enhance environmental stewardship with a targeted focus of protecting priority, unburnt areas. It is not intended to address all facets of environmental stewardship.

The role of robust environmental laws

While EDO strongly supports funding incentives and payments to landholders for environmental stewardship, this should not be at the expense of robust environmental laws that protect biodiversity, natural ecosystems and landscapes.

Without robust environmental laws, there is a real risk that efforts to achieve environmental outcomes through improved environmental stewardship will be undermined by ongoing degradation caused by poorly regulated activities such as unchecked land clearing, native forest logging and inappropriate development, industry and infrastructure.

For example, land clearing rules, particularly in New South Wales and Queensland, have been significantly relaxed in recent years on the premise that increased support for private land conservation will counterbalance any detrimental impacts on biodiversity.[28] This approach places almost complete reliance on political, budgetary decisions to achieve biodiversity gains, rather than on protections in law to prevent continued biodiversity decline. Overall, it lacks long-term policy and regulatory stability.

Similarly, rules that allow infrastructure and resource activities to override environmental controls or protections undermine conservation efforts.[29]

Environmental stewardship should complement robust environmental laws that protect biodiversity, natural ecosystems and landscapes.

Three:
Opportunities to expand and enhance environmental stewardship to Defend the Unburnt

This section of the Discussion Paper identifies opportunities for governments to expand and enhance environmental stewardship, with a particular emphasis on protecting priority unburnt landscapes. These include:

- Prioritising and investing in the protection of unburnt areas through private land conservation;
- Enhancing opportunities for First Nations stewardship;
- Aligning opportunities with broader, global initiatives and goals; and
- Ensuring market-based stewardship mechanisms deliver genuine environmental outcomes.

While the focus of this Discussion Paper is on protecting priority unburnt landscapes and opportunities for private landholders, the analysis and recommendations are likely to have broader application to landscapes and opportunities across all of Australia, including public land.

3.1 Prioritise and invest in the protection of unburnt areas through private land conservation

Following the 2019-2020 bushfires there appears to be limited emphasis on the role that *additional* private land conservation can play as part of bushfire restoration and recovery efforts. Landholders currently engaged in private land conservation have had access to additional support as part of immediate bushfire recovery efforts (for example, in New South Wales, Queensland and Victoria, additional grant funding has been available to assist with activities such as weed control, fencing or assisted revegetation).[30] However, to the best of our knowledge, no additional funding or support has been directed to establishing new private land conservation agreements in priority unburnt areas.

New funding that is delivered through existing private land conservation mechanisms, programs and strategies would be an efficient way of enhancing targeted stewardship for priority unburnt areas in the medium-term. It may also align with broader government bushfire recovery strategies. New funding could be made available through ongoing annual payments, or one-off grants – depending on the program.

A variety of private land conservation programs currently operate across New South Wales, Queensland and Victoria, and through national programs delivered across jurisdictions.[31] There are also mechanisms under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) that could, with targeted funding, be better utilised to enhance environmental stewardship.

A brief outline of existing private land conservation programs, and how they could be enhanced to target protection of unburnt areas is provided below.

3.1.1 New South Wales

Current programs:

In New South Wales, the Biodiversity Conservation Trust (**BCT**) is responsible for delivering the State government's private land conservation programs. The BCT has two programs for delivering Government investment in private land:

- The Conservation Management Program offers in-perpetuity and fixed-term Conservation Agreements supported by annual conservation management payments; and
- The Conservation Partners Program offers in-perpetuity Conservation Agreements supported by grants to assist with conservation management actions, as well as Wildlife Refuge Agreements (which are entry level agreements that can access limited grant funding and can be terminated at any time).

The BCT also delivers the New South Wales Biodiversity Offsets Program and can enter into biodiversity stewardship agreements with landholders to create a biodiversity offset site. This differs from a conservation agreement as a biodiversity stewardship agreements site is used to offset impacts of development, whereas a conservation agreement is established for conservation purposes. Biodiversity offsetting is discussed in more detail below (see 3.4.2).

The NSW Government and BCT also support Land for Wildlife[32] which is a private conservation scheme coordinated by the Community Environment Network in NSW and Humane Society International's Wildlife Land Trust[33] which is a national network of privately owned wildlife sanctuaries. Participating landholders are eligible to apply for grants through the BCT's Conservation Partners Program to assist them to maintain the ecological values of their properties.

Opportunities to protect priority unburnt areas:

Investment in private land conservation in New South Wales is guided by the *Biodiversity Conservation Investment Strategy 2018* (**the Investment Strategy**), which is required to be prepared under Part 5 Division 1 of the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**). The Investment Strategy was prepared prior to the 2019-2020 bushfires, and our analysis shows that current investment priorities do not directly align with priority unburnt areas. This means that funding and support available to landowners wanting to protect valuable unburnt areas for conservation through the Government's private land conservation programs may be limited.

Updating the Investment Strategy to explicitly identify priority unburnt areas as priority investment areas will facilitate an uptake of conservation agreements in those areas. It is open to the Minister to amend the strategy at any time,[34] and it would not be inconsistent with the BC Act to update the strategy in this way (for example, subsections 5.3(4) and (5) of the BC Act outline what the Minister must consider in preparing the Investment Strategy and what the Investment Strategy may include (without limitation)).

Within the scope of the Investment Strategy, the BCT uses a range of delivery mechanisms to encourage and support landholders to participate in private land conservation (including, for example, fixed price offers, conservation tenders, and co-investment partnerships).[35] In this way, the BCT could potentially target a specific round of fixed price offers or conservation tenders to priority unburnt areas, seeking to increase the amount of land under private land conservation in those areas.

Targeting investment to priority unburnt areas would align with Theme 4 of the Government's *NSW Wildlife and Conservation Bushfire Recovery: Medium-term response plan* which provides that 'ecological refuge areas should be identified and protected for the long term'. There is no further detail in the *NSW Wildlife and Conservation Bushfire Recovery: Medium-term response plan* about how Theme 4 will be implemented. An increased investment in private land conservation (in addition to the more than $350 million over the next 5 years from 2019–20 that has already been committed to fund the BCT to deliver its private land conservation programs)[36] and updated investment strategy could play a key role in achieving this goal.

3.1.2 Queensland

Current programs:

In Queensland, there is no single government agency tasked with coordinating private conservation and distributing government funding to participating landholders, however various private land conservation options are available:

- A landholder can voluntarily enter into a Conservation Agreement negotiated with the Queensland Government that creates either a Nature Refuge or Special Wildlife Reserves on their land. The Queensland Department of Environment and Science (**DES**) approaches landholders whose properties it is interested in adding to the private protected area network. Funding is not guaranteed, but may be available for eligible projects through the Queensland Government's NatureAssist Program.[37]
- Landholders can execute a Statutory Covenant with a relevant government agency to protect the ecological values of a property. In most instances this mechanism is used by local councils because State agencies (like DES) administer their own private conservation mechanisms (described above). Landholders are not guaranteed any financial or other support for executing a Statutory Covenant. Individual covenantees may offer rewards or incentives, such as rate reductions, taxation benefits or management support.
- Queensland landholders also have the option of entering into a Voluntary Declaration to protect high conservation value native vegetation on their properties under the *Vegetation Management Act 1999* (Qld), or register their property for wildlife conservation through Land for Wildlife in some areas of Queensland.[38]

Opportunities to protect priority unburnt areas:

The Queensland Government could invest in a targeted program to establish Nature Refuges or Special Wildlife Reserves that protect priority unburnt areas. For example, it could allocate dedicated funding to provide additional capacity within DES to deliver the program (e.g. identifying priority areas and approaching landholders to negotiate options), and make additional funding available to landholders via NatureAssist.

This would help achieve one of the projected outcomes of the Queensland Government's *2019 State Recovery Plan 2019-2022*, namely that the natural environment operates to maintain or restore healthy biodiversity and ecosystems.[39]

3.1.3 Victoria

Current programs:

- In Victoria, the Trust for Nature administers a conservation covenant program under the *Victorian Conservation Trust Act 1972*. A Conservation Covenant is a voluntary agreement between a landholder and Trust for Nature to legally protect the conservation values of land. The covenant must be approved by the Minister for Energy, Environment and Climate Change. In general, conservation covenants do not provide ongoing funding to landholders, but Trust for Nature works actively to negotiate project-based funding that can incentivise and support landholders' conservation efforts, including for fencing, weeding and revegetation works.
- Landholders in Victoria can also enter into a Land Management Cooperative Agreement (also known as a s 69 Agreement under the *Conservation, Forests and Lands Act 1970*), which is a legally binding agreement made between a landholder and the Secretary of the Department of Environment, Land, Water and Planning (**DELWP**) to conserve private land. There are no financial or technical support programs connected to Land Management Cooperative Agreements but individual agreements may require the Secretary to provide the landholder with advice, financial or other assistance to help the landholder perform their obligations under the Agreement.
- The Victorian Government also coordinates Land for Wildlife in Victoria through DELWP.[40] Under the Land for Wildlife program, landholders voluntarily register their properties to indicate they are committed to managing their property for nature conservation. There are no formal agreements. In other jurisdictions Land for Wildlife is coordinated by community groups.

Opportunities to protect priority unburnt areas:

The Victorian Government could set up a new program to drive uptake of existing mechanisms specifically targeted at priority unburnt areas. This program may be able to be delivered in collaboration with Trust for Nature and DELWP. It could be similar to the $77 million BushBank program currently being delivered by DELWP and the Trust for Nature to restore natural environments across Victoria (and which is not directly targeted at protecting intact, unburnt areas).[41]

This would align with Victoria's *Bushfire Biodiversity Response and Recovery Program*, specifically under the theme Threat Management/Landscape Resilience to "Create and support a safe haven network of ecological refuges across the state".[42]

3.1.4 Commonwealth

Current programs:

At the Commonwealth level, a landholder can enter into a Conservation Agreement made in accordance with the provisions of Part 14 of the EPBC Act. A Conservation Agreement is a legally binding agreement between the Federal Environment Minister (through the Department of Agriculture, Water and the Environment) and a landholder for the protection and conservation of an area of land or sea.[43] To be eligible, an area to be covered by the Agreement must relate to matters of national environmental significance identified in the EPBC Act (for example nationally threatened species and ecological communities or their habitats, the World Heritage values of declared World Heritage properties or the ecological character of a declared Ramsar wetland).

Opportunities to protect priority unburnt areas:

The conservation agreement framework in Part 14 of the EPBC Act appears to be underutilised; there is no dedicated program underpinning the use of these agreements and little publicly available information about the application process. It has the potential however to provide the legislative framework for a Commonwealth-led program for private land conservation. For example, as part of its ongoing bushfire recovery efforts, the Federal Government could provide funding to establish a dedicated program under Part 14 of the EPBC Act to support the conservation of unburnt areas where those areas support matters of national environmental significance.

In August 2022, the Albanese Labor Government announced that it would be implementing a new biodiversity certificates scheme.[44] This follows the announcement of the former Morrison Government that it would establish a biodiversity stewardship scheme.[45] The new biodiversity certificates scheme will operate in parallel to the existing carbon market scheme regulated by the Clean Energy Regulator. It is unclear whether the proposed new biodiversity certificates scheme will operate as an offsets scheme - concerns with offsets-based markets are discussed further at 3.4 below. The scheme has the potential to provide new opportunities for environmental stewardship, however in order to deliver genuine environmental outcomes, it must be developed consistent with current science and based on best practice principles. The Government has commenced consultation on the proposed scheme.[46]

Opportunity 1

Utilise existing private land conservation frameworks to protect priority unburnt areas, including by:

a) Providing new funding and capacity to drive an uptake in private land conservation, targeted at protecting priority unburnt areas; and
b) Aligning private land conservation priorities with bushfire recovery strategies.

3.2 Enhance opportunities for First Nations involvement in caring for Country

While this report considers opportunities to enhance First Nations involvement in caring for Country, EDO is a non-Indigenous organisation and we do not speak on behalf of First Nations peoples. The suitability of opportunities outlined below as options for Defending the Unburnt would need to be considered further, in collaboration with First Nations. We acknowledge that self-determination (i.e. the ability for First Nations to freely pursue their economic, social and cultural development) should be respected. Further, the interaction between these options and Native Title would need to be considered, both broadly when establishing new policies and programs, and on a case-by-case basis by First Nations considering participating in conservation stewardship programs.

Caring for Country[47] is an integral part of First Nations cultures. First Nations can play a key role in caring for priority unburnt areas, and targeted programs to support First Nations stewardship provide an opportunity to enhance recovery efforts.

In our earlier guides, EDO set out opportunities relating to Indigenous Protected Areas (**IPAs**) - a form of private land conservation over an area of land or sea country that First Nations have voluntarily agreed to manage for conservation, in agreement with the Federal Government.[48] There are also numerous resources outlining and facilitating opportunities for First Nations to engage in the carbon economy.[49]

Broadly, opportunities to expand or enhance First Nations stewardship include:

- identifying and supporting actions that can be taken by First Nations groups, or networks of First nations peoples and communities to protect, care for or responsibly use the environment in pursuit of environmental, cultural, spiritual and/or social outcomes; and
- recognising and promoting First Nations governance systems and decision-making processes to empower First Nations to manage and protect the unburnt.

Such opportunities could include:

- **Building capacity for First Nations to engage in existing private land conservation schemes.** Targeted funding or capacity building could be incorporated into private land conservation frameworks outlined above at 3.1. At a minimum, notions of capacity building must address the specific barriers to participation, the attributes of individual stakeholders that facilitate participation and the characteristics of the decision-making environment.
- **Building capacity for First Nations to engage in existing carbon farming programs.** Targeted funding or capacity building could support increased First Nations participation in carbon farming programs should First Nations Peoples choose to do so. We note however that carbon farming opportunities for the specific purpose of protecting unburnt areas are limited,[50] and there are broader concerns about the integrity of carbon offsets (see 3.4 below).
- **Enabling First Nations to lead the design and implementation of new environmental stewardship programs.** Such opportunities must provide for First Nations governance and decision-making protocols that are agreed and based on cultural histories and geographies. One example of First Nations led design and implementation is the Victorian BushBank program. This program was announced in 2020 and it included a component that was intended to be specifically designed by First Nations, to increase capacity and participation in restoration and carbon markets.[51]
- **Using shared governance models to enable cooperative decision-making between First Nations and Commonwealth, State and local-level government in the management of protected areas.** This could include increased resourcing and use of existing mechanisms, including:
  - The Indigenous Protected Areas (IPA) program run by the Australian Government.[52] An IPA is an area of land or sea country that First Nations peoples have voluntarily agreed to manage for conservation. Further consideration should be given to what role IPAs could play in enhancing conservation outcomes in priority unburnt areas, including through specific funding and opportunities targeted at protecting unburnt areas.
  - Part 4A of the *NSW National Parks and Wildlife Act 1974* (**NPW Act**). Part 4A allows for land reserved under the NPW Act to be vested, on behalf of the First Nations owners, in one or more Local Aboriginal Land Councils or the New South Wales Aboriginal Land Council, and subsequently leased back to the Environment Minister and managed as a reserve, with the Board of Management having a majority of its members appointed from the Aboriginal owners. For this mechanism to be available for priority unburnt landscapes, areas would first need to be reserved under the NPW Act (or be additional land added to Schedule 14 of the NPW Act by the NSW Parliament).
  - The Victorian *Traditional Owner Settlement Act 2010*. This legislation established a process for certain Crown land to be granted as 'Aboriginal title', to be managed jointly by First Nations peoples who are Traditional Owners in partnership with the state as national parks or other forms of public parks. For this mechanism to be available for priority unburnt landscapes, areas would first need to be reserved as parks.
  - Relevant provisions of Queensland's Indigenous Lands Acts (the *Aboriginal Land Act 1991* (ALA) and *Torres Strait Islander Land Act 1991* (TSILA) may allow for land to be transferred to First Nations peoples who are Traditional Owners and managed as a protected area.
- **Respecting the contribution that First Nations' knowledges are making to address environmental challenges in unburnt areas.** For example, partnerships between First Nations experts and non-First Nations environmental scientists can foster an increased understanding of First Nations Traditional Ecological Knowledges (**TEK**) and help shaping conservation and management practices.
- **Recognising First Nations benefits as part of co-benefit schemes.** Co-benefit schemes (discussed below at 3.4.4) do not need to be limited to delivering only carbon and biodiversity benefits. For example, the LRF Co-benefits Standard[53] established under the Queensland Government's Land Restoration Fund (**LRF**) includes criteria that recognises socio-economic and First Nations benefits, the latter encompassing a broad range of benefits including customary, cultural, economic and business development benefits.
- **Enabling land to be returned to First Nations ownership and management.** One example of how this is achieved is through the Indigenous Land and Sea Corporation (**ILSC**), which can facilitate the purchase and return of land and water related rights and assets to First Nations. The ILSC is established under Part 4A of the Commonwealth *Aboriginal and Torres Strait Islander Act 2005*. The ILSC is able to acquire interests in land, and water-related rights and grant these interests to First Nations corporations.[54]

Opportunity 2

Enhance opportunities for First Nations involvement in in caring for Country, by:

a) Building capacity for First Nations to engage in existing private land conservation schemes;
b) Building capacity for First Nations Peoples to engage in existing carbon farming programs;
c) Enabling First Nations to lead the design and implementation of new environmental stewardship programs;
d) Using shared governance models to enable cooperative decision-making between First Nations and Commonwealth, State and local-level government in the management of protected areas;
e) Respecting the contribution that First Nations' knowledges are making to address environmental challenges in unburnt areas;
f) Recognising First Nations benefits as part of co-benefit schemes; and
g) Enabling land to be returned to First Nations ownership and management.

3.3 Align opportunities with broader, global initiatives and goals

Environmental stewardship on private (and public) land can contribute to broader, global initiatives and goals including to conserve biodiversity and reduce emissions. For example:

3.3.1 High Ambition Coalition for Nature and People

The High Ambition Coalition for Nature and People (**HAC for Nature and People**)[55] is an intergovernmental alliance of 70 countries, including Australia, championing the protection of at least 30 percent of the world's land and ocean by 2030 (30 x 30) through agreement at the 15th Conference of the Parties to the Convention on Biological Diversity (**CBD**).[56]

The HAC for Nature and People recognises that "*(i)n order to address both the biodiversity crisis and the climate crisis, there is growing scientific research that half of the planet must be kept in a natural state*".[57]

The *Concept Note High Ambition Coalition for Nature & People*[58] sets out the following goals:

- Central Goal of the HAC for Nature and People: Specifically, as its central goal, the HAC is championing the protection of at least 30 percent of the world's land and ocean by 2030, in line with scientific advice. This increased target should promote Indigenous-led conservation, prioritize intact ecosystems, and focus on areas most important for biodiversity and climate. The resulting network of conserved areas should be ecologically representative, well-connected, and maintain species diversity and abundance.
- Additional Goals of the HAC for Nature and People: To ensure that protection is able to fully deliver on its potential in terms of the fair sharing of benefits to people, to biodiversity, and to a stable climate, the HAC for Nature and People supports several related goals, including the effective management of protected and conserved areas; increased public and private financing to ensure long-term management and local governance; and clear implementation mechanisms to put nature on a path to recovery by 2030.

Expanding and enhancing opportunities for environmental stewardship could contribute to the broader goal of increasing protection for land and ocean by 2030. To contribute to such goals, protected areas, whether on public or private land, must meet certain criteria to meet the agreed definition of 'protected area' (see for example Article 2 and Article 8 of the CBD,[59] and the International Union for Conservation for Nature (IUCN) *Guidelines for Applying Protected Area Management Categories*[60]) and environmental stewardship programs should be designed with this in mind to ensure that efforts and funding achieve the most effective outcomes.

3.3.2 Glasgow Leaders' Declaration on Forests and Land Use

During the 26th UN Climate Change Conference of the Parties (COP26) in Glasgow from 31 October 12 November 2021 over 100 countries, including Australia, pledged to halt and reverse deforestation and land degradation by 2030. *The Glasgow Leaders' Declaration on Forests and Land Use*[61] includes six key commitments, including to:

- conserve forests and accelerate their restoration;
- ensure national and international trade doesn't drive deforestation and land degradation;
- reduce vulnerability, build resilience and enhance rural livelihoods, including through empowering communities, the development of profitable, sustainable agriculture, and recognition of the multiple values of forests, while recognising the rights of Indigenous Peoples;
- implement and redesign agricultural policies and programs to promote sustainable agriculture, promote food security, and benefit the environment;
- increase financial commitments to enable sustainable agriculture, sustainable forest management, forest conservation and restoration, and support for Indigenous Peoples and local communities; and
- reverse forest loss and degradation while ensuring robust policies and systems are in place to accelerate the transition to an economy that is resilient and advances forest, sustainable land use, biodiversity and climate goals.

Providing strengthened opportunities for environmental stewardship can assist in halting and reversing deforestation by 2030, for example by incentivising landholders and land managers to change land management practices and retain vegetation on their land, including through additional or alternative income streams. However, it is unclear how Australia will implement the Declaration, and what role the states and territories, who have a key role in regulating land clearing and forestry activities and in delivering conservation programs, will play in implementing the Declaration.

3.3.3 Leaders' Pledge for Nature

In September 2022, Prime Minister Albanese, announced that Australia would sign on to the *Leaders' Pledge for Nature* to reverse biodiversity loss by 2030.[62] Under the pledge, political leaders have committed to undertake urgent action, as part of the UN Decade of Action to achieve Sustainable Development, to put nature and biodiversity on a path to recovery by 2030. This includes commitments to *"address the direct and indirect drivers of biodiversity loss and halt human induced extinction of species, to ensure species populations recover, and to significantly increase the protection of the planet's land and oceans through representative, well-connected and effectively managed systems of Protected Areas and Other Effective Area-Based Conservation Measures, and to restore a significant share of degraded ecosystems"*.[63]

At this stage, it is unclear what additional action Australia intends to put in place in order to effectively implement the *Leaders' Pledge for Nature.* Providing strengthened opportunities for environmental stewardship, including for priority unburnt areas, could form part of the Australian government's strategy for nature and biodiversity recovery and contribute to efforts to reverse biodiversity loss by 2030.

Opportunity 3

Align opportunities for environmental stewardship with broader, global initiatives and goals, including:

a) The protection of at least 30 percent of the world's land and ocean by 2030 (High Ambition Coalition for People and Nature 30 x 30 goal);

b) Halting and reversing forest loss and land degradation by 2030 (***Glasgow Leaders' Declaration on Forests and Land Use***); and

c) Reversing biodiversity loss by 2030 (***Leaders' Pledge for Nature***).

3.4 Ensure market-based stewardship mechanisms deliver genuine environmental outcomes

3.4.1 Market-based stewardship mechanisms

Market-based approaches are being used to address a broad range of environmental challenges, including reducing greenhouse gas emissions, improving water quality, and restoring and conserving biodiversity. Examples of market-based approaches to environmental regulation include:

- Cap and trade schemes: generally, these put a capped limit on total emissions or pollutants, and allocate an allowance of units to participants that are traded within the framework of the scheme.
- Offset schemes: these generally operate by creating 'credits' and facilitating trading between market participants – for example, greenhouse gas emitters may seek to buy carbon credits created by landholders undertaking tree planting projects or developers may seek biodiversity credits to clear environmental significant vegetation.
- Certification schemes: The premise behind certification is that an increased market demand for sustainable products leads to improvement in sustainable practices, and a need for those sustainable practices to be given formal recognition.
- Supply chain intervention: This could include companies adopting supply chain traceability practices, or governments imposing laws and policies limiting the trade of unsustainable products.

Some market-based mechanisms can provide an incentive for environmental stewardship by creating opportunities for landholders to benefit (e.g. from payments) from undertaking conservation and restoration action on their land. Such opportunities are likely to become more prevalent as market demand for 'nature-based solutions' increases. This is likely to be driven by, for example:

- work being undertaken by the Taskforce on Nature-related Financial Disclosures (**TNFD**), which aims to develop, by 2023, a framework for organisations to report and act on evolving nature risks and opportunities;[64] and
- implementation of the Glasgow Leaders' Declaration on Forests and Land Use, which recognises the link between trade and development policies, increased finance and investment, and the alignment of financial flows, and international goals to reverse forest loss and degradation.

Market-based stewardship mechanisms present both an opportunity and a risk. On the one hand, market-based mechanisms can drive an increased uptake in environmental stewardship in two ways: by providing additional pathways for landholders to benefit from setting aside land for carbon sequestration or conservation, and by providing access to new, private investment where government funds may be limited. On the other, significant concerns have been raised about the integrity of market mechanisms, particular offsets-based mechanisms, and their ability to deliver genuine environmental outcomes.

The success or otherwise of environmental markets is highly dependent on whether the market conditions adequately reflect the limited nature of natural resources and properly price the costs of environmental harm, including those costs that traditional economic models consider to be 'externalities'. Without necessary limits and safeguards, market-based mechanisms can undermine genuine conservation efforts by legitimising both scientifically unsound policies and facilitating the continuation of high-impact activities such as land clearing or fossil fuel usage. Importantly, market-based mechanisms should not replace broader environmental conservation frameworks and regulation, but rather, where appropriate, form a complementary part of the framework.

This Discussion Paper considers the following specific market-based mechanisms as opportunities for Defending the Unburnt:

- Biodiversity offset schemes
- Carbon offset schemes
- Co-benefit schemes
- Certification and supply chains mechanisms

3.4.2 Biodiversity offsets schemes

Biodiversity offsetting aims to ameliorate negative environmental impacts, including from development, agriculture, and industrial and infrastructure projects. The premise behind biodiversity offsetting is to protect and improve biodiversity values in one area to compensate for impacting on biodiversity values in another area; improvement (i.e. gain) in the biodiversity values of the offset area is needed to ensure there is no net let loss in biodiversity values. Offset schemes therefore inherently involve an attempt to balance habitat loss with gains elsewhere, in contrast to stewardship schemes that focus on habitat gains.

All Australian jurisdictions have an established biodiversity offsetting framework for offsetting the impacts of development, industry and infrastructure. As a stewardship mechanism, landholders can elect to establish a biodiversity offset area on their land, and sell biodiversity credits to proponents looking to offset biodiversity impacts. This is different to landholders setting up conservation-based areas on their land (which are not used as offsets).

Demand for biodiversity offsets is driven by both offsetting rules (i.e. offsets must meet legislative requirements such as geographic location and the types of biodiversity) and the market (i.e. offsets are required to meet the needs of proponents) rather than broader conservation goals. Therefore, there may be limited opportunities to align the supply of biodiversity offsets with conservation outcomes, such as protecting priority unburnt areas.

Further, experts have raised concerns about the effectiveness of biodiversity offsetting and its ability to deliver the anticipated environmental outcomes. Concerns relate to difficulties in quantifying biodiversity values for market purposes, and in establishing offset markets (i.e. supply and demand requirements), challenges in re-creating nature, time lags in restoring areas, failure to account for declining base lines, failures to effectively manage offsets sites and protect offset sites in perpetuity, and perverse outcomes.[65]

Biodiversity offsets should only be used in limited circumstances and only as a last resort, with clear guidance on what impacts are so unacceptable that they should not be allowed and cannot be offset. If used, biodiversity offsets must meet best-practice standards.[66] Even then, biodiversity offsets should not be seen as an equivalent stewardship mechanism to strictly conservation-based private land conservation agreements (such as conservation agreements in New South Wales and nature refuges in Queensland).

Concerns about the broad use of biodiversity offsets and implications for priority unburnt areas are set out in more detail in EDO's report, *Defending the Unburnt: Offsetting our way to extinction*.[67]

3.4.3 Carbon offset schemes

Carbon offsetting schemes operate by establishing 'carbon credits' which are used to 'offset' emissions generated elsewhere.[68] In general, in Australia, carbon credits can be generated through the Federal Government's Emissions Reduction Fund (Australian Carbon Credit Units (**ACCUs**)), or through the voluntary carbon market (e.g. Gold Standard or Verra).[69] Certain carbon offset projects, namely those involving carbon farming, avoided deforestation and regeneration may provide additional biodiversity benefits, and for this reason may be viewed as a possible stewardship option available to landholders seeking to conserve land and protect biodiversity.

In the context of Defending the Unburnt, there are limited carbon market opportunities for protecting intact, existing vegetation. This is due to integrity and eligibility requirements, particularly if the current management and use of the land would ordinarily retain those trees in the landscape. Most options require a landholder to demonstrate that existing land management practices will change.

Broadly, significant concerns have been raised about the integrity of carbon offsets, and in particular:

- the ability for land-based offsets (i.e. carbon farming, tree plantings etc.) to offset emissions generated from the burning of fossil fuels;[70]
- the difficulties in measuring the effectiveness of carbon offsets and other 'nature-based solutions' in achieving climate and biodiversity outcomes;[71]
- the risk of afforestation projects promoting monocultures and leading to a loss in biodiversity;[72] and
- the danger in carbon offsets undermining real action on much needed emissions reductions.[73]

Specific concerns have been raised about the integrity of the Australian Government's Emissions Reduction Fund (**ERF**), and carbon credits issued under specific ERF methods, including the Human Induced Regeneration and Avoided Deforestation methods.[74]

These concerns include:

- that credits are routinely issued for tree growth that would have happened anyway;
- that credits are being issued for growing trees despite, in many cases, the area already containing mature trees when the projects started; and
- that credits are being issued based on a flawed assumption that any landholder in western New South Wales with a land-clearing permit issued between 2005 and 2010 planned to use it within 15 years.[75]

This is despite 'offsets integrity standards' in legislation that are intended to provide integrity safeguards. Research published in 2022 shows that approved carbon crediting methods under the ERF do not meet offsets integrity standards.[76] The new Australian Labor Government has announced an independent review into the ERF, to be chaired former chief scientist and former vice-chancellor of the Australian National University, Professor Ian Chubb.[77] EDO has outlined our concerns in a submission to the Independent Review.[78]

As with biodiversity offsets, carbon offsets schemes should not be used as a regulatory tool of first resort. Emissions should first be avoided. If that is not possible, they should be reduced, and only then should offsets be considered. If used, any use of 'carbon offsetting' must be strictly regulated via a robust, science-based scheme, developed with expert, scientific advice that is transparent and verifiable and meets best practice. Inadequately regulated offset schemes could significantly undermine the achievement of emissions reduction targets and therefore must be strictly limited. Further, due to the intrinsic weaknesses of the ERF and carbon offset schemes more broadly (outlined above), imposing a price on carbon through a robust cap and trade scheme is likely to provide a more effective market-mechanism for reducing greenhouse gas emissions.[79]

While some improvements to the ERF model may lead to additional stewardship opportunities, (e.g. new ERF methods or tightening up the safeguard mechanism) for the reasons outlined above, carbon offset frameworks should not be relied on for driving genuine enhanced environment stewardship.

3.4.4. Co-benefit schemes

Traditionally, co-benefit projects aim to deliver outcomes for both the climate (e.g. by reducing emissions in the land-use, land-use change and forestry sector), and biodiversity (by conserving and improving biodiversity values, including vegetation, soil and water quality). Some models, such as the LRF Co-benefits Standard[80] established under the Queensland Land Restoration Fund (**LRF**), also recognise socio-economic co-benefits and First Nations co-benefits.

A number of jurisdictions, including Queensland, Victoria, Western Australia and the Commonwealth, have introduced new programs and funding for co-benefit projects that provide incentives for landholders to conserve and restore land. Other jurisdictions, such as New South Wales and the Northern Territory, are considering or piloting options to support carbon management and enhance biodiversity. **See Appendix 1** – *Summary of co-benefit schemes (or other support for carbon farming initiatives) in Australian jurisdictions* for a general overview of co-benefit opportunities across Australian jurisdictions.

To be eligible under a co-benefit scheme, a project must meet both carbon and biodiversity eligibility requirements. Existing co-benefit schemes in Australia rely on the Federal Government's ERF scheme for the carbon component of a co-benefit project (that is, a co-benefit project must qualify for ACCUs under an approved ERF methodology). The biodiversity component differs between schemes - in general, each scheme has developed its own protocol that must be met to be eligible for biodiversity benefits. The benefits derived for the biodiversity component of a co-benefit project may also differ – for example, project proponents may be eligible for premium payments for ACCUs (e.g. ACCUs with recognised biodiversity benefits attract a higher price), or may be eligible for an additional, separate payment in recognition of biodiversity benefits.

Co-benefit schemes are an appealing market-based stewardship model as they encourage both improved climate and biodiversity outcomes, and can provide a greater incentive for landholders, who are likely to receive greater reward for having both carbon and biodiversity outcomes recognised.

However, current models in Australia rely primarily on the problematic carbon offsets market (see comments above), and biodiversity components are inconsistent and untested, with many still in development. For this reason, there are still many uncertainties around the extent to which co-benefit schemes can drive genuine enhanced environment stewardship. As co-benefit schemes are further developed, it is recommended, that:

- **Co-benefit protocols align with best practice:** As outlined above, each existing co-benefit scheme has its own co-benefit protocol that establishes eligibility criteria that must be satisfied. The carbon component of each scheme relies on the Federal Government's ERF framework. While the ERF framework has a legislated process for developing new ERF methods, the development of each co-benefit protocol is unregulated. Therefore, there is nothing to ensure the integrity of co-benefit protocols. At a minimum, co-benefit protocols must be evidence based and align with best practice. It may also be beneficial to create consistency across jurisdictions (see below).
- **All environmental benefits are recognised:** While colloquially co-benefit protocols are referred to as 'biodiversity protocols', co-benefit schemes should aim to recognise a broad range of environmental benefits and ecosystem services. The LRF Co-benefits Standard[81] includes seven environmental co-benefit classes that can be

claimed and verified under the Standard, namely: soil, the Great Barrier Reef, wetlands, coastal ecosystems, threatened ecosystems, threatened wildlife (including plants) and native vegetation; as well as socio-economic benefits (see below). There are a range of additional environmental benefits that could and should be recognized, including but not limited to: soil health, water quality, ecosystem health and climate resilience.

- **Social and cultural benefits of projects are recognised:** Co-benefit schemes do not need to be limited to delivering only carbon and biodiversity benefits. For example, the LRF Co-benefits Standard[82] established under the Queensland LRF includes criteria that also recognise:
  - Socio-economic benefits, being benefits for a person, community or regional economy from a project located close to that community or within that region. Such benefits may include employment opportunities and/or skills development; community and/or socio-economic resilience; improved environmental connectivity; and benefits linked to cultural and ethnic diversity and/or human rights; and
  - First Nations co-benefits, which encompass a broad range of benefits including customary, cultural, economic and business development benefits.

Schemes that seek to recognise social-economic and First Nations benefit schemes should be co-designed with First Nations.

- **Clear processes are put in place to effectively monitor and report on the outcomes of co-benefit schemes:** As noted above, there are still many uncertainties around the extent to which co-benefit schemes can drive genuine enhanced environment stewardship. To address this, there should be clear requirements for monitoring and reporting on the effectiveness of co-benefit schemes, so that there is a better understanding of how these schemes can be improved and whether they can deliver genuine environmental outcomes.
- **There is consistency across jurisdictions:** As noted above, co-benefit protocols differ between jurisdictions, and are in development or absent in some jurisdictions. For example, in New South Wales, where four of the six priority landscapes are found, there is no co-benefit scheme in existence. The New South Wales Government has however indicated it is considering co-benefit options *Primary Industries Productivity and Abatement Program* to support farmers and land managers across the State to reduce their emissions, improve their carbon management, and enhance biodiversity on their land alongside production.[83] It would be beneficial to develop a consistent, centrally regulated framework for identifying co-benefits. This would improve consistency across jurisdictions, ensure integrity of co-benefit standards, create certainty for investors, and reduce administrative duplication. However, consideration would need to be given to appropriate funding models, and who would purchase centrally regulated co-benefit credits.

3.4.5 Certification and supply chains mechanisms

Supply chain processes involve the production and distribution of a product or service. For example, the supply chain for agricultural production generally includes cultivation of raw products, procurement, transport, manufacturing, marketing and sales and delivery.[84] Policies, initiatives and interventions that aim to improve or change the practices of businesses within the supply chain may support enhanced environmental stewardship. For example:

- **Certification schemes** are one way to encourage improved sustainability within the supply chain. The premise behind certification is that an increased market demand for sustainable products leads to improvement in sustainable practices, and a need for those sustainable practices to be given formal recognition. Well-known, global certification schemes include, for example: forest management certification issued by Forest Stewardship Council (**FSC**) – which aims to confirm that forestry operations are being undertaken in a way that preserves biological diversity and benefits the lives of local people and workers, while ensuring forestry operations are economically viable;[85] a product with the FAIRTRADE Mark means that producers and businesses have met the Fairtrade social, economic and environmental standards, administered by Fairtrade;[86] and Rainforest Alliance certification signifies that a product was produced by farmers, foresters, and/or companies working together to create a world where people and nature thrive in harmony – in compliance with Rainforest Alliance Standards.[87] In Australia, a range of smaller, less known schemes operate. These include, for example, Australian Certified Organic,[88] Good Environmental Choice Australia (GECA),[89] and Green Power Australia.[90] The NSW Government has released announced it is investing $206 million in a new Sustainable Farming Program, which will accredit farmers who take action to improve biodiversity and reduce carbon emissions, while enhancing their productivity.[91]
- A formal certification scheme is not always needed to implement improved sustainability practices. Players within the supply chain may endeavour to voluntarily improve processes and practices in order to appeal to customers' demands for improved sustainability, and to retain their social licence. For example, the Australian Beef Sustainability Framework aims to guide what 'sustainable beef production' looks like in practice, and annually tracks how the industry is performing over a series of indicators.[92] While not a certification scheme in its own right, it aims to encourage and track environmental stewardship action.[93] Similarly, some retailers are adopting **supply chain traceability** practices, which aim to track products from source to consumer. For example, McDonalds has committed to eliminating deforestation from its global supply chains. It reported that at the end of 2020, 99.4%

of beef sourced for its restaurants came from deforestation-free supply chains.[94] New tools are being developed to help businesses demonstrate the positive impacts their businesses decisions are having on the environment. For example, FSC has developed a new tool, the FSC Ecosystem Services Procedure, that supports businesses to demonstrate the positive impact that their purchases, investments and financial support have on the conservation and restoration of forest ecosystem services.[95]

- Governments can also play a role in implementing policies and laws that can improve the sustainability of supply chains. For example, the European Commission (which has a key role in instigating and implementing policies in the European Union), has developed a proposal for a regulation on deforestation-free products.[96] The proposal would see due diligence rules placed on specific products in the EU market associated with deforestation and forest degradation, including soy, beef, palm oil, wood, cocoa and coffee, and some derived products, such as leather, chocolate and furniture. Its purpose is to ensure that only deforestation-free and legal products (according to the laws of the country of origin) are allowed on the EU market.[97]

The authenticity of supply chain interventions is key to their success. Voluntary certification schemes or supply chain sustainability can be established and operate with very little oversight and regulation, so there is a risk that 'greenwashing' (i.e. misinformation that presents a false environmentally responsible public image) may occur. Industry-led schemes that seek buy-in from a range of stakeholders may be viewed in a better light, as may government-led schemes. In general, certification schemes should aim to meet best practice, including with respect to transparency (for example, clear and objective standards) and accountability (including oversight and monitoring).

Certification schemes that result in improved land management practices on private land may lead to improved environmental outcomes, including the conservation of intact, unburnt landscapes. However, depending on the design of the scheme, certification schemes are unlikely to provide the same level of protection as some private land conservation agreements (which, for example, conserve vegetation in perpetuity). In particular, supply chain interventions are not always directly linked to conservation goals and outcomes. There may be opportunities to better align conservation targets with schemes aimed at encouraging environmental stewardship through sustainable farming practices, in order to deliver improved outcomes overall. This could be achieved through consultation with conservation groups and First Nations during the design of certification schemes or supply chain sustainability practices.

3.4.6 The role of market-based mechanisms in Defending the Unburnt

While market-based mechanisms can play a role in incentivising stewardship, existing market mechanisms are less suited to the immediate task of protecting unburnt areas. Changes to the market would be needed for the market to have any substantial application for priority unburnt areas, and while policy settings could be manipulated to drive an increased uptake in certain areas, ultimately outcomes are dependent on the market. Additionally, due to the significant concerns raised about the integrity of both biodiversity and carbon offsets, caution should be exercised when relying on offsets-based mechanisms to drive environmental stewardship, as there are real doubts as to whether these can deliver genuine, improved environmental outcomes.

If market-based mechanisms are to be relied on, they should be significantly strengthened to ensure they are delivering genuine environmental outcomes.

Opportunity 4

Ensure market-based stewardship mechanisms deliver genuine environmental outcomes.

In particular, market-based mechanisms must include:

a) Integrity standards based on best-available science;
b) Robust and effective provisions for monitoring, reporting, auditing, compliance and enforcement; and
c) Strict limits on offsets: Offsets should only be used in limited circumstances and only after all other mitigation measures in the mitigation hierarchy have been exhausted. There should be clear guidance on what impacts are so unacceptable that they should not be allowed and cannot be offset.

Four: Analysis and Conclusions

The protection of unburnt areas remains an urgent priority following the 2019-2020 bushfires that saw vast areas of south-eastern Australia decimated.

Areas impacted by the fires are still recovering - it has been suggested that the time required for recovery of threatened and fire sensitive species ranges from around 10 – 120 years, depending on the severity of the fire and extent of impacts on individual populations. Subsequent rainfall and flooding in bushfire-impacted areas has caused further damage, including soil erosion and reduced water quality.

Unburnt areas are essential for providing habitat, shelter and refuge for wildlife; assisting in the recovery of burnt areas, including by acting as a source of individuals for recolonisation; providing future climate change refugia; delivering important ecosystem services including storing forest carbon; and building landscape resilience.

However, unburnt areas that are not already protected (e.g. in national parks or reserves or via conservation agreements on private land) remain at risk from key threats, including a warming climate, expanding urban and industrial development, agricultural activity, infrastructure development, and commercial logging operations.

The protection of important unburnt areas should be a priority for governments. One way to achieve this is through an increased uptake of environmental stewardship on private land.

Existing frameworks, such as private land conservation and First Nations land management, could accommodate increased investment and scaling up, with a targeted policy focus on priority unburnt areas. Little legislative amendment would be needed to utilise existing methods. While these mechanisms are currently available, an increase in investment and targeted outreach by government could see an increased uptake of these stewardship mechanisms and lead to improved outcomes for priority unburnt areas.

Government-led uptake of these forms of environmental stewardship would have the added benefit of contributing to broader, global initiatives and goals including to conserve biodiversity and reduce emissions, including, for example, the High Ambition Coalition for Nature and People's goal of protecting of at least 30 percent of the world's land and ocean by 2030; the *Glasgow Leaders' Declaration on Forests and Land Use commitments*, including to conserve and restore forests; and the *Leaders' Pledge for Nature*, aimed at reversing biodiversity loss by 2030.

While market-based mechanisms can play a role incentivising stewardship, existing market mechanisms are less suited to the immediate task of protecting unburnt areas. Significant concerns have been raised about the ability of market-based mechanisms to deliver genuine environmental outcomes. In particular, the integrity of offsets-based market mechanisms has been called into question, including whether they can deliver genuine environmental outcomes. If market-based mechanisms are to be relied on, they should be significantly strengthened to ensure they are delivering genuine environmental outcomes.

Ultimately, increased investment in non-market-based stewardship options by governments, targeted at priority, unburnt areas is likely to be the simplest and most effective way for environmental stewardship to contribute to Defending the Unburnt and deliver genuine environmental outcomes.

Appendix 1

Summary of co-benefit schemes (or other support for carbon farming initiatives) in Australian jurisdictions

Jurisdiction	Scheme summary	Carbon component	Biodiversity component	Payments	Status of applications
Commonwealth	Commonwealth Carbon + Biodiversity Pilot program * Note – the former Morrison Government's Agriculture Biodiversity Stewardship Market Bill 2022 was intended to build on this pilot program and introduce a voluntary national biodiversity stewardship scheme. The Albanese Government has since announced a new biodiversity certificates scheme (see below).	ACCUs under ERF (using environmental plantings projects)	Carbon + Biodiversity Pilot program biodiversity protocol	Two components: • Sell ACCUs • Additional payment for biodiversity benefits	Applications for Round 2 closed on 3 March 2022.
Commonwealth	Proposed new biodiversity certificates scheme In August 2022, the Albanese Labor Government announced that it would be implementing a new biodiversity certificates scheme. The new biodiversity certificates scheme will operate in parallel to the existing carbon market scheme regulated by the Clean Energy Regulator. We understand that the Government will be consulting on the detailed rules for the new scheme over the coming months.	In development	In development	In development	In development

Jurisdiction	Scheme summary	Carbon component	Biodiversity component	Payments	Status of applications
Queensland	Land Restoration Fund	**ACCUs under ERF (The list of ERF methods eligible for LRF investment will be specific to each LRF investment round.)**	LRF Co-benefits Standard	**Premium payment from LRF for ACCUs (which recognises biodiversity, socio-economic and First Nations benefits benefits)**	**To date, there have been two rounds of applications (investment rounds). Round 1 ran in 2020 Applications for Round 2 funding closed in October 2021.** **At the time of publication, there is no information as to if, and when, additional investment rounds will take place.**
	Carbon Farming Advice Rebate Program	**ERF projects**	**Not applicable**	**$10,000 rebate to offset the cost of obtaining advice about undertaking carbon farming projects by land holders, or organisations seeking advice on their behalf, through the Land Restoration Fund.**	**Closed.**
Victoria	Victorian BushBank program - Private land restoration and protection. The program is seeking delivery partners to implement private land projects that deliver carbon and biodiversity outcomes.	It is not mandatory to be eligible for existing carbon credits opportunities, however the program encourages projects that are eligible under the ERF or other voluntary carbon market schemes (such as the Verra or Gold Standard).	No formal standard, but eligibility guidelines and project specifications are set out in the document – BushBank private land restoration and protection - Open call to market to select a delivery partner	Accepted projects are eligible for funding under the private land component of the BushBank program. If eligible for carbon credits, separate payment is also available under the relevant carbon market scheme.	Expressions of interest closed 30 May 2022.

Jurisdiction	Scheme summary	Carbon component	Biodiversity component	Payments	Status of applications
Victoria	Victorian BushBank program – Traditional Owner grants Stream 1 – Foundational to build capacity and capability: e.g., projects that build an organisations internal capacity to participate in land management and restoration and emerging biodiversity and carbon markets. Stream 2 – Place-based projects in Victoria: e.g., on-ground activities that support or deliver biodiversity and carbon outcomes	Projects do not need to meet ERF eligibility requirements, but assessment criteria consider carbon potential of a project.	No formal standard. Eligibility guidelines and project specifications are set out in the document Nature restoration for carbon storage – BushBank program Guidelines for First Peoples Grant	Eligible projects are eligible for funding under the Traditional Owner component of the BushBank program.	First round applications closed 15 May 2022.
	Victorian Carbon Farming Program A $15.3m Victorian Carbon Farming Program was announced in the 2020-2021 Victorian State Budget.	In development	In development	In development	In development
Western Australia	Western Australian Carbon Farming and Land Restoration Program (CFLRP)	ACCUs under ERF • ACCU Plus A - ERF soil and vegetation projects only • ACCU Plus B - ERF soil projects located on a property with an average rainfall below 350 mm	Priority Investment Co-benefits Standard	Recipients receive upfront funding for new carbon farming projects in return for an agreed number of ACCUs. The price paid for the ACCUs will incorporate the value of the project's co-benefits (i.e. will be above market price)	Round 1 is now closed. A second round of funding is planned in the coming months. Information for potential proponents is available here.

Jurisdiction	Scheme summary	Carbon component	Biodiversity component	Payments	Status of applications
Tasmania	Carbon Farming Advice Rebate pilot program	ERF projects	Not applicable	A rebate of up to $10,000 for having sought professional advice about the costs and benefits of accessing carbon credits, auditing requirements, and on-ground actions that are eligible for carbon credits.	Applications opened in November 2021 and remain open at the time of publication.
New South Wales	Biodiversity Conservation Trust (BCT): Co-investment opportunities – biodiversity plus carbon projects	ERF projects	Must meet eligibility requirements for a BCT agreement.	Eligible projects may receive funding through the BCT's existing programs, and if eligible for ACCUs, separate payment is also available under the ERF, including from voluntary purchasers who may pay a higher price for ACCUs with demonstrated biodiversity values.	Ongoing. No formal process.
	For example, the NSW Government has partnered with WWF Australia and Climate Friendly to pilot a new project - Koala Friendly Carbon.	ERF Projects	Conservation agreements via the NSW Biodiversity Conservation Trust's (BCT) Conservation Partners Program. Additionally, WWF using the Accounting for Nature Framework, WWF has developed an accredited method (including scat surveys to measure koala activity levels) to verify that koalas are actually benefiting from the plantings.	Landowners may be able to receive remuneration via both the ERF program and the NSW BCT Conservation Partners Program. Additionally, the NSW Government is funding 250,000 trees and WWF-Australia is investing $1.5 million to run the pilot, co-ordinate the logistics for planting, and provide on-going biodiversity monitoring.	Pilot program underway on NSW North Coast
New South Wales	The NSW Government has announced a Primary Industries Productivity and Abatement Program to support farmers and land managers across the State to reduce their emissions, improve their carbon management, and enhance biodiversity on their land alongside production. As part of the program, the NSW government is developing frameworks to recognise co-benefits.	In development	In development	In development	In development
South Australia	Growing Carbon Farming Pilot	Certain ERF and non-ERF projects are eligible. Specific criteria must be met – see Growing Carbon Farming Demonstration Pilot Guidelines	Projects must deliver one more environmental, social or economic benefit as identified in the Growing Carbon Farming Demonstration Pilot Guidelines	Applicants can apply for funding through the program. It is unclear whether there are any limitations on selling any carbon credits generated from the project (e.g., ERF ACCUs).	Applications can be submitted between 25 August 2022 and 22 September 2022.
Northern Territory	As part the Northern Territory Aboriginal Carbon Industry Strategy, the Northern Territory Government is investigating opportunities to create markets for offsets associated with the social, cultural and environmental benefits that flow from emissions reduction projects.	In development	In development	In development	In development

End Notes

[1] EDO, *Defending the Unburnt: A guide to private land conservation for landholders*, August 2021, available at https://www.edo.org.au/wp-content/uploads/2022/05/private-land-conservation-2.pdf

[2] EDO, *Defending the Unburnt: Carbon market opportunities for private landholders – a guide*, September 2022, available at https://www.edo.org.au/wp-content/uploads/2022/10/9a19152a95cf-EDO_Defending_the_Unburnt_Carbon_market_opportunities_for_private_landholders___a_guide__Web_Final-1.pdf

[3] Parliament of Australia, *2019–20 Australian bushfires—frequently asked questions: a quick guide*, 2020, available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianBushfires. We note that some reports state 34 deaths, however we have been unable to confirm this number.

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[10] Professor Chris Dickman, Faculty of Science, University of Sydney. For an explanation of Professor Dickman's estimates see https://www.sydney.edu.au/news-opinion/news/2020/01/08/australian-bushfires-more-than-one-billion-animals-impacted.html; see also Australian Academy of Science, *Monitoring Wildlife Recovery Bushfire Expert Brief*, July 2020, available at https://www.science.org.au/files/userfiles/support/evidence/2020/wildlife-monitoring.pdf

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[22] On 22 October 2021, former Minister for the Environment Sussan Ley announced Australia's 100 Priority Species to focus further conservation efforts under the 10 year *Threatened Species Strategy*, and an immediate $10 million in community grants for on ground activities, see https://minister.awe.gov.au/ley/media-releases/australias-100-priority-species?fbclid=IwAR1khxsnj0hnQS86tKAqEZm5kzrbWAH-5PpVD0MKL8NdM9e28vDTFDMctP4

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[24] Bennett, N.J., Whitty, T.S., Finkbeiner, E. et al. *Environmental Stewardship: A Conceptual Review and Analytical Framework* (2018) *Environmental Management* 61, 597–614, op. cit.

[25] EDO, *Defending the Unburnt: A guide to private land conservation for landholders*, August 2021, op. cit.

[26] EDO, *Defending the Unburnt Carbon market opportunities for private landholders – a guide*, 2022, op. cit.

[27] For example, the Australian Centre for Agriculture and Law has recently published its business case for increased funding for rural stewardship, see Martin P.; Lawson A.; Luiza Luz M.; Nauschutz S.; Davies K., *Funding Rural Stewardship: the case for significant reform*, Report. Landcare NSW et. ors., 2021, available at https://landcarensw.org.au/wp-content/uploads/2021/06/STEWARDSHIP-FUNDING-REPORT-July-26.pdf

[28] Many of EDO's concerns with the legal framework regulating land clearing in NSW are set out in the following report: EDO, *Restoring the balance in NSW native vegetation law - Solutions for healthy, resilient and productive landscapes*, August 2020, available at https://www.edo.org.au/publication/report-nsw-native-vegetation-law/

[29] For example, certain activities (e.g. mining or public infrastructure projects) may be able to be undertaken in areas in conserved areas, despite a conservation agreement being in place.

[30] See, for example, https://www.bct.nsw.gov.au/news-stories/message-bcts-ceo-about-bushfire-crisis; see also https://trustfornature.org.au/news/bushfire-recovery-partnership/; see also https://www.qld.gov.au/environment/parks/protected-areas/private/natureassist

[31] For further information about existing private land conservation opportunities see Environmental Defenders Office, *Defending the Unburnt: A guide to private land conservation for landholders*, August 2021, op. cit.

[32] See https://www.cen.org.au/projects/land-for-wildlife

[33] See https://www.wildlifelandtrust.org.au/

[34] *Biodiversity Conservation Act 2016*, s 5.4.

[35] See https://www.bct.nsw.gov.au/conservation-management-program

[36] See https://www.bct.nsw.gov.au/what-we-do

[37] See https://www.qld.gov.au/environment/parks/protected-areas/private/natureassist

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[40] See http://www.wildlife.vic.gov.au/protecting-wildlife/land-for-wildlife

[41] For more information on the BushBank program, see https://www.environment.vic.gov.au/bushbank

[42] See https://www.wildlife.vic.gov.au/home/biodiversity-bushfire-response-and-recovery#toc__id_2_bushfire.

[43] See https://www.awe.gov.au/environment/epbc/what-is-protected/conservation-agreements

[44] See https://minister.dcceew.gov.au/plibersek/media-releases/joint-media-release-biodiversity-certificates-increase-native-habitat-and-support-australian-landholders

[45] In November 2021, the former Morrison Government announced it was developing a new legislative framework to underpin a national voluntary biodiversity stewardship market for agricultural lands, delivering a range of benefits including a new income stream for farmers and biodiversity outcomes for the environment. It introduced the *Agriculture Biodiversity Stewardship Market Bill 2022* (ABSC Bill) into the Federal Parliament in February 2022. The ABSC Bill aimed to set up a new voluntary biodiversity market, modelled off the carbon farming framework established by the *Carbon Credits (Carbon Farming Initiative) Act*. However, the ABSC Bill lapsed on the dissolution of Parliament ahead of the May 2022 Federal election. See https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r6832

[46] See https://www.dcceew.gov.au/environment/environmental-markets/biodiversity-market. EDO's submission to the first round of consultation is available on our website: https://www.edo.org.au/publication/edo-submission-on-the-proposed-market-for-biodiversity/

[47] 'Caring for Country' can be understood generally as Indigenous peoples' approaches to land and water management, based in the laws, customs and ways of life that Indigenous people have inherited from their ancestors and ancestral beings. While caring for Country can have obvious environmental and land benefits, caring for Country also has benefits for the social-political, cultural, economic, and physical and emotional wellbeing of Indigenous people. See further, Australian Institute of Aboriginal and Torres Strait Islanders Studies, *Caring for our Country, The Benefits Associated with Caring for Country - Literature Review*, 2011, prepared for the Department of Sustainability, Environment, Water, Population and Communities, available at https://aiatsis.gov.au/sites/default/files/research_pub/benefits-cfc_0_2.pdf

[48] See, EDO, *Defending the Unburnt: A guide to private land conservation for landholders*, August 2021, op.cit.

[49] See for example, the Aboriginal Carbon Foundation (https://www.abcfoundation.org.au/); see also the Indigenous Carbon Industry Network (https://www.icin.org.au/)

[50] See EDO, *Defending the Unburnt Carbon market opportunities for private landholders – a guide*, 2022, op. cit.

[51] See https://www.environment.vic.gov.au/bushbank

[52] https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-protected-areas-ipas

[53] See https://www.qld.gov.au/__data/assets/pdf_file/0025/116548/lrf-co-benefits-standard.pdf

[54] For more information, see https://www.ilsc.gov.au. According to the ILSC Corporate Plan, *"The ILSC is funded through the Aboriginal and Torres Strait Islander Land and Sea Future Fund (ATSILSFF), established (initially as the Aboriginal and Torres Strait Islander Land Account) to support the purpose of the ILSC. Revenue from the Fund supports our operations, with the ILSC receiving $45 million (in 2010 values) annually"*, see ILSC, *Unlocking the Indigenous Estate Corporate Plan 2021-22 - Strategy to 2025*, available at https://www.ilsc.gov.au/wp-content/uploads/2021/08/Corporate-Plan-2021-22-Strategy-to-2025.pdf

[55] See https://www.hacfornatureandpeople.org/home

[56] The 15th Conference of Parties to the UN Convention on Biological Diversity will reconvene from 5 to 17 December 2022 in Montreal, Canada. Part 1 was held in Kunming in October 2021. See further https://www.cbd.int/conferences/2021-2022

[57] See https://www.hacfornatureandpeople.org/why-30x30

[58] See *Concept Note High Ambition Coalition for Nature & People*, available at https://www.hacfornatureandpeople.org/s/200619-Concept-Note-HAC-t4t3.pdf.

[59] See, for example, https://www.cbd.int/protected/pacbd/

[60] See https://portals.iucn.org/library/sites/library/files/documents/PAG-021.pdf

[61] See https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/

[62] See The Guardian, *Australia signs global nature pledge committing to reverse biodiversity loss by 2030*, 21 September 2022, available at https://www.theguardian.com/australia-news/2022/sep/21/australia-signs-global-nature-pledge-committing-to-reverse-biodiversity-loss-by-2030

[63] See https://www.leaderspledgefornature.org/. 'Other effective area-based conservation measures' (OECMs) are areas that achieve long term and effective in-situ conservation of biodiversity, outside of protected areas, and can include areas on private land, such as areas protected under a formal, long-term or in-perpetuity conservation agreement. The International Union for the Conservation of Nature (IUCN) has published guidance on defining and identifying OECMs, see https://portals.iucn.org/library/sites/library/files/documents/PATRS-003-En.pdf

[64] See https://tnfd.global/. The TNFD is based on the earlier-established Taskforce on Climate Related Financial Disclosures (TCFD) which was developed to increase awareness of climate risk and reporting of climate-related financial information. The TNFD consists of 35 senior executives from financial institutions, corporates and market service providers, including Elizabeth O'Leary, Macquarie Group, Head of Agriculture & Natural Assets in Australia.

[65] See, for example: M. Maron et al., *Faustian bargains? Restoration realities in the context of biodiversity offset policie'* (2012) *Biological Conservation* Vol. 155, Oct. 2012, pp 141-148; Bull, J.W., Blake Suttle, K., Gordon, A., Singh, N.J., and Milner-Gulland, E.J., *Biodiversity offsets in theory and practice* (2013) *Fauna and Flora International*, Oryx, 47(3) 369-380; Curren, M. et al., *Is there empirical support for biodiversity offset policy?* (2014) *Ecological Applications* 24(4) pp 617-632; Fallding, M., *Biodiversity Offsets: Practice and Promise* (2014) 31 *Environmental Planning & Law Journal 33*; Gordon, A., Bull, J.W., Wilcox, C., Maron, M., *Perverse incentives risk undermining biodiversity offset policies* (2015) *J. Appl. Ecol.* 52, 532–537; Gibbons, P., Macintosh, A., & Constable, A., and Hayashi, K., *Outcomes from 10 years of biodiversity offsetting* (2017) *Global Change Biology* 24. 10.1111/gcb.13977; Pope, J., Morrison-Saunders, A., Bond, A. et al., *When is an Offset Not an Offset? A Framework of Necessary Conditions for Biodiversity Offsets* (2021) *Environmental Management* 67, 424–435 https://doi.org/10.1007/s00267-020-01415-0

[66] See, for example, EDO's report, *Defending the Unburnt: Offsetting our way to extinction*, November 2022, available at https://www.edo.org.au/defending-the-unburnt-a-landmark-legal-initiative/

[67] EDO, *Defending the Unburnt: Offsetting our way to extinction*, November 2022, op. cit.

[68] EDO's *Defending the Unburnt: Carbon market opportunities for private landholders – a guide* (op.cit) provides an outline of both the Australian Government's Emissions Reduction Fund (**ERF**) (also known as the Climate Solution Fund) regulated by the Clean Energy Regulator; it also provides an outline of the voluntary carbon market.

[69] Further information about the voluntary carbon market is available in the EDO Guide: *Defending the Unburnt: Carbon market opportunities for private landholders – a guide*, 2022, op. cit.

[70] See, for example, Mackey, B., Prentice, I., Steffen, W. et al., *Untangling the confusion around land carbon science and climate change mitigation policy* (2013) *Nature Clim Change* 3, 847 available at https://openresearch-repository.anu.edu.au/bitstream/1885/64454/2/01_Mackey_Untangling_the_confusion_2013.pdf; see also The Australia Institute and Australian Conservation Foundation, *Questionable integrity: Non-additionality in the Emissions Reduction Fund's Avoided Deforestation Method*, 2021, available at https://australiainstitute.org.au/report/questionable-integrity-non-additionality-in-the-emissions-reduction-funds-avoided-deforestation-method/

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[73] See, for example, Climate Council of Australia (Will Steffen, Jacqui Fenwick and Martin Rice), *Land carbon: No substitute for action on fossil fuels*, 2016, available at https://www.climatecouncil.org.au/uploads/aadc6ea123523a46102e2be45bfcedc8.pdf

[74] See, The Australia Institute, *An Environmental Fig Leaf? Restoring integrity to the Emissions Reduction Fund*, 2022, available at https://australiainstitute.org.au/report/an-environmental-fig-leaf/; see also, for example, ABC News, *Insider blows whistle on Australia's greenhouse gas reduction schemes*, 24 March 2022, available at https://www.abc.net.au/news/2022-03-24/insider-blows-whistle-on-greenhouse-gas-reduction-schemes/100933186.

[75] See, for example, The Guardian, *Australia's carbon credit scheme 'largely a sham', says whistleblower who tried to rein it in*, 23 March 2022, available at https://amp.theguardian.com/environment/2022/mar/23/australias-carbon-credit-scheme-largely-a-sham-says-whistleblower-who-tried-to-rein-it-in

[76] Macintosh, A., Butler, D., Evans, M.C., Larraondo, P.R., Ansell, D., Gibbons, P. *The ERF's Human-induced Regeneration (HIR): What the Beare and Chambers Report Really Found and a Critique of its Method*, The Australian National University, Canberra, 2022, available at https://law.anu.edu.au/sites/all/files/what_the_beare_and_chambers_report_really_found_and_a_critique_of_its_method_16_march_2022.pdf

[77] The Hon. Chris Bowen, Minister for Climate Change and Energy, Media Release, *Independent Review of ACCUs*, 1 July 2022, https://minister.dcceew.gov.au/bowen/media-releases/independent-review-accus.

[78] See https://www.edo.org.au/publication/edo-submission-to-the-independent-review-of-australian-carbon-credit-units/

[79] Generally, cap and trade schemes put a capped limit on total emissions and allocate an allowance of units to participants that are traded within the framework of the scheme. However, various forms of 'cap and trade' style schemes have begun incorporating offsetting, by allowing units generated from carbon-sequestration activities (such as carbon farming and avoided deforestation) to be introduced into the framework. In such frameworks, the integrity issues would be equally applicable to land-based carbon sequestration offsets used as part of a cap and trade scheme.

[80] See https://www.qld.gov.au/__data/assets/pdf_file/0025/116548/lrf-co-benefits-standard.pdf

[81] See https://www.qld.gov.au/__data/assets/pdf_file/0025/116548/lrf-co-benefits-standard.pdf

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[83] See https://www.energysaver.nsw.gov.au/reducing-emissions-nsw/primary-industries-productivity-and-abatement; see also New South Wales Department of Planning and Environment, *Growing NSW's primary industries and land sector in a low carbon world*, March 2022, p 31, available at https://www.energysaver.nsw.gov.au/sites/default/files/2022-04/Growing_NSWs_primary_industries_and_land_sector_in_a_low_carbon_world_April_2022_1.pdf

[84] See, for example, United Nations Development Program, *Protecting biodiversity in production landscapes - A guide to working with agribusiness supply chains towards conserving biodiversity*, 2011, p 12 -13, available at https://fdocuments.in/document/a-guide-to-working-with-agribusiness-supply-chains-towards-conserving-biodiversity.html

[85] See https://fsc.org/en/forest-management-certification

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[87] See https://www.rainforest-alliance.org/

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[92] See https://www.sustainableaustralianbeef.com.au/

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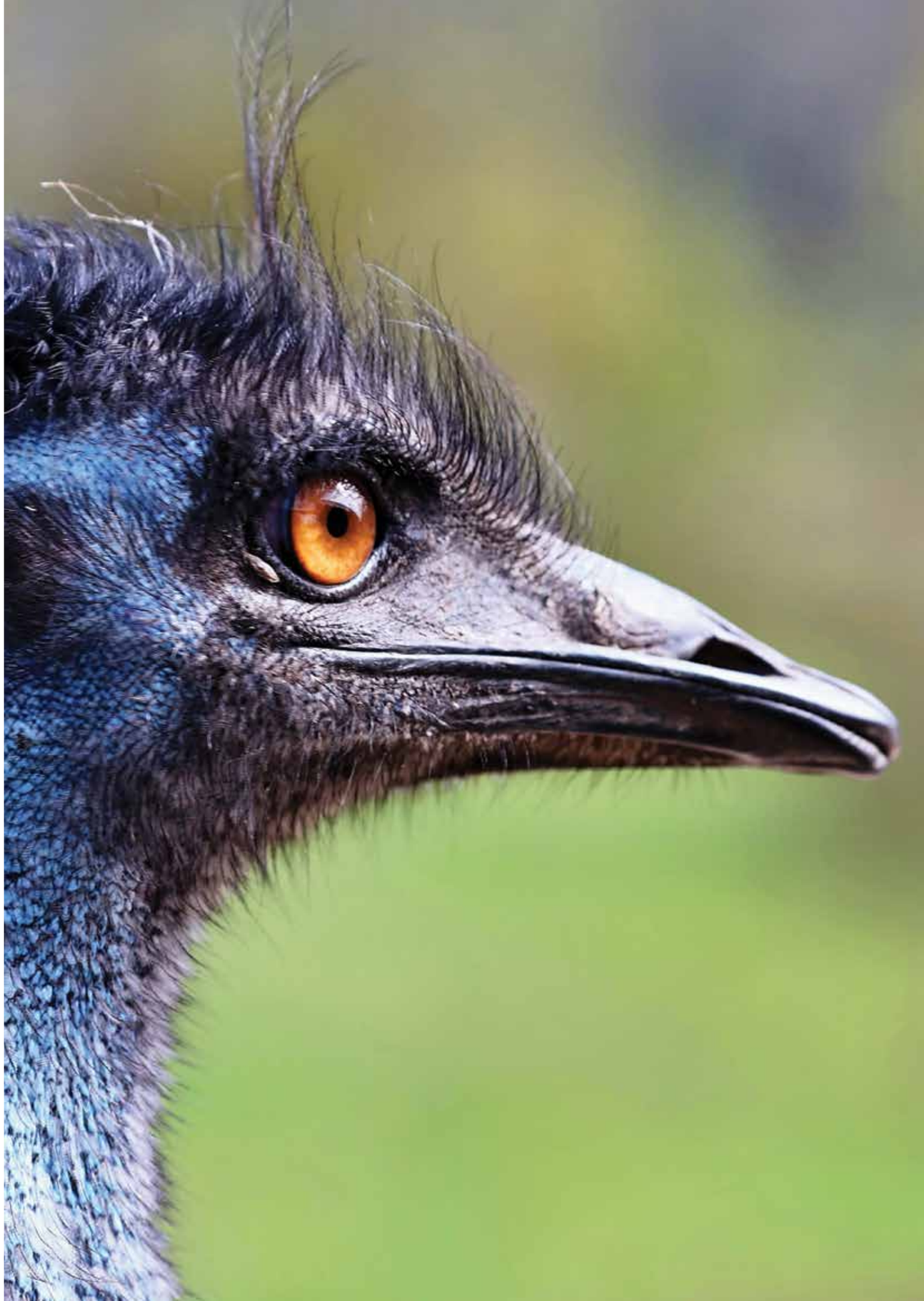
[96] See https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en.

[97] See https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919



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