Chapter 3

Key issues

Introduction

3.1 This chapter discusses key issues raised in submissions and evidence, including:

- support for the bill;
- changes to the crediting period;
- the safeguard mechanism;
- additionality and co-funding;
- the development of methodologies;
- the auction process;
- enforceability and contract terms;
- carbon sequestration projects; and
- eligible interest holder consent.

Support for the bill

3.2 The Clean Energy Regulator provided evidence to the committee on its experience of administering the Carbon Farming Initiative and the feedback it had received from participants in the scheme's first two years of operation. The Regulator noted:

> After two years of experience and regular feedback from our clients, we have a better understanding of administering the act and our clients also have been able to explain where there are some streamlining opportunities and reporting opportunities that will not change the integrity of the credits that are issued or the scheme but can provide for improved participation.[1]

3.3 The Regulator agreed that the changes proposed in the bill would improve the current legislation and respond to issues raised in participant feedback.

3.4 CO2 Australia stated in its submission that the passage of the bill would be essential, should the carbon pricing mechanism be repealed. CO2 Australia stressed the need for consistency in carbon abatement policy. It commented that any gap between the repeal of the carbon pricing mechanism and the commencement of the provisions in the bill would result in uncertainty for those sectors of the economy that are seeking to address climate change.[2]

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1 Ms Chloe Munro, Chair and Chief Executive Officer, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 20.

2 CO2 Australia, *Submission 10*, p. 1.

3.5 CO2 Australia welcomed the move to provide a single framework for multiple emissions reduction activities and to streamline administration of the Carbon Farming Initiative through the bill.[3]

3.6 The Carbon Market Institute, the peak body representing a broad range of participants in the market, described the Emissions Reduction Fund as having 'real benefit in terms of being able to channel funding into abatement that could deliver a kick-start to the decarbonisation'.[4] It emphasised that the level of interest in participating in the Emissions Reduction Fund should not be underestimated:

> A lot of project proponents have invested a lot of time and money to go through the methodology development processes and be in a position where they can bid into the Emissions Reduction Fund.[5]

3.7 Australian Soil Management fully supported the amendments contained in the bill and welcomed the recognition of 'the potential contribution of soil carbon in meeting the objectives of the Emissions Reduction Fund'.[6]

3.8 The Cement Industry Federation (CIF) and National Lime Association of Australia (NLAA) endorsed the broad intent of the bill:

> The development of a consistent, national regulatory framework—supporting the use of alternative (non-fossil based) fuels such as those derived from waste—would potentially allow the domestic cement and lime industries to increase abatement opportunities.[7]

3.9 The CIF and NLAA further supported the risk-based approach to auditing emissions reductions and the streamlining of methodologies proposed by the bill.[8]

3.10 Hydro Tasmania supported the aim of the bill to ensure targeted and efficient funding processes but cautioned against the Clean Energy Regulator being too prescriptive and 'setting absolute guidelines that may prohibit important opportunities from progressing'.[9]

3.11 When asked what the effect would be on the land sector if the price on carbon were repealed and the Carbon Farming Initiative Amendment Bill were not passed, Carbon Farmers of Australia stated:

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3 CO2 Australia, *Submission 10*, pp 1–2.

4 Mr Peter Castellas, Chief Executive Officer, Carbon Market Institute, *Committee Hansard*, 1 July 2014, p. 33.

5 Mr Peter Castellas, Chief Executive Officer, Carbon Market Institute, *Committee Hansard*, 1 July 2014, p. 34.

6 Australian Soil Management, *Submission 6*, p. 1.

7 The Cement Industry Federation and National Lime Association, *Submission 7*, p. 2.

8 The Cement Industry Federation and National Lime Association, *Submission 7*, p. 3.

9 Hydro Tasmania, *Submission 8*, p. 2.

> …we would be forced into a sort of niche market type situation that would have more difficulties.[10]

Crediting period

3.12 There was some discussion in submissions and evidence about the changes the bill makes to crediting periods. CO2 Australia expressed concern that the bill removes the ability to re-credit projects after the initial crediting period expires. CO2 Australia noted that this has particular relevance for carbon sequestration or reafforestation projects. It stated:

> …the proposed legislation curtails the potential economic life of carbon assets that would continue to actively sequester carbon beyond the period for which the project is credited.[11]

3.13 CO2 Australia recommended that a second 25-year crediting period be allowed for sequestration projects that have 100-year permanence.[12]

3.14 The Aboriginal Carbon Fund highlighted the effect that the single crediting period imposed by the bill would have on savanna burning projects:

> They are not like energy efficiency projects where you make the change and there is a continuing benefit. Savanna projects require a continuing effort every year to manage the burning.[13]

3.15 The Kimberley Land Council called the change to a single crediting period 'significant'.[14]

3.16 The Carbon Market Institute acknowledged that the bill allows for some flexibility in the length of a crediting period and encouraged such an approach.[15]

3.17 The explanatory memorandum to the bill explains the single crediting period as follows:

> This will ensure that the Emissions Reduction Fund continues to target new projects that build on previous gains.[16]

3.18 In response to consultation on the Carbon Farming Initiative Amendment Bill draft legislation, the Government has stated it will monitor the progress of savanna burning projects under the Emissions Reduction Fund and will review arrangements

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10 Mrs Louisa Kiely, Director, Carbon Farmers of Australia, *Committee Hansard*, 1 July 2014, p. 36.

11 CO2 Australia, *Submission 10*, p. 2.

12 CO2 Australia, *Submission 10*, p. 2.

13 Aboriginal Carbon Fund, *Submission 5*, p. 2.

14 Kimberley Land Council, *Submission 12*, p. 3.

15 Carbon Market Institute, *Submission 11*, p. 8.

16 Carbon Farming Initiative Amendment Bill 2014, *Explanatory Memorandum*, p. 33.

for these projects as a priority as part of the operational review of the Emissions Reduction Fund at the end of 2015.[17]

Safeguard mechanism

3.19 As outlined in the previous chapter, the explanatory memorandum to the bill states that a safeguard mechanism for the Emissions Reduction Fund will begin on 1 July 2015, following consultation with stakeholders, and will be governed by discrete legislation.

3.20 CO2 Australia expressed the view that a legislative requirement to deliver the Emissions Reduction Fund safeguard mechanism by July 2015 should be included in the current bill.[18]

3.21 The Carbon Market Institute also observed that consideration of the safeguard mechanism would be beneficial at the commencement of the Emissions Reduction Fund. The Carbon Market Institute stated:

> Although the draft legislation does not include the safeguard mechanism proposed in the ERF [Emissions Reduction Fund] White Paper, it is important to consider it at this stage to ensure that in implementation the ERF and the safeguard mechanism are linked. This will be crucial to ensure any new policy is enduring and can effectively limit Australia's emission growth to 2020 and beyond.[19]

3.22 It suggested that the safeguard mechanism include the allocation of baselines and that the costs of emissions reductions be transferred ultimately to the buyers of ACCUs:

> If allocated baselines for entities covered under the safeguard mechanism are reduced over time, it transfers the 'heavy lifting' to meet emissions reduction targets to covered entities, rather than the tax payer funded ERF. The cost for emissions reduction is transferred to those who are required to buy the credits.[20]

3.23 The Grattan Institute mentioned in its evidence the difficulty in setting baselines when no historical data exists—that is, for new businesses or businesses that engage in new practices.[21]

3.24 Regarding the development of the safeguard mechanism, the Department of the Environment confirmed that 'there is further work to be done' in 2014 but reported

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17 Department of the Environment, *The Emissions Reduction Fund: the results of consultation on draft legislation*, http://www.environment.gov.au/system/files/pages/7aef9f12-8ba1-4d9a-bf6a-1bc89a0bd6f5/files/erf-exposure-draft-legislation-consultation.pdf (accessed 4 July 2014).

18 CO2 Australia, *Submission 10*, p. 2.

19 Carbon Market Institute, *Submission 11*, p. 4.

20 Carbon Market Institute, *Submission 11*, p. 5.

21 Mr Tony Wood, Program Director, Energy, Grattan Institute, *Committee Hansard*, 1 July 2014, p. 43.

that 'quite a bit of consultation with business' had occurred in the course of developing the Green Paper and the White Paper.[22]

3.25 The department indicated that discussions so far had included the types of entities the mechanism covers and the historical basis on which baselines are set.[23] It stated that:

> …the government's policy is actually to have safeguard baselines set at a level based on historical levels so that they prevent any increase in emissions beyond what business as usual might have been. It is not…to drive those baselines down to impose costs and therefore incentivise companies to undertake reductions to avoid those costs.[24]

3.26 The department reiterated that the Government would continue to consult on appropriate baselines and compliance arrangements prior to the implementation of the safeguard mechanism. It confirmed that the Government would:

> …continue to talk to business about what sorts of flexible compliance arrangements would be available in the event that baselines are breached by an entity.[25]

Additionality and co-funding

3.27 Organisations involved in savanna burning in northern Australia emphasised the importance of the Carbon Farming Initiative to the continuation of their projects but raised a number of concerns about the provisions of the bill. The first was eligibility. The Carbon Farming Initiative Amendment Bill 2014 requires that emissions reduction projects be additional to business-as-usual activities, must not have started and must not be funded by other Government programs. The Aboriginal Carbon Fund expressed concern about these provisions:

> …it could mean that we are ruled ineligible and that would mean wiping out a source of income that is worth hundreds of thousands of dollars and employs hundreds of traditional owners…[26]

3.28 This view was supported by the Kimberley Land Council, which stated in its submission:

> Land sector carbon abatement projects offer an opportunity to complement and strengthen existing Ranger activities with projects to reduce emissions

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22 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 56.

23 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 56.

24 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 51.

25 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 56.

26 Mr Rowan Foley, General Manager, Aboriginal Carbon Fund, *Committee Hansard*, 1 July 2014, p. 23.

> or store carbon on the land. Under the additionality requirements in the ERF Bill, these groups could be prevented from participation in carbon projects. This overlooks the fact that the funding they receive focuses on a much larger range of land management activities that do not include carbon abatement activities, and that, without funding from the ERF or CFI, they would not have the resources nor capacity to undertake carbon projects.[27]

3.29 The Carbon Market Institute commented in its submission that the requirement that projects be new, additional and not co-funded needed clarification. It pointed out that savanna burning projects rely on co-funding from several Government programs and, without further explanation of these points, 'they may be considered non-additional and excluded from participating in the ERF'.[28]

3.30 The Law Council of Australia supported the call for clarification and noted that the additionality and co-funding requirements have the potential to disadvantage Indigenous communities.[29] It suggested in evidence that the legislation could make specific provision for Indigenous land management practices:

> We would even support the idea of a separate test of additionality applying to those sorts of projects.[30]

3.31 The Department of the Environment acknowledged in its evidence to the committee that Indigenous land management could involve a range of Government programs. It pointed out that, while these programs support various aspects of land management, savanna burning activities receive support only through the Carbon Farming Initiative. Therefore, they should continue to be supported under the Emissions Reduction Fund. The department stated:

> There is a sort of common-sense element to it. If another government program has funded something and the project is happening anyway, it would not be a good use of taxpayer funding to fund it again. But the government have made it quite clear that it is not their intention to prevent people from pooling together support from a range of different sources. Particularly in Indigenous areas, there will be a whole range of government programs that might touch on or intersect with something under the Emissions Reduction Fund.
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> The government know[s] that, on their own, none of those individual projects are sufficient to get savanna burning projects off the ground. The legislation talks about not funding projects that would already happen under another government program. In this case, savanna burning activity does not happen despite all the other government programs that you have in place. So it is clearly a case where funding is needed through the Emissions Reduction Fund to have those projects go ahead. The regulator will put out

27 Kimberley Land Council, *Submission 12*, p. 2.

28 Carbon Market Institute, *Submission 11*, p. 7.

29 Law Council of Australia, *Submission 17*, p. 3.

30 Mr Greg McIntyre SC, Law Council of Australia, *Committee Hansard*, I July 2014, p. 10.

> further guidance to explain how it is that they will make that assessment on a case-by-case basis.[31]

3.32 Hydro Tasmania welcomed the bill's focus on ensuring that projects funded under the Emissions Reduction Fund be additional to normal business practices but advocated flexibility. It recommended that the assessment of projects for inclusion in the Emissions Reduction Fund take into consideration the influence of geographic location.[32]

Development of methodologies

3.33 The Aboriginal Carbon Fund and the Kimberley Land Council commented in their submissions that the bill gives the minister an increased ability to propose and develop methodologies and expressed concern at this.[33] The Kimberley Land Council called it a 'top-down approach' and recommended:

> …to facilitate continued innovation, the ERF Bill should allow the public to develop and propose methodologies, including variations and amendments to existing methodologies.[34]

3.34 The Law Council of Australia observed that the current Carbon Farming Initiative framework provides opportunities for project proponents to suggest innovation in methodologies and that 'the ERF Bill will remove this ground-up approach and replace it with a 'top down' approach'—that is, one determined by the minister. It was of the view that, while the bill could streamline the assessment and endorsement of methodology proposals, it could make participation in the Emissions Reduction Fund difficult for some groups and could 'inadvertently stifle innovation and research and development'.[35]

3.35 CO2 Australia expressed the view that the bill did not greatly expand the minister's responsibility for the development of methodologies and that it 'perhaps might simply be clearer'. It said in evidence:

> This bill really does introduce the opportunity to have energy efficiency technologies, other forms of industrial abatement, subject to a rigorous methodology in the same way that the land sector is, and then those projects can essentially be part of the marketplace as a whole, so I think there is an advantage to that. It offers companies more opportunity to explore the space.[36]

3.36 The Department of the Environment reported that it had consulted with a range of stakeholders on changes to methodology development and that ministerial

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31 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, pp 56–57.

32 Hydro Tasmania, *Submission 7*, p. 2.

33 Aboriginal Carbon Fund, *Submission 5*, p. 3; and Kimberley Land Council, *Submission 12*, p. 4.

34 Kimberley Land Council, *Submission 12*, p. 4.

35 Law Council of Australia, *Submission 17*, p. 5.

36 Dr Chris Mitchell, Managing Director, CO2 Australia, *Committee Hansard*, 1 July 2014, p. 6.

discretion had 'not been a significant concern'. It pointed out that, under the current legislation, the minister already decides whether or not to make a methodology determination. The department stated:

> …there might be some misunderstandings about the extent of the changes in the legislation. In the current CFI act, a decision to make or not to make a methodology determination is a decision for the minister, so the minister has that discretion. The minister continues to have the role of deciding whether or not a make a methodology determination. As legislative instruments they are subject to parliamentary scrutiny, so there is that very important parliamentary scrutiny process.[37]

3.37 The department reported that it had listened to stakeholder feedback about the development of methodologies. It said:

> There was quite a lot of feedback from various stakeholders about the time required to develop and assess methodologies. We undertook a range of stakeholder consultation processes around methodology development. So a number of the changes that you see reflected in the legislation are a response to stakeholder feedback.[38]

3.38 In addition, the department highlighted the ability for stakeholders to have input into the development of methodologies. It observed:

> These methodologies under the Emissions Reduction Fund will be developed through technical working groups. There is information provided about the work of the technical working groups through, for example, an Emissions Reduction Fund newsletter. The membership of those technical working groups or access to information about what the technical working groups are doing is very open. They are collaborative processes. So there are lots of opportunities for people to make their views known and to have input into it.[39]

3.39 The department stated that the amending legislation not only allows stakeholder input into methodology development, via technical working groups, but also allows the minister to propose methodologies that have been seen to be successful in other schemes. As under the current legislation, methodologies must meet the offsets integrity standards and the minister will continue to be advised by the Emissions Reduction Assurance Committee (formerly the Domestic Offsets Integrity Committee). The department stated:

> So if, for example, the minister was interested in a methodology that had been developed from another scheme—the Clean Development Mechanism or another offset scheme overseas—the minister could ask…the emissions

37 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 48.

38 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 48.

39 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 48.

> assurance committee to assess that methodology and advise him on whether or not that method is suitable under the Emissions Reduction Fund…[40]

3.40 The department also noted that the bill provides the ability 'to establish priorities for methodology development' and that this had come about in consultation with stakeholders through technical working groups. It said:

> …there is an ongoing…work program for methodology priorities. That…would also be a collaborative process where, for example, industry or proponents could bring forward an idea that they would like to develop a methodology around a particular area. Then, effectively, the minister could consider that and consult with industry themselves about whether they would like to pursue that sort of methodology proposal and then, for example, publish a list of priorities where further methods could be developed.[41]

3.41 The department further stated:

> So the process of prioritising it collaboratively in consultation with business means that there is a transparent process of thinking through what really are the priorities, what are the methods that we need to bring forward the biggest sources of low-cost emissions reductions.[42]

Auction process

3.42 The Aboriginal Carbon Fund was of the view that the proposed auction process did not appear to be transparent.[43] The Kimberley Land Council, similarly, commented on the apparent lack of transparency in the auction process:

> Without transparent and up-front information on the likely price for abatement, Indigenous communities will not be in a position to undertake the advanced planning—including feasibility assessments—required to participate in the ERF.[44]

3.43 The Cement Industry Federation and National Lime Association of Australia expressed some concern at the possible administrative burden created by the auction process and suggested 'that a tender process be considered as the key instrument to select projects until the proposed review at the end of 2015'.[45]

3.44 The Grattan Institute gave evidence that 'using reverse auctions is a perfectly viable way of reducing emissions, possibly at moderate cost', but that greater detail on

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40 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, pp 48–49.

41 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 49.

42 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 49.

43 Aboriginal Carbon Fund, *Submission 5*, p. 3.

44 Kimberley Land Council, *Submission 12*, p. 5.

45 The Cement Industry Federation and National Lime Association, *Submission 7*, p. 3.

the setting of baselines and the limit of funding needed to be provided. The Institute also noted that absence of detail about the safeguard mechanism could affect the auction process and the quality of bids.[46]

3.45 The Clean Energy Regulator described the auction process as 'a very simple process to start with', where price would be 'the sole criterion'. The Regulator reported in its evidence to the committee that it would verify that each participant is proposing a credible amount of abatement.[47] It stated:

> So the intention is to have a competitive auction process but also a process which encourages people to make their offers on realistic and conservative assumptions…[48]

3.46 The Department of the Environment noted that it 'would ultimately be up to proponents to bid in what they see as a fair return or the cost of their project, and the auction process would determine whether they were successful'.[49]

Enforceability and contract terms

3.47 The committee heard evidence from a number of witnesses on the options for enforcing compliance for projects registered under the Emissions Reduction Fund. CO2 Australia was of the view that compliance via contract provisions was preferable to legislation.[50]

3.48 The Law Council of Australia echoed this view, commenting that statutory penalties were 'not a particularly helpful approach' and that 'the better approach would be for there to be a contractual relationship set up which would create a commercial obligation'.[51]

3.49 The Clean Energy Regulator informed the committee that it had released a draft Emissions Reduction Fund contract for consultation and that 'it is a commercial contract like any other', with 'the obligations on the supplier to deliver and the obligations on the purchaser to pay'.[52] It stated that, while the bill allows more flexibility in reporting and auditing for project proponents, 'that does not relieve them

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46 Mr Tony Wood, Program Director, Energy, Grattan Institute, *Committee Hansard*, 1 July 2014, pp 41 and 43–44.

47 Ms Chloe Munro, Chair and Chief Executive Officer, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 16.

48 Ms Chloe Munro, Chair and Chief Executive Officer, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 19.

49 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 53.

50 Dr Chris Mitchell, Managing Director, CO2 Australia, *Committee Hansard*, 1 July 2014, pp 4–5.

51 Mr Greg McIntyre SC, Law Council of Australia, *Committee Hansard*, I July 2014, p. 11.

52 Ms Chloe Munro, Chair and Chief Executive Officer, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, pp 16–17.

of the obligation to demonstrate that they have delivered the abatement, and it does not change our opportunities to examine that before issuing the credits'.[53]

3.50 The Aboriginal Carbon Fund commented in its submission that the proposed five-year contract periods were too short, thus compounding 'the problem with the single crediting period'.[54]

3.51 The Carbon Market Institute suggested aligning the five-year contract period and the seven-year crediting period. It proposed that this would offer 'more certainty and less risk' as projects might not otherwise find a buyer for their Australian carbon credit units in the remaining two years after the end of the contract. The Institute was also of the view that:

> If the contract period is too short, clearly it will be more difficult to get finance…[55]

3.52 In its evidence, the Department of the Environment explained that the Government was still consulting with the market on the contract length but that its preference was for five-year contracts. It explained that this approach was to provide 'certainty to proponents' that they would receive 'five years of credits at a fixed price', while giving them the ability to sell credits to other proponents in the market for the final two years.[56]

Carbon sequestration

3.53 The committee received evidence related to the change the bill makes to permanence obligations for carbon sequestration projects. The Wentworth Group of Concerned Scientists stated that the proposed change from a 100-year permanence period to a 25-year period would 'weaken the permanence obligations'.[57] It also pointed to a lack of understanding about 100-year permanence, stating that it 'does not mean the land is locked up' and that 'if you want to change the land use you simply buy a carbon credit for the amount of carbon you would be replacing'.[58]

3.54 Carbon Farmers of Australia supported the move from a 100-year to a 25-year permanence period. Carbon Farmers stated that it had 'spent many hours with the department' and that:

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53 Ms Chloe Munro, Chair and Chief Executive Officer, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 16.

54 Aboriginal Carbon Fund, *Submission 5*, p. 3.

55 Mr Peter Castellas, Chief Executive Officer, Carbon Market Institute, *Committee Hansard*, 1 July 2014, p. 31.

56 Mr Trevor Power, Acting First Assistant Secretary, Emissions Reduction Taskforce, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 52.

57 Mr Peter Cosier, Director and Member, Wentworth Group of Concerned Scientists, *Supporting Statement*, 1 July 2014, p. 2.

58 Mr Peter Cosier, Director and Member, Wentworth Group of Concerned Scientists, *Committee Hansard*, 1 July 2014, p. 42.

> The 25-year rule is one of the ones we have fought hard for.[59]

3.55 Carbon Farmers of Australia reported that engaging in projects with a 100-year permanence period was seen by their members as 'pure risk' and that 'the fear was palpable'. It commented that, with the proposed introduction of the 25-year permanence period, 'people are starting to understand how the process can be less punitive'.[60]

3.56 The ability to aggregate carbon sequestration projects under the changes to the legislation was also welcomed by Carbon Farmers of Australia. It was of the view that this 'takes away the fear that people will be left to stand on their own and face the consequences of disasters they could not control'.[61]

3.57 The Department of the Environment noted in its evidence that the White Paper emphasised the importance of project aggregation to pool 'small-scale sources of emissions'. It observed that the legislation removes 'potential barriers to sequestration' and makes the 'aggregation of land sector projects simpler'.[62]

Eligible interest holder consent

3.58 A point raised by the Law Council of Australia in its evidence to the committee was that the bill allows a proponent to conditionally register a project, go to auction and be granted a contract before obtaining the consent of eligible interest holders. The Law Council commented that this could lead to a proponent spending time and money on a project that was ultimately unsuccessful due to a lack of consent from the eligible interest holders.[63]

3.59 The Law Council also raised the need to seek consent from native title holders, highlighting that differences could exist between 'exclusive-possession native title and those who have a non-exclusive possession native title'.[64] Given the complexities of identifying native title holders, the Law Council advised obtaining their consent early in project planning.

3.60 The Department of the Environment clarified for the committee that the conditional registration provision was in response to requests from proponents to speed up the process by allowing the registration and auction process to take place while consent was being sought from eligible interest holders. It stated:

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59 Mrs Louisa Kiely, Director, Carbon Farmers of Australia, *Committee Hansard*, 1 July 2014, p. 37.

60 Mr Michael Kiely, Director, Carbon Farmers of Australia, *Committee Hansard*, 1 July 2014, p. 38.

61 Mr Michael Kiely, Director, Carbon Farmers of Australia, *Committee Hansard*, 1 July 2014, p. 38.

62 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 56.

63 Mr Greg McIntyre SC, Law Council of Australia, *Committee Hansard*, I July 2014, pp 8–9.

64 Mr Greg McIntyre SC, Law Council of Australia, *Committee Hansard*, I July 2014, p. 10.

> The reason that change was made was because proponents were saying it takes a long time to go and get the consents and if we have to do that without having gone through the auction yet then we can waste a lot of time and money without knowing yet whether or not we are successful at auction. So they will go through auction and then finalise those consents.[65]

3.61 The Clean Energy Regulator confirmed that the change to obtaining eligible interest holder consent is a matter that has 'been raised by stakeholders variously to ourselves and the department'. It commented that the change means that 'the proponent has a greater period of time in which to seek consent because often it can take some time'. [66]

3.62 Notwithstanding this change, the Regulator stressed that the requirement to obtain eligible interest holder consent is 'absolutely clear' and it advises proponents to consider it at the planning stage of a project. The Regulator said that if a proponent chooses to proceed without that consent, 'they have accepted that risk'.[67]

3.63 The Department of the Environment supported the Regulator's evidence that projects would not receive credits without the consent of eligible interest holders. It stated:

> The way it works is that they cannot receive any credits until those consents are in place. The regulator has indicated that it would be a conditioned precedent under the contract: the contract would not come into effect until those consents were in place, and they cannot receive credits until those consents are in place.[68]

Committee comment

3.64 The committee supports the Carbon Farming Initiative Amendment Bill 2014 as a key component of the Government's response to climate change.

3.65 The establishment of the Emissions Reduction Fund will expand and streamline the Carbon Farming Initiative. This will not only result in significant benefits to land-based carbon abatement projects but open up the scheme to innovative projects in all sectors. The committee considers that this is an important element in the Government's aim to reduce emissions at lowest cost. This will benefit business and the Australian community as a whole.

3.66 The committee further notes that the bill will deliver a smooth transition for proponents of carbon abatement projects registered under the current Carbon Farming

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65 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, pp 55–56.

66 Ms Mary-Anne Wilson, General Manager, Carbon Farming, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 14.

67 Ms Chloe Munro, Chair and Chief Executive, Clean Energy Regulator, *Committee Hansard*, 1 July 2014, p. 15.

68 Ms Maya Stuart-Fox, Assistant Secretary, Legislation and Policy Frameworks Branch, Department of the Environment, *Committee Hansard*, 1 July 2014, p. 56.

Initiative and an essential ongoing market for credits in the event the carbon pricing mechanism is repealed.

3.67 The committee acknowledges that there has been widespread consultation in the development of the legislation and that this consultation is continuing with regard to methodology development, contract periods and the design of the safeguard mechanism, which will commence on 1 July 2015.

3.68 In addition, the committee considers that the Clean Energy Regulator has the expertise and resources to commence the administration of the Emissions Reduction Fund immediately.

Recommendation 1

3.69 The committee recommends that the Carbon Farming Initiative Amendment Bill 2014 be passed.

Senator Anne Ruston
Chair