



Environmental Defenders Office

Commonwealth Department of Climate Change, Energy, the Environment and Water
Nature Repair Market

By email: naturerepairmarket@dcceew.gov.au

29 July 2026

Dear Sir/Madam,

Re Consultation on the exposure draft *Nature Repair Amendment (Environmental Offsets and Market Integrity) Rules 2026*

Thank you for the opportunity to provide feedback on the exposure draft of the *Nature Repair Amendment (Environmental Offsets and Market Integrity) Rules 2026 (Amendment Rules)*.

We note that the Amendment Rules implement some of the changes outlined in three Issues Papers released for public comment in April/May 2026.¹ While our feedback in this submission is focused on the Amendment Rules, we have ongoing concerns about the Nature Repair Market and its suitability for environmental offsetting in its current form. Many of our concerns are set out in our May 2026 *Submission on the ongoing development of the Nature Repair Market*,² and two are repeated in this submission.

Our brief submission, **attached**, is structured as follows:

1. Feedback on the Amendment Rules
2. Ongoing concerns with the use of biodiversity certificates for environmental offsetting

In relation to the Amendment Rules, we make the following recommendations:

- The definition of relevant offset decision-maker should be revised, including by clarifying key terms used in the definition.
- Information about the intention to use a biodiversity certificate for an environmental offsetting purpose should also be included as a requirement for the content of a biodiversity certificate under section 60 of the Rules.
- In relation to the proposed amendments relating to cancellation of registration of biodiversity projects:

¹ Information about previous consultation on the Nature Repair Market is available at <https://consult.dcceew.gov.au/methods-have-your-say>

² EDO, *Submission on the ongoing development of the Nature Repair Market*, May 2026, available at <https://www.edo.org.au/publication/submission-on-the-ongoing-development-of-the-nature-repair-market/>

- Further clarification is needed about what the Regulator must consider to be satisfied that any requirements relating to the use of the biodiversity certificate in respect of the project for an environmental offsetting purpose have been met.
- Further changes are needed to limit or manage the cancellation of biodiversity projects where they have been used as offsets because it is important that any biodiversity outcomes are achieved and maintained in the long-term to appropriately compensate for the impacts of a development project.
- Clause 63(2)(l) of the *Nature Repair Rules 2024* should retain the current requirement for project proponents to provide a statutory declaration.
- Provisions relating to relinquishment of biodiversity certificates should address the specific scenario of a significant reversal of biodiversity outcomes occurring after a biodiversity certificate has been used as an environmental offset.

More broadly, we remain concerned that the broader framework is still missing key elements to support environmental offsetting. In particular, we recommend that:

- a mechanism to provide for the retirement of certificates is needed.
- legal security should run with the land, as occurs for other offset frameworks .

We would welcome the opportunity to meet with you to discuss our ongoing concerns and to better understand how the Nature Repair Market will be able to deliver environmental offsets that are robust, genuine and achieve the necessary environmental outcomes to compensate for the impacts of development projects.

Please reach out to Cerin Loane, Special Counsel, Policy and Law Reform, on (02) 7229 0029 or cerin.loane@edo.org.au in relation to this matter.

Yours sincerely,

Environmental Defenders Office

Cerin Loane
Special Counsel, Policy and Law Reform



Submission on the exposure draft *Nature Repair Amendment (Environmental Offsets and Market Integrity) Rules 2026 (Amendment Rules)*

1. Feedback on the Amendment Rules

Our feedback on the Amendment Rules highlights areas where we have concerns with the draft provisions.

Schedule 1

- **Definition of relevant offset decision-maker (Item 1)**

The proposed definition of relevant offset decision-maker is as follows:

relevant offset decision-maker: *if a project may be used to meet an environmental offsetting requirement (however described) under a law of the Commonwealth, a State or a Territory, the relevant offset decision-maker for the project is the person or body responsible for determining whether the project meets that requirement*

While we understand the intent behind this definition, some of the terms used in the definition are not clear. For example:

- it would be useful to clarify what is meant by “project”, for example, is this referring to a registered biodiversity project?
- it might also be useful to clarify what is meant by “may be used”, for example, would it be clearer to use the phrase “is proposed to be used” or “is intended to be used”?

We **recommend** the definition of relevant offset decision-maker should be revised, including by clarifying key terms used in the definition.

- **Information about a biodiversity certificate being intended to be used for an environmental offsetting purpose (Items 3 – 6)**

Items 3 – 6 of the Amendment Rules propose changes that require information about the intention to use a biodiversity certificate for an environmental offsetting purpose to be provided during the registration process, and in the notice of approval of registration. However, there is no similar requirement for that information to be included in a biodiversity certificate itself (e.g. under section 60 of the Rules). It is unclear if this was a deliberate omission, but we suggest there would be benefit in having this information included in the biodiversity certificate itself. We **recommend** that information about the intention to use a biodiversity certificate for an environmental offsetting purpose be included as a requirement for the content of a biodiversity certificate under section 60 of the Rules.

- **Cancellation of registration of biodiversity project (Items 7 – 12)**

Part 2, Division 3 of the *Nature Repair Rules 2024* deals with the cancellation of registration of biodiversity projects – both voluntary cancellation following application by the project proponent, or unilaterally by the Regulator in various circumstances, such as if the project proponent ceases to exist (section 37) or the project proponent ceases to be a fit and proper person (section 36).

The Amendment Rules propose amendments to the cancellation process in light of changes that allow biodiversity certificates to be used for an environmental offsetting purpose. Specifically:

- In the case of voluntary cancellation, the Regulator can only cancel the registration of a project that is registered as offset-capable if satisfied that any requirements relating to the use of the biodiversity certificate in respect of the project for an environmental offsetting purpose have been met. It is unclear exactly what this requirement entails. For example, is the Regulator required to consider whether the biodiversity outcomes intended to be delivered by the certificate have been achieved?
- In the case of unilateral cancellation by the Regulator for various reasons, there does not appear to be a similar requirement to be satisfied that any requirements relating to the use of the biodiversity certificate in respect of the project for an environmental offsetting purpose have been met.
- Various provisions require notification to be given to the relevant offset decision-maker.

We are concerned that the proposed Amendment Rules do not adequately manage the risks of cancelling biodiversity projects where they have been used as an offset. Where a biodiversity certificate has been relied on to offset the specific impacts of a particular project, it should not be able to be cancelled unless the relevant biodiversity outcomes are achieved and maintained, otherwise it has not done its job as an offset.

While various provisions require notification to be given to the relevant offset decision-maker, the relevant offsets decision-maker does not play a role in deciding whether to cancel biodiversity certificates. Where biodiversity certificates have been cancelled without delivering and maintaining the relevant offsets outcomes, the offsets decision-maker may be left with compliance and enforcement responsibilities under the project approval which has relied on the biodiversity certificate to deliver offsets.

We **do not support** this part of the Amendment Rules in their current form. We **recommend** that:

- Further clarification is needed about what the Regulator must consider to be satisfied that any requirements relating to the use of the biodiversity certificate in respect of the project for an environmental offsetting purpose have been met.
- Further changes are needed to limit or manage the cancellation of biodiversity projects where they have been used as offsets because it is important that any biodiversity outcomes are achieved and maintained in the long-term to appropriately compensate for the impacts of a development project.

Schedule 2

- **Replacing requirements for statutory declarations (Item 5)**

Clause 63(2)(l) of the *Nature Repair Rules 2024* currently requires project proponents to provide a statutory declaration stating that the information in and documents accompanying a biodiversity project report meet the requirements in the Act, the Rules and the applicable methodology determination that apply; and are accurate.

Item 5 of Schedule 2 of the Amendment Act proposes to change this requirement from a statutory declaration to simply a statement.

We **do not support** this change. As noted in our May 2026 submission, removing the requirement for proponents to submit statutory declarations is a backwards step. This is an important measure for ensuring integrity in the framework and should be maintained. While we recognise that other measures, such as extensive auditing and information-gathering powers, and offences for providing false and misleading information also exist, the requirement to provide a statutory declaration is an upfront measure that puts the onus on proponents to demonstrate they are acting with integrity, rather than relying on the regulator to enforce breaches once a proponent has acted inappropriately. We **recommend** that clause 63(2)(l) of the *Nature Repair Rules 2024* should retain the current requirement for project proponents to provide a statutory declaration.

- **Relinquishment requirements (Item 11)**

The Amendment Rules include a new Part 13 – Relinquishment Requirements. These provisions implement changes explained in the Nature Repair Market Issues Papers that were released for public comment in April/May 2026. We note that several of our previous questions relating to the relinquishment requirements have been addressed in the Amendment Rules (e.g. all listed circumstances would need to be met to establish a significant reversal, and the replacement area for relinquishment equivalence requirements would need to be in the same IBRA subregion, or are in adjacent IBRA subregion).

However, we remain concerned that the Amendment Rules do not address the specific scenario of a significant reversal of biodiversity outcomes occurring after a biodiversity certificate has been used as an environmental offset. If that was to occur, there is the additional risk that full compensation of impacts of a development project would not be achieved (i.e. the offset would not be delivered in full) and it is unclear how a proponent's offsetting obligations will be affected or met if a significant reversal does occur. We **recommend** that provisions relating to relinquishment address the specific scenario of a significant reversal of biodiversity outcomes occurring after a biodiversity certificate has been used as an environmental offset.

2. Ongoing concerns with the use of biodiversity certificates for environmental offsetting

EDO has ongoing concerns that, without substantial changes, the Nature Repair Market framework is not suitable for environmental offsetting. This is because *Nature Repair Act 2023* (Cth) is not designed to be used for environmental offsetting, and accommodating environmental offsets within the Market requires more than a few tweaks and add-ons.

Generally, our concerns are set out in our *Submission on the ongoing development of the Nature Repair Market*.³ However, we would like to reiterate two specific concerns:

- **A mechanism to provide for the retirement of certificates is needed**

It is unclear how the framework will facilitate the retirement of credits. This is an essential part of an offsets market. When used as an offset, any benefits delivered by a biodiversity project under a biodiversity certificate are essentially ‘allocated’ for the purpose of offsetting the impact of a development project. The benefits can no longer be used or attributed for another purpose (e.g. sold as another offset, or to a business seeking to bolster its environmental credentials), and the biodiversity certificate needs to be removed from the Market (but the biodiversity project continues in order to keep delivering the benefit).

The obvious analogy here is the cancellation of Australian Carbon Credit Units (**ACCUs**) when used to offset greenhouse gas emissions. This is done by permanently removing the relevant ACCUs from the Australian National Registry of Emissions Units (**ANREU**). A similar mechanism must be built into the Nature Repair Market.

We note the Amendment Rules do include a requirement for a project proponent to notify the Regulator if a biodiversity certificate for the project has been used for an environmental offsetting purpose and, if so, how it has been used (proposed section 73(2)(g)). However, it is unclear what, if any, action the Regulator will need to take in response to that information, and whether such notification would lead to a biodiversity certificate being “retired”.

- **Legal security should run with the land, as occurs for other offset frameworks**

Many jurisdictions in Australia require offsets to be secured by a legal mechanism such as a legal covenant, and this is the intent of the Commonwealth Government in relation to its new environmental offsetting framework.⁴ Such legal instruments ‘run with the land’, meaning that offsetting obligations on a site bind future landowners. This provides certainty and assurance that biodiversity outcomes can be delivered to compensate for the impacts of development.

The Nature Repair Market does not require site-based legal protection for project sites used for offset-capable biodiversity projects (e.g. covenants) and there is a risk that where a project site is sold, or a project proponent dies, there is no strong legal guarantee that the biodiversity outcomes intended to be relied on to offset the impacts of development will be delivered. This misalignment between the Nature Repair Market and the environmental offsetting framework needs to be resolved.

³ EDO, *Submission on the ongoing development of the Nature Repair Market*, May 2026, available at <https://www.edo.org.au/publication/submission-on-the-ongoing-development-of-the-nature-repair-market/>

⁴ See the *Updated Draft Policy Position Paper: National Environmental Standard for Environmental Offsets*, page 15, which states: “Where possible and appropriate (e.g., for land-based offsets), strong legal instruments such as covenants on land titles should be used to secure the offset”