2

Key issues arising from the legislation

Introduction

2.1 As identified in chapter one, inquiry participants expressed broad support for the proposed legislation and general satisfaction with amendments that have been made following consultation on an exposure draft by the Department of Climate Change and Energy Efficiency.

2.2 Notwithstanding this support, however, a number of aspects of the proposed carbon farming scheme remain of concern. The Committee has not attempted to address every matter, but will focus in this chapter upon the following issues raised in evidence to the inquiry:

- methodologies;
- additionality;
- permanence and the risk of reversal buffer;
- native title;
- Natural Resource Management (NRM) plans; and
- perverse outcomes.

Methodologies

2.3 Offsets projects will be required to use methodologies assessed and endorsed by the Domestic Offsets Integrity Committee (DOIC) and approved by the Minister. Methodologies may be developed by either

government agencies or private proponents, and will contain detailed rules for implementing and monitoring specific abatement activities.[1]

2.4 The Committee notes that methodologies have already been developed for manure management, landfill emissions, savanna farm management and reforestation, and that work is underway on methodologies for soil carbon, reductions in livestock emissions and for application in range lands.[2]

2.5 In its submission, the CSIRO supported the scheme's approach to methodologies, stating that it provides a 'continuous opportunity' for methodologies to be submitted and therefore:

> ... allows the abatement approaches to evolve as the science evolves and as new technical opportunities are generated. This approach is likely to stimulate innovation and continuous improvement in abatement methodologies.[3]

2.6 In evidence, Professor Barlow and Professor Grace highlighted some of the international opportunities, describing Australia as 'in the driver's seat in terms of where we are heading with methodologies', but also emphasised the need for further investment in research and development.[4] Professor Barlow stated that there is a imminent risk of a 'lack of delivery to Australia's farming communities'.[5]

2.7 The NSW Farmers' Association argued that significant new funding is required to 'fast track' the development of methodologies that are relevant to commercial agriculture.[6]

2.8 Other inquiry participants also emphasised the need for strong and robust science to support methodologies and highlighted the time necessarily involved in their development.[7]

2.9 Participation in the scheme is contingent upon a methodology determination being made by the Minister. In cases where methodologies do not exist, this will delay uptake of the scheme.[8] The NSW Farmers'

1 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 48.

2 Mrs Shayleen Thompson, Proof Transcript of Evidence, 3 May 2011, p. 46.

3 CSIRO, Submission No. 11, p. 3.

4 Professor Snow Barlow, Proof Transcript of Evidence, 3 May 2011, p. 3; Professor Peter Grace, Proof Transcript of Evidence, 3 May 2011, p. 3.

5 Professor Snow Barlow, Proof Transcript of Evidence, 3 May 2011, p. 3.

6 NSW Farmers' Association, Submission No. 67, p. 9.

7 Mr Mark Wootton, Proof Transcript of Evidence, 3 May 2011, p. 11; Mr David Putland, Proof Transcript of Evidence, 3 May 2011, p. 34; Greening Australia, Submission No. 43, p. 9.

8 Winemakers' Federation of Australia, Submission No. 54, p. 1.

Association commented that although the scheme is being marketed as being primarily about farming:

> ... the activities available to commercial farmers are those least ready for market in regard to basic science, available technology and established methodologies.[9]

2.10 Groups such as the NSW Farmers' Association and Winemakers' Federation of Australia advocated support for the development of a broad range of methodologies that go beyond an emphasis upon forestry related projects.[10] AUSVEG also pointed out that the content of the additional list, and therefore activities that are acceptable, will influence methodology development.[11] In many cases, too, development of a methodology will be beyond the scope of individual growers. Mr David Putland of Growcom told the Committee in relation to a current fieldwork project being undertaken:

> ... turning some of those early results into a methodology is quite a time consuming process. It needs to be replicated across multiple soil types, crop types and farming systems, for example. That is well beyond the scope of an individual grower and so needs to be a process that is encouraged and sponsored by government.[12]

2.11 Like other submitters, GreenCollar Climate Solutions pointed out that the development of methodologies is both costly and time consuming. It also offered the following comments in relation to intellectual property and compensation:

> ... the private sector has been and continues to be an important driver of methodology development and innovation in the carbon space, and that over time, the delivery of methodologies from the private sector can provide significant intellectual assets to the scheme. The CFI does not however offer a means to remunerate intellectual property, and therefore offers no direct incentive for methodology development.[13]

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9 NSW Farmers' Association, Submission No. 67, p. 5.

10 NSW Farmers' Association, Submission No. 67, p. 8; Winemakers' Federation of Australia, Submission No. 54, p. 3;

11 AUSVEG, Submission No. 69, p. 4.

12 Mr David Putland, Proof Transcript of Evidence, 3 May 2011, pp. 34-35. See also Australian Forest Growers, Submission No. 4, p. 2.

13 GreenCollar Climate Solutions, Submission No. 17, p. 1.

2.12 GreenCollar advocated that a compensation mechanism would incentivise methodology development.[14]

2.13 Methodologies are an integral component of this scheme. The Committee considers that support for the research and development that is essential to methodology development must be forthcoming. Support for groups within the land sector for which methodologies are not well advanced is also important. In this regard, the Committee notes the Department's comments about this issue:

> A number of the stakeholders, as you say, have raised this desire for more research and development and outreach funding to support carbon farming, so that is something that government is thinking about. The other thing I should say, though, is that the government is providing quite a lot of support to the development of the methodologies, and that is looking to pick up the outcomes of the research work that [the Department of Agriculture, Fisheries and Forestry] has been doing over the last few years and putting it into this methodology that will give people the wherewithal to start doing these projects and estimate the emissions reductions on the ground. The department has work streams in place, and we have set up technical working groups with stakeholders, scientific experts and so forth who are working together on putting these methodologies in place, supported by the department. Soil is one of the ones that are in that work stream. We also have work going ahead on avoided deforestation and a few of the others.
>
> ... the government is actually doing quite a bit at the moment to support that effort; it is just that it is being done through a collaborative partnership-type approach rather than through giving people grants to go off and develop up some more of these methodologies.[15]

2.14 The Committee supports the view that there is a need for further funding for research and development and strongly encourages the Department of Climate Change and Energy Efficiency to examine this issue further.

14 GreenCollar Climate Solutions, Submission No. 17, p. 3.

15 Mrs Shayleen Thompson, Proof Transcript of Evidence, 3 May 2011, p. 53.

Additionality

2.15 The Explanatory Memorandum notes that methodologies must pass an additionality test:

> The purpose of the additionality test is to ensure that credits are only issued for abatement that would not normally have occurred and, therefore, provides a genuine environmental benefit.
>
> The Government's intention is that this test will enable crediting of activities that improve agricultural productivity or have environmental co-benefits, but which have not been widely adopted.[16]

2.16 Activities that are determined to pass the additionality test will be listed in the regulations, forming a 'positive list'.

2.17 The positive list will be put together by the Minister, acting on the advice of the DOIC. It is the Minister's responsibility to consider whether a project is 'beyond common practice', along with other matters the Minister considers relevant. The purpose of this common practice test is to provide a streamlined way of identifying activities that are genuinely additional.[17] Further, activities that are not deemed to be additional would be added to a 'negative list'.

2.18 Concerns about testing to determine and define additionality were raised by submitters, primarily concerned that given the list would be determined through regulations, it would be difficult to determine the take up rate of the scheme until the regulations were prepared and made public.[18]

2.19 The National Association of Forest Industries expressed particular concerns about additionality and the common practice test, and advocated that Kyoto-compliant forestry activities should be formally recognised under the scheme.[19] Similarly, the Queensland Government suggested that the additionality test is likely to render many Kyoto-compliant reforestation projects ineligible.[20]

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16 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 53.

17 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, pp. 53-4.

18 Carbon Farmers of Australia, Submission No. 16, p. 15; Australian Pork Limited, Submission No. 58, p. 2.

19 National Association of Forest Industries, Submission No. 27, p. 6.

20 Queensland Government, Submission No. 61, p. 2.

2.20 Environmental Farmers Network noted that the definition of whether an activity was common practice would change over time, with once uncommon methodologies becoming common over time.[21]

2.21 The creation of a negative list was also questioned. The Australian Industry Greenhouse Network suggested that the negative list had the potential to open the door to regulatory interference, and that any activity that complied with relevant planning and environmental instruments should be approved.[22]

2.22 The Australian Industry Greenhouse Network also suggested it would be difficult to determine and apply activities that were 'common practice', and that it would be possible for regulations to be made that were not motivated by climate change policy.[23]

2.23 The National Farmers' Federation also noted the 'common practice test' may present difficulties, suggesting that requiring farmers to demonstrate that activities were not common practice would place a limit on many abatement projects.[24]

2.24 It was suggested by several submitters that while the principle of additionality was important to demonstrate that abatement was genuine, there was also the perverse outcome of rewarding the least progressive farmers, and penalising early adopters.[25] It was also suggested by submitters that farmers already pioneering low carbon farming techniques should be rewarded or compensated.[26]

2.25 Centrefarm Aboriginal Horticulture Limited indicated the additionality requirements would impair the rights of Aboriginal people to participate in carbon markets: if an Indigenous group already had an agreement in place with the Australian Government to manage land for conservation purposes, any carbon abatement activities taking place could be considered 'business as usual' and excluded.[27]

2.26 The Australian Network of Environmental Defender's Officers (ANEDO) argued that additionality needed to be considered on a case-by-case basis

21 Environmental Farmers Network, Submission No. 1, p. 2.
22 Australian Industry Greenhouse Network No. 65, Submission, p. 3.
23 Australian Industry Greenhouse Network No. 65, Submission, p. 3.
24 National Farmers' Federation, Submission No. 32, p. 5.
25 Carbon Farmers of Australia, Submission No. 16, pp. 17-18.
26 Andrew Swann, Submission No. 3, p. 1.
27 Centrefarm Aboriginal Horticulture Limited, Submission No. 64, p. 2.

and that it is likely that the positive list would allow projects that are not additional to receive credits.[28]

2.27 Greenpeace suggested that the 'common practice test' was not clearly defined, and instead suggested a far simpler test of additionality, requiring a determination of whether the abatement would have occurred in the absence of the carbon farming legislation.[29]

2.28 The Committee heard further evidence on additionality from witnesses at its public hearing, with ANEDO reiterating the importance of considering applications on a case-by-case basis, unless it proves by the time of the 2014 review into the initiative to be an impediment to scheme participation.[30]

2.29 The Wentworth Group of Concerned Scientists identified the positive and negative lists as 'one of the great innovations in this bill', and as a 'great way to simplify a lot of complex economic questions'. It urged using the positive and negative lists as transitional mechanisms to get the scheme started, before adequate planning mechanisms were put into place.[31]

2.30 Witnesses from AUSVEG expressed concern that the common practice test for additionality may disadvantage farmers already undertaking low-emissions farming practices, such as low-till farming.[32]

2.31 During the hearing, the Committee asked the Department of Climate Change and Energy Efficiency about additionality, expressing concern about the lack of detail currently available about activities that would be placed on the positive and negative lists.

2.32 The Department advised the Committee that they intended to conduct consultations on the lists 'very soon', and noted that the Explanatory Memorandum to the bill contained examples of activities for the information of readers.[33] The Committee also noted items on the positive list would be non-commercial activities that were unlikely to happen without a carbon incentive.[34]

2.33 The Committee supports the need for additionality to be determined to show that activities undertaken through the scheme represent genuine

28 Australian Network of Environmental Defender's Offices, Submission No. 26, pp. 7-8.
29 Greenpeace, Submission No. 15, p. 3.
30 Mr Michael Power, Proof Transcript of Evidence, 3 May 2011, p. 18.
31 Mr Peter Cosier, Proof Transcript of Evidence, 3 May 2011, p. 41.
32 Mr David Putland, Proof Transcript of Evidence, 3 May 2011, p. 36.
33 Mrs Shayleen Thompson, Proof Transcript of Evidence, 3 May 2011, p. 50.
34 Mrs Maya Stuart-Fox, Proof Transcript of Evidence, 3 May 2011, p. 50.

abatement. Ensuring the value of Australian Carbon Credit Units (ACCUs) is vitally important for a trading scheme which is designed to create credits that can be sold overseas, as well as domestically.

2.34 The Committee notes the concerns about determining which behaviours are considered additional, and is sympathetic to groups worried about the current uncertainty surrounding additionality. Determining additionality through regulations allows the department to roll out the scheme quickly, but provides little information to potential scheme participants. The Committee is pleased to see that activities undertaken under the Greenhouse Friendly program will be accepted under the carbon farming initiative.[35]

2.35 The Committee understands concerns about activities that may or may not be included on the positive and negative lists, and is especially concerned that farmers currently undertaking best environmental practice farming may be disadvantaged. However, the Committee also notes the need for the scheme to be able to quickly approve or reject activities and methodologies through the use of a positive and negative list.

2.36 Suggestions that each activity be approved on a case-by-case basis may constitute a better way of determining additionality, but runs the risk of unduly constraining the operation of the scheme, and may also serve as a disincentive to participation.

2.37 On the balance of the arguments, the Committee supports the use of a positive list and a negative list to report on additionality, and encourages the Department of Climate Change and Energy Efficiency to release the relevant regulations as soon as practicable. Further, the Committee would like to see the issue of determining additionality reconsidered in the 2014 review of the scheme.

Permanence and the risk of reversal buffer

2.38 The Explanatory Memorandum (EM) notes that carbon removed from the atmosphere and stored in plants and soils can be released back into the atmosphere. To ensure offsets are genuine, sequestration must be permanent. Sequestration is generally regarded as permanent if it has been maintained on a net basis for around 100 years. Further, it notes that deliberate clear-felling of trees, or natural disturbance such as drought

35 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 59.

may cause carbon to be released from the soil, and that the bill needs to address these risks.[36]

2.39 The 100 year permanence requirement is accompanied by a risk of reversal buffer, which functions as insurance against the loss of carbon storage. The buffer is designed to ensure that ACCUs issued under the scheme represent permanent abatement by insuring the scheme against losses through fire and drought, wrongdoing, or necessary losses such as the creation of fire breaks. The bill sets the risk of reversal buffer at 5 per cent of the ACCUs issued unless the regulations provide otherwise (it is planned that the buffer will be adjusted over time to reflect actual losses of carbon across the scheme). The EM uses the following example to illustrate how the buffer works:

> The Bush Trust establishes an environmental mixed species planting.
>
> Their first report is made 5 years after the establishment of the planting. The amount of carbon sequestered during the period is 600 tonnes.
>
> Once the risk of reversal buffer is applied, they receive 570 Kyoto ACCUs.[37]

2.40 Many submissions identified the 100 year definition of permanence to be excessive and to even function as a disincentive to participation in the scheme.[38]

2.41 Degree Celsius suggested that there is no convention that establishes that 100 years is permanent, that the 100 year figure has been chosen by policymakers, and suggests using the Voluntary Carbon Standard definition, which allows for a minimum of 20 years for a project up to 100 years.[39]

2.42 Carbon Farmers of Australia agreed with the assertion that the 100 year figure is a policy determination, not a technical one, and recommended that the ceiling for project permanence be set at 55 years.[40]

2.43 The North Australian Indigenous Land and Sea Management Alliance suggested that the rule is 'illogical and ill-matched to Australian

36 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 63.

37 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 68.

38 Goulburn Broken Catchment Management Authority, Submission No. 19, p. 1; Fitzroy Basin Association, Submission No. 28, p. 1; Degree Celsius, Submission No. 14, p. 4.

39 Degree Celsius, Submission No. 15, p. 3.

40 Carbon Farmers of Australia, Submission No. 16, p. 13.

conditions', suggesting that 'locking up' land will limit participation by Indigenous groups, who would not wish to limit their options for land use. Instead, the North Australian Indigenous Land and Sea Management Alliance suggested recognition of commitments exceeding 20 years at a lower price than 'permanent' credits.[41]

2.44 The Winemakers' Federation of Australia believed its industry would be unable to participate in parts of the proposed scheme due to the less than 50 year optimum lifespan of grape vines.[42]

2.45 The Australian Plantation Products and Paper Industry Council also believed the 100 year definition of permanence would serve as a disincentive to participation, as the risk is placed entirely upon investors, and the cost of private insurance against damage to projects is likely to be prohibitive. They suggested a shared risk model in which the government plays a role, as had been planned with carbon capture and storage under the Carbon Pollution Reduction Scheme.[43]

2.46 Opinions as to the value and appropriateness of the risk of reversal buffer varied amongst submitters and witnesses. Greenpeace suggested the 5 per cent buffer was 'very low', and 'not an accurate reflection of the reversal risks'.[44]

2.47 Verified Carbon Standard suggested the application of a uniform risk level across all projects means there is no incentive for projects to conduct accurate risk assessments, and that there is also no incentive for those undertaking projects to take action to mitigate non-permanence risks, such as creating fire breaks, and that 5 per cent may even constitute an underestimate of risk.[45]

2.48 Bushfires were also considered a cause for concern by WWF-Australia, who suggested the 5 per cent buffer was too low a general rate to adequately protect against inadvertent carbon release, in particular, bushfires in forestry projects.[46]

2.49 Australian Forest Growers also identified the length of the permanence period as a disincentive, and suggested that there be some form of

41 North Australian Indigenous Land and Sea Management Alliance, Submission No. 6, p. 4.

42 Winemakers' Federation of Australia, Submission No. 54, p. 3.

43 Australian Plantation Products and Paper Industry Council, Submission No. 7, p. 5.

44 Greenpeace, Submission No. 15, p. 2.

45 Verified Carbon Standard, Submission No. 13, p. 3.

46 WWF-Australia, Submission No. 34, p. 3.

incentive provided by Government to encourage participation, citing the variable risk of reversal buffer as an insufficient incentive.[47]

2.50 Permanence and the risk of reversal buffer were comprehensively examined during the Committee's public hearing. Mr Mark Wootton of The Climate Institute indicated that farmers were looking to engage with the market and add value to their businesses, and would assess the benefits and costs of participating in carbon farming, like any other business decision. In his discussions with farmers there was significant concern about the permanence rule.[48]

2.51 The Committee discussed the origin of the 100 year permanence requirement with Mr Corey Watts of The Climate Institute, who indicated that a 100 year requirement was seen as 'the imprimatur of a good scheme' and that it had been applied by the Voluntary Carbon Standard.[49]

2.52 Mr Peter Cosier of the Wentworth Group of Concerned Scientists suggested using the 100 year figure may be unimportant:

> We do not see any need to use the '100-year' phrase. If you just say, 'If you are paid to sequester carbon and you wish to relinquish it, you are allowed to, but you have to pay for the relinquishment credits,' just leave it at that. We do not see any great advantage in them putting this 100-year stuff on it. I know that if I go in to buy a farm and someone says to me, 'There's a covenant on the bit of land that you want to buy,' and it has this 100-year thing on it, I'm not going to touch that. But in fact it is not a complicated thing at all. If you sequester it, you get paid for it; if you relinquish the credits, you have to buy them. Just leave it at that. Make the rule more transparent.[50]

2.53 The Department of Climate Change and Energy Efficiency advised that when the Carbon Pollution Reduction Scheme was designed, there was no time limit definition for permanence, which had been an issue of concern for industry. As a result, the department entered into a period of consultation and found no real difference between 70 and 100 years, as both were long periods that would cover multiple generations. As a result, the 100 year definition was adopted as it was consistent with international standards.[51]

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47 Australian Forest Growers, Submission No. 4, p. 5.

48 Mr Mark Wootton, Proof Transcript of Evidence, 3 May 2011, p. 8.

49 Mr Corey Watts, Proof Transcript of Evidence, 3 May 2011, p. 8.

50 Mr Peter Cosier, Proof Transcript of Evidence, 3 May 2011, p. 42.

51 Mrs Maya Stuart-Fox, Proof Transcript of Evidence, 3 May 2011, p. 53.

2.54 The representatives of The Climate Institute noted that while the 100 year permanence requirement was of concern to farmers and would 'scare some people off', it was necessary so ACCUs would be comparable to similar products available overseas, and therefore attractive in the international marketplace.[52] This point was supported by Mr Michael Power of the Australian Network of Environmental Defender's Offices, who noted that it was important to retain a strong definition of permanence to show that ACCUs represented genuine carbon abatement.[53] Professor Snow Barlow and Professor Peter Grace also supported a robust permanence mechanism.[54]

2.55 Mr Peter Balsarini of Carbon Conscious advised that government backing of the scheme served as another pillar of legitimacy for ACCUs, unlike credits being sold from other countries with less stringent accounting standards.[55]

2.56 Both witnesses from The Climate Institute noted that the purpose of the scheme was to create a carbon credit trading scheme, and that it was the nature of the program for landholders to pay for carbon if they no longer wished to store it, and that in attempting to design a program that aligned private profit with public good there would always be difficulties.[56]

2.57 The Wentworth Group of Concerned Scientists indicated that the ability of farmers to relinquish their credits if they wished to alter land use may not have been fully explained.[57]

2.58 Mr Peter Cosier of the Wentworth Group acknowledged that the permanence requirement may be a disincentive to farmers, but that it would benefit farmers who used it on marginal land or to complement other land uses:

> My personal view is that they will adopt it where there are no-regret actions. A no-regret action is, for example, if you want to put riparian vegetation on your farm. That usually puts up the price of your property and does not affect or has a minimal impact on your farming enterprise. You say to yourself 'I'm never going to want to clear that land again; so, if I will get paid for doing that, that'll be great.' But if you are entering into a changing farming

52 Mr Corey Watts, Proof Transcript of Evidence, 3 May 2011, p. 10.
53 Mr Michael Power, Proof Transcript of Evidence, 3 May 2011, p. 19.
54 Professor Snow Barlow, Proof Transcript of Evidence, 3 May 2011, p. 4.
55 Mr Peter Balsarini, Proof Transcript of Evidence, 3 May 2011, p. 32.
56 Mr Corey Watts, Proof Transcript of Evidence, 3 May 2011, pp. 10-11.
57 Ms Claire Parkes, Proof Transcript of Evidence, 3 May 2011, p. 41.

> management enterprise where you are aware that if you are paid to sequester carbon and you wish to relinquish those credits you have to buy credits at the market price... ...you are going to be very risk averse in changing your land use. You are really locking in a land-use practice, effectively, because you will not be able to afford to buy your way out.[58]

2.59 Dr Sarah Ryan of the National Natural Resource Management Regions Working Group indicated to the Committee that she was aware that landholders considered the permanence period to be long and risky, and that it looked like a potentially strong disincentive.[59]

2.60 Addressing the point that farmers could simply buy the credits if they wished to remove a carbon sink, Dr Ryan noted:

> We understand people can relinquish their forest carbon and buy credits back, but of course people are so uncertain about how that might work even in 20 or 30 years, let alone 100. So it is a concern to us. It may be something in the perception.[60]

2.61 The Committee also discussed the 5 per cent risk of reversal buffer with witnesses. Mr David Putland noted the buffer functioned as a form of insurance,[61] while Mr Andrew Macintosh of the Centre for Climate Law and Policy at the Australian National University noted that other countries had higher buffers, but that the 5 per cent figure seemed 'fair and reasonable' in terms of the sorts of risks faced in Australia.[62]

2.62 The Committee notes concerns that the 100 year permanence requirement may act as a disincentive for some farmers who are unwilling to commit to a project for an extended period, and understands that farmers may be reluctant to 'lock in' land use for an extended period.

2.63 However, the Committee also believes the integrity of the scheme and the credits it generates must be maintained by ensuring that abatement is genuine. The Committee notes concerns about carbon farming projects being established on arable land, and believes that a 100 year permanence requirement would act as but one mechanism that would prevent land that should be used for food and fibre production being converted into carbon sinks for short-term financial gain.

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58 Mr Peter Cosier, Proof Transcript of Evidence, 3 May 2011, p. 42.

59 Dr Sarah Ryan, Proof Transcript of Evidence, 3 May 2011, p. 13.

60 Dr Sarah Ryan, Proof Transcript of Evidence, 3 May 2011, p. 13.

61 Mr David Putland, Proof Transcript of Evidence, 3 May 2011, p. 36.

62 Mr Andrew Macintosh, Proof Transcript of Evidence, 3 May 2011, p. 45.

2.64 Further, the Committee believes the permanence requirement will benefit farmers seeking a complementary source of income from land that might otherwise be marginal. The Committee also sees value in these plantings being used to address environmental degradation.

2.65 The Committee has some concerns that the risk of reversal buffer may prove to be too low at its current 5 per cent level, given the danger bushfires pose in Australia, but notes the plan to alter the buffer as the scheme is implemented and more data is made available on the risks to carbon storage sites. Further, the Committee notes the buffer functions as a form of insurance, and while there may be some losses due to bushfire in one part of the country, a flat 5 per cent buffer could be expected to cover any losses due to bushfire across the country.

Native Title

2.66 The bill contains provisions dealing exclusively with native title issues, and seeks to make it clear how holders of Aboriginal and Torres Strait Islander land can participate in the scheme.

2.67 These Indigenous-specific provisions have been welcomed by many Aboriginal and Torres Strait Islander submitters, including the National Indigenous Climate Change project team, who believe the bill 'lays positive foundations for Indigenous participation in emerging carbon markets'.[63]

2.68 Most submitters who raised Indigenous issues were supportive of the bill's treatment of recognised native title land, describing it as a 'rare opportunity',[64] 'appropriate'[65] and 'welcomed'.[66]

2.69 However, the same submitters expressed concern that some issues relating specifically to Indigenous participation in the program had not properly been addressed, primarily, provisions concerning non-exclusive native title holders.

2.70 The National Native Title Council (NNTC) argued that while the bills provide clarity for native title holders and Aboriginal land rights land that

63 National Indigenous Climate Change project group, Submission No. 46, p. 2.

64 Australian Institute of Aboriginal and Torres Strait Islander Studies, Submission No. 52, p. 1.

65 National Native Title Council, Submission No. 41, p. 2.

66 National Indigenous Climate Change Coalition, Submission No. 57, p. 1.

is freehold, they do not provide the same for native title non-freehold land rights land.[67]

2.71 Centrefarm Aboriginal Horticulture Limited supported the position of the NNTC, praising the treatment of carbon credit rights on freehold land rights land, but noting:

> It remains unclear that similar rights are afforded to native title holders once a determination of exclusive possession has been made by the Federal Court. This uncertainty will lead to a lack of confidence in the market place and potentially expensive legal challenges to provide certainty.
>
> Where non-exclusive possession of native title is determined over a national park or conservation reserve, the ability of State governments to trade in carbon credits should be subject to an Indigenous Land Use Agreement (ILUA) or other formal agreement.[68]

2.72 The NNTC suggested that the bill fails to treat non-exclusive native title rights as valuable property and proposed that the bill be amended to provide a mechanism by which non-exclusive native title holders can be recognised as co-owners of a carbon sequestration right alongside state and territory governments.[69]

2.73 In its submission, the Northern Territory Government pointed out that very little land in the Northern Territory is exclusive possession native title and that it is therefore 'crucial' that non-exclusive native title be addressed in the bill.[70]

2.74 The NSW Aboriginal Land Council has also raised concerns about the application of the bill to different types of land in NSW.[71]

2.75 In its public hearing, the Committee heard from Dr Lisa Strelein of the Australian Institute of Aboriginal and Torres Strait Islander Studies, who noted there were still concerns about the treatment of non-exclusive native title.

2.76 Dr Strelein suggested that instead of viewing non-exclusive native title as akin to a licence, it should be seen as exclusive native title minus any

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67 National Native Title Council, Submission No. 41, pp. 2-3.

68 Centrefarm Aboriginal Horticulture Limited, Submission No. 64, p. 2.

69 National Native Title Council, Submission No. 41, pp. 3-6.

70 Northern Territory Government, Submission No. 30, p. 8.

71 New South Wales Aboriginal Land Council, Submission No. 44, p. 1.

rights and interests that have been recognised elsewhere. She provided the following example:

> When we look at the coexistence of native title on pastoral leases, we look at the rights and interests that the pastoral leases have under legislation. We compare that to the rights and interest that native title holders have, and where they conflict, native title gives way, but only where they conflict. So it is important conceptually to think of native title as 'exclusive possession minus'.[72]

2.77 Dr Strelein noted that Indigenous Land Councils had extensive experience working with pastoral industry issues, and that there was a strong desire to care for country amongst Indigenous groups. There was also a desire for Indigenous groups to also pursue environmentally sustainable economic development on their land.[73]

2.78 Further, Dr Strelein advised that it was time consuming and expensive to secure determinations on land for non-exclusive native title holders, and that it was important that Indigenous groups were fully informed and resourced.[74] She noted that Indigenous groups were relatively carbon literate, and that there may be a high take-up rate of the carbon farming initiative amongst Indigenous groups because of this high level of carbon literacy and experience with the pastoral industry.[75]

2.79 Looking at a group with experience in consent determinations, Dr Strelein informed the Committee of the Gunditj Mirring Traditional Owners, who hold non-exclusive native title rights and have extensive experience securing ILUAs to undertake projects on non-exclusive native title land.[76]

2.80 In their submission, the Gunditj Mirring Traditional Owners called for 'Aboriginal Title' rights recognised under the *Traditional Owners Settlement Act 2010* (Vic) to be recognised by the carbon farming legislation.[77] In looking at the group's situation, Dr Strelein indicated that there would now have to be a process of re-recognition of their ILUAs.[78]

2.81 The Committee received late correspondence from the Western Australian Government drawing attention to its concerns about the need for broader consultations about the relationship between native title holders and other

72 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 23.
73 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 25.
74 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 23.
75 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 26.
76 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 25.
77 Gunditj Mirring Traditional Owners Aboriginal Corporation, Submission No. 9, p. 1.
78 Dr Lisa Strelein, Proof Transcript of Evidence, 3 May 2011, p. 26.

stakeholders. The Committee believes broadest consultations are in the best interest of good legislative outcomes.

2.82 The Committee does have concerns about the treatment of non-exclusive native title in the bill, but understands that continued consultations and discussions with Indigenous groups are planned by the Department of Climate Change and Energy Efficiency. The Committee is optimistic that continued consultation and discussion will lead to a satisfactory resolution of non-exclusive native title issues.

Regional natural resource management plans

2.83 Project applications must be accompanied by a statement of consistency with the relevant regional natural resource management (NRM) plan. Regional NRM plans are considered a mechanism for local communities to have input on land use and planning with respect to abatement projects.[79]

2.84 This project requirement was criticised by several submitters, who generally saw it to be a bureaucratic burden that had the potential to reduce scheme participation.

2.85 Greening Australia saw the problem with NRM plan compliance differently, noting in its submission that 'the relevance of regional NRM plans to CFI approvals is highly variable across the country'.[80]

2.86 CO2 Group supported the assertions about bureaucracy and the quality of NRM plans, noting:

> Regional Natural Resource Management Plans are not well defined within the Bills and considering that resources in the development and maintenance of regional natural resource management plans have been variable there appears to be no quality control in relation to these plans and how they may affect carbon projects.
>
> Furthermore, since the legislation requires that all Local, State and Commonwealth planning and other regulatory requirements need to be met, it is questionable as to whether the references to potentially outdated NRM plans add value.[81]

79 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 24.

80 Greening Australia, Submission No. 43, p. 5.

81 CO2 Group, Submission No. 32, p. 5.

2.87 Greenfleet indicated in its submission that NRM bodies may propose to become project proponents or be aligned to project development groups, suggesting they would have a direct or perceived conflict of interest in project approval matters.[82]

2.88 On the other hand, several submitters, including WWF-Australia supported the requirements relating to NRM plans, noting that projects should conform to these plans as long as the NRM regulations themselves did not contain any perverse outcomes.[83]

2.89 The Committee discussed the role of regional NRM bodies with witnesses at its public hearing, and found general support for the involvement of these groups. Ms Nicola Rivers of the Australian Network of Environmental Defender's Offices noted the involvement of Landcare and NRM groups was 'crucial' as they would be able to assist farmers in determining whether they wanted to participate in the scheme.[84]

2.90 The Committee was also informed that the ability of NRM bodies to assist with carbon farming initiatives varied greatly, and that further government support of these bodies may be required. [85] Mr Corey Watts of The Climate Institute advised the Committee:

> ... while some NRM groups or catchment authorities are probably able to grapple with a proponent coming to them, wanting to do a large planting or develop some carbon farming, many would not be. So they are going to need assistance.[86]

2.91 This point was supported by the Chair of the National Natural Resource Management Regions Working Group, Dr Sarah Ryan, who said of the variability of the utility of regional NRM plans for carbon farming:

> ... a lot of plans are not yet capable of assessing what the impact of a carbon project would be. We certainly need a little bit more time and investment to make those more carbon ready.[87]

2.92 Dr Ryan also noted that the form of some NRM plans was dictated by the requirements of State legislation, and that as a result, they may not ever be suitable to be used for assessing carbon farming projects.[88]

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82 Greenfleet, Submission No. 20, p. 6.

83 WWF-Australia, Submission No. 33, p. 5.

84 Ms Nicola Rivers, Proof Transcript of Evidence, 3 May 2011, p. 21.

85 Mr Andrew Macintosh, Proof Transcript of Evidence, 3 May 2011, p. 44; Mr Mark Wootton, Proof Transcript of Evidence, 3 May 2011, p. 12.

86 Mr Corey Watts, Proof Transcript of Evidence, 3 May 2011, p. 12.

87 Dr Sarah Ryan, Proof Transcript of Evidence, 3 May 2011, p. 13.

2.93 Mr Corey Watts of The Climate Institute also supported the view that NRM bodies may wish to be involved in carbon farming activities themselves:

> We also know – and others will speak to this – there are NRM groups or catchment authorities who are hot to trot to get involved, to be aggregators of carbon. It probably will not be individual farmers for the most part – some of the large ones perhaps but the small guys no – and they will be gathering together either under the umbrella of industry groups or NRM/catchment groups. So catchment and regional NRM organisations have a really important role to play here not only in coordinating where it is best to put carbon plantings but also coordinating individual landholders with the marketplace.[89]

2.94 The Department of Climate Change and Energy Efficiency noted the importance of regional groups:

> ... we see them as the vehicles for local communities to have their say in terms of what land use activities happen in their regions. We see the main vehicle for dealing with the perverse outcomes problem – and these perverse outcomes can range from problems to do with local biodiversity or with water or whatever...[90]

2.95 The Committee understands the rationale behind including regional NRM plans in the requirements that need to be satisfied before a carbon farming project is approved. The Committee believes the inclusion of regional NRM plans does not constitute an additional layer of bureaucracy, instead it allows local communities to have a role in decision making, rather than having decisions imposed upon them from a Federal or State level.

2.96 As the form of many regional NRM plans are dictated by the requirement of state governments, the argument that they constitute yet another hurdle for a project is not sufficiently robust.

2.97 The Committee does acknowledge the potential for perceived conflicts of interest to apply if NRM groups act as project proponents, but also sees real value in NRM groups acting to assist smaller landholders in conducting carbon farming projects. As there are both benefits and potential disadvantages to NRM groups being project proponents, the Committee strongly encourages the Department of Climate Change and

88 Dr Sarah Ryan, Proof Transcript of Evidence, 3 May 2011, p. 13.

89 Mr Corey Watts, Proof Transcript of Evidence, 3 May 2011, p. 12.

90 Mrs Shayleen Thompson, Proof Transcript of Evidence, 3 May 2011, p. 12.

Energy Efficiency to consider, the role of regional NRM groups as project proponents, in its 2014 review of the scheme.

2.98 The Committee notes the weight of evidence suggesting that the quality of regional NRM groups and regional NRM plans vary significantly across the country, but that there is sufficient flexibility in NRM plans to assist with carbon farming projects.

2.99 The Committee believes that the issues raised concerning funding and training of regional NRM groups need to be seriously explored by the Department to ensure that their legislation is adequately supported by these groups.

Perverse outcomes

2.100 The bill recognises the possibility of perverse outcomes and includes a number of mechanisms to address these impacts and maximise environmental and community benefits. This includes creation of a 'negative list', which will exclude certain types of projects that might otherwise be eligible to receive credits.

2.101 In addition, Part 3, Division 12, Clause 56(2) of the bill states that the Minister must have regard to whether there is a significant risk that projects will have a significant adverse impact on:

- the availability of water;
- the conservation of biodiversity;
- employment; or
- the local community.

2.102 As noted earlier, offsets projects will need to comply with all state, Commonwealth and local government water, planning and environmental requirements and project proponents will be required to take account of NRM plans.[91]

2.103 The EM states that the Government will monitor the impact of the scheme on the environment and rural communities, and introduce further restrictions on abatement projects if there is evidence that the projects are

91 Mrs Shayleen Thompson, Proof Transcript of Evidence, 3 May 2011, p. 47.

likely to adversely impact prime agricultural land, water availability or biodiversity.[92]

2.104 The Committee received evidence from a number of parties, expressing concerns about possible perverse impacts arising from the scheme.

2.105 The Wentworth Group of Concerned Scientists identified three possible perverse outcomes:

- lack of environmental flows in rivers resulting from massive forestry plantations in catchments;
- shifts, at an individual level, from agricultural production to forestry, which while it might be a good decision for an individual, could have flow-on community, economic and social impacts; and
- impacts on biodiversity from monocultures.[93]

2.106 The Wentworth Group commented that:

> Without complementary land use controls and water use accounting arrangements in place, there is a risk that carbon forests could take over large areas of agricultural land or affect water availability. This could create adverse impacts on food and fibre production, and impact on regional jobs that are dependent on these industries.[94]

Competition with agricultural land and land use change

2.107 The National Farmers' Federation raised concerns about the possibility of perverse outcomes in relation to land use change. In particular, the National Farmers' Federation considered that the scheme has a disproportionate incentive for forestation that will lead to potential perverse impacts on communities, water, biodiversity and food production.[95] AUSVEG also highlighted its concerns about the bias towards forestry activities as did the Winemakers' Federation of Australia, which considered it would lead to competition with areas of high-productivity agriculture.[96]

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92 Carbon Credits (Carbon Farming Initiative) Bill 2011, Explanatory Memorandum, p. 7.

93 Mr Peter Cosier, Proof Transcript of Evidence, 3 May 2011, p. 40.

94 Wentworth Group of Concerned Scientists, Submission No. 59, p. 1.

95 Mr Charles McElhone, Senate Environment and Communications Legislation Committee Proof Transcript of Evidence, 20 April 2010, p. 24.

96 AUSVEG, Submission No. 69, p. 5; Winemakers' Federation of Australia, Submission No. 54, p. 4.

2.108 The NSW Farmers' Association raised the potential for land and water allocation conflict, and recommended that the scheme provide greater emphasis on supporting projects with food security and productivity co-benefits.[97]

2.109 Professor Snow Barlow made the following observation:

> You can only really fill the carbon sink once. It is not a long-term solution. It is only a short-term interim solution for the nation and for the country. But food has to be renewable. So we need to think very seriously about what land we use because we do not want to change the other parts of our lifestyle and we need to think very seriously about what land we need ongoing for food production because we want to remain an exporting country.[98]

2.110 It was suggested that the DOIC should have a set of strong guidelines that not only takes into account the sequestration potential of their projects but also the long term implications in terms of renewable food production.[99]

2.111 In evidence, Mr Peter Balsarini of Carbon Conscious Ltd, a company responsible for planting 8.5 million native mallee eucalypt trees for carbon sequestration since 2008, expressed a different point of view:

> If you have high-value agricultural land it would be very unlikely that you would put that back to native trees for a carbon sequestration event. The economics just would not work.[100]

2.112 Greenfleet expressed a similar view, arguing carbon forestry projects will remain peripheral to prime agricultural production.[101] Mr David Putland of Growcom echoed this view, but stated that it is an issue that will require monitoring over time.[102]

2.113 In evidence, the Department of Climate Change and Energy Efficiency informed the Committee that it also considered it was economically unlikely there would be perverse outcomes for agricultural production, 'but if there were concerns about it then the negative list would be exactly the way that you would address that'.[103]

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97 NSW Farmers' Association, Submission No. 67, pp. 6-7.

98 Professor Snow Barlow, Proof Transcript of Evidence, 3 May 2011, p. 4.

99 Professor Snow Barlow, Proof Transcript of Evidence, 3 May 2011, p. 4.

100 Mr Peter Balsarini, Proof Transcript of Evidence, 3 May 2011, p. 30.

101 Greenfleet, Submission No. 20, p. 7.

102 Mr David Putland, Proof Transcript of Evidence, 3 May 2011, p. 36.

103 Mrs Maya Stuart-Fox, Proof Transcript of Evidence, 3 May 2011, p. 51.

Real and genuine abatement

2.114 The Australian Network of Environmental Defender's Offices (ANEDO) emphasised that credits issued under the scheme must represent genuine, real and additional carbon abatement.[104] Both Greenpeace and WWF-Australia also argued that credits must represent verifiable, permanent emission reductions.[105]

2.115 ANEDO pointed out that 'offset credits allow someone else to pollute' and that without real abatement, the ultimate result could be a net increase in emissions. [106]

2.116 ANEDO emphasised that the scheme must not only avoid perverse outcomes for the environment or communities, but should ensure that opportunities to restore biodiversity and achieve co-benefits are promoted.[107]

Conservation covenants

2.117 The Australian Conservation Land Trusts Alliance raised concerns about potential perverse outcomes in terms of perpetual conservation covenants, including:

- landowner reluctance to establish conservation covenants due to uncertainty as to whether this will preclude them entering the carbon market;
- ongoing ownership and management costs for landowners that have already entered into covenants for the public good, but which have now lost the opportunity to enter carbon markets; and
- a move by landowners to decision making based primarily on carbon considerations rather than biodiversity.[108]

2.118 The Tasmanian Government also expressed concern about how the scheme would interact with state-based conservation initiatives, such as conservation covenants, noting that Tasmania has over 600 participants in voluntary perpetual covenants covering 75,000 hectares who would be disadvantaged.[109]

104 Mr Michael Power, Proof Transcript of Evidence, 3 May 2011, p. 17.
105 WWF-Australia, Submission No. 34, p. 2; Greenpeace, Submission No. 15, p. 2.
106 Mr Michael Power, Proof Transcript of Evidence, 3 May 2011, p. 17.
107 Mr Michael Power, Proof Transcript of Evidence, 3 May 2011, p. 17.
108 Australian Conservation Land Trusts Alliance, Submission No. 31, p. 6.
109 Tasmanian Minister for Climate Change, Submission No. 39, p. 4.

2.119 The Committee notes that the issue of conservation covenants was raised at the public hearing of the Senate Environment and Communications Legislation Committee and that the Department is working with non-government organisations to address this issue.[110]

Disadvantages early adopters

2.120 The Carbon Farmers of Australia stated in its submission that the additionality principle has a perverse outcome in that it:

> ... rewards the least progressive farmers and penalises those farmers who adopted conservation farming when it was frowned upon.[111]

2.121 A similar view was raised by the Winemakers' Federation of Australia, which pointed out that the wine sector has been an early adopter of environmental initiatives and may now be placed at a competitive disadvantage compared with late adopters.[112] The Alternative Waste Treatment Provider Carbon Credits Working Group also argued that the scheme 'punishes' alternative waste treatment providers who have been early movers in the voluntary carbon market because of the sector's capacity to generate high volume greenhouse reductions.[113]

Potential remedies

2.122 In evidence to the Committee, the Wentworth Group of Concerned Scientists considered that one mechanism to address many of the potential perverse impacts is regional natural resource management planning. Ms Claire Parkes told the Committee:

> ... the job of the regional natural resource management bodies is to marry up the science, the community views and the government's priorities into looking across the landscape, what the most appropriate land use is and where the priorities are in the landscape.[114]

110 Mrs Shayleen Thompson, Senate Environment and Communications Legislation Committee Proof Transcript of Evidence, 20 April 2011, p. 85.

111 Carbon Farmers of Australia, Submission No. 16, pp. 17-18.

112 Winemakers' Federation of Australia, Submission No. 54, p. 2.

113 Alternative Waste Treatment Provider Carbon Credits Working Group, Submission No. 56, p. 17.

114 Ms Claire Parkes, Proof Transcript of Evidence, 3 May 2011, p. 40.

2.123 The Wentworth Group also advocated using land use planning schemes.[115]

2.124 Mr Andrew Macintosh of the Centre for Climate Law and Policy at the Australian National University also emphasised the importance of aligning the carbon farming initiative with a planning scheme that provides a mechanism to control perverse outcomes.[116] In his view, regulations could be made under the *Environment Protection and Biodiversity Conservation Act 1999* to deal with perverse impacts by triggering the relevant assessment and approval sections of that Act for particular projects. The advantage to this approach would be that environmental assessments would then be carried out by the department with the appropriate expertise in this area.[117]

2.125 The Committee shares the concerns of inquiry participants that the scheme should not result in perverse outcomes, and considers the Government should adopt a rigorous approach to monitoring impacts. This monitoring should be undertaken on an ongoing basis from commencement of the scheme.

2.126 The Committee also considers that the adequacy of the negative list and other regulatory measures to address perverse outcomes should receive specific attention during the 2014 review of the scheme, and earlier attention if it becomes apparent the legislation is not delivering adequate protection for the environment and communities.

115 Ms Claire Parkes, Proof Transcript of Evidence, 3 May 2011, p. 40.

116 Mr Andrew Macintosh, Proof Transcript of Evidence, 3 May 2011, p. 44.

117 Mr Andrew Macintosh, Proof Transcript of Evidence, 3 May 2011, p. 45.