



Submission: Exposure draft of the Carbon Pollution Reduction Scheme legislation

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Confidentiality

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General comments

The National Association of Forest Industries (NAFI) broadly supports the full inclusion of forestry in a domestic emissions trading system (ETS), so long as such a system maximises forestry based carbon emission reduction opportunities and provides appropriate commercial incentives for reforestation in a practical and low cost manner. Such an ETS would maximise voluntary participation of forestry entities and reduce the overall cost of meeting an economy wide emissions reduction target.

The draft CPRS legislation largely adopts the policy position of the Australian Government outlined in the White Paper. In doing so, the CPRS goes some way in recognising reforestation but contains a number of significant impediments in scheme design that restrict the potential for the 'opting in' of forestry activities. Most of these issues were previously raised by NAFI in a submission to the Department of Climate Change (DCC) discussion paper on detailed design issues relating to the coverage of reforestation.

Given the range of issues identified, a key recommendation is for the Australian Government and officials to provide for industry participation in the development of the CPRS and supporting regulations. NAFI is willing to

participate fully on aspects dealing with forestry and the forest industry, ensuring the best possible outcomes for the Australian environment and economy.

In addition to providing comments on specific sections of the draft bill below, we highlight a number of key issues restricting the effectiveness of the draft Bill to promote full forestry participation. These are:

- ‘Cascading’ liability provisions related to forest maintenance obligations. These enforcement obligations may seriously inhibit investment in reforestation projects given a break in the connection between the owner of the carbon credits (i.e. free emissions units) and any future liabilities (i.e. surrender of units). These obligations are to be imposed on the forestry right owner irrespective of whether they hold such proprietary interests and such arrangements are unprecedented with respect to the rest of the scheme.
- Uncertainty over carbon estimation methods to be adopted under the scheme, including the proposed use of the National Carbon Accounting Toolbox (NCAT) approach. There remain significant issues surrounding how the NCAT system would apply across the range of forest and project types, its degree of accuracy and flexibility in incorporating project specific carbon estimation information provided by forest entities.
- Non-recognition of multiple land titles as part of eligible reforestation projects. This is a major impediment given the high propensity for carbon pooling arrangements and multiple land titles and areas for reforestation projects.
- Trading restrictions on the exports of emission units compared to unlimited imports of eligible international units under the scheme. Such trading restrictions impede domestic potential and investment for reforestation activities for emission removal exports to high cost emitters, while allowing imports of units including some eligible forestry activities from developed countries under the Kyoto Protocol.
- Inflexible carbon crediting approach. Based on the White paper, the regulations detailing the crediting approach for removals are likely to be limited to ‘average’ crediting rather than provide a choice with ‘annual’ crediting. This may be less suited to some commercial business models that may prefer annual crediting to take advantage of early tree growth while managing inter-year fluctuations.

A number of other important concerns are outlined below.

Exclusion of forestry from CPRS fuel credit scheme

A key concern relates to the policy position adopted in the White Paper that ‘The Government will introduce legislation to implement a new CPRS fuel credit scheme for three years for businesses in the agriculture and fishing industries’.

NAFI is concerned that forestry was not included in the proposed fuel credit scheme and is not being equitably treated with other primary industries pertaining to fuel credits. This inequity was confirmed in the exposure draft of the CPRS Fuel Tax Adjustments Arrangements Bill released by the Treasurer on 7 April. There appears no logical rationale why the fuel credit scheme should not equally apply to eligible forest industry businesses.

NAFI will be seeking clarification as to why the forest industry is excluded from the proposed fuel credit scheme available to the fishing and agricultural industries.

Broader forestry inclusion and international rule setting

This submission has largely focused on specific reforestation sections of the draft CPRS Bill. As noted in the White Paper, the inclusion of reforestation in the draft Bill has been closely tied to international climate change rules as part of the UN Framework Convention on Climate Change and Kyoto Protocol. The Australian Government has also stated that any changes in the treatment of forestry under the proposed CPRS would reflect international rule setting outcomes, and would not be adopted until 5 years from any international agreement. There are a significant number of carbon abatement opportunities available from Australia’s forest industry closely linked with reforestation, due to the highly integrated nature of the industry. NAFI has identified these opportunities in previous submissions on the Green Paper and DCC discussion paper on CPRS design issues relating to reforestation. Two of the main opportunities include:

- Carbon in wood products: NAFI continues to advocate that carbon storage in harvested wood products should be recognised from scheme inception given their contribution to a longer term carbon pool; and
- Article 3.4 forests (pre-1990 forests): allowance should be made for the inclusion of these forests (native forests and plantations) under the scheme, but treated initially as net neutral until the finalisation of carbon accounting methodology (e.g. treatment of non-anthropogenic forest disturbances).

NAFI takes the view that the Australian Government should give these issues a high level of priority in the ongoing international negotiations under the UN Framework Convention on Climate Change, the Kyoto Protocol and any post Kyoto Protocol agreement, given their relevance to providing low cost greenhouse gas abatement and possible inclusion under a domestic CPRS. Furthermore, they should be included in the scheme as soon as practicable following international agreement on appropriate rule sets, rather than the 5 year time lag identified in the White Paper.

Another important issue concerns the international negotiations on Reducing Emissions from Deforestation in Developing Countries (REDD) and potential market based mechanisms for facilitating such activities. It is important that any rule sets in relation to market based mechanisms for REDD are compatible with those for other Kyoto Protocol trading mechanisms and international guidelines. This will be critically important to maintain the credibility of the trading system as a whole and ensure a 'level playing field' with respect to trading mechanisms in both developed and developing countries.

Emissions intensive trade exposed (EITE) sectors

Nationally, the Australian forest industry is integrated across various sectors in the forest growing, processing and distribution supply chain. Given the level of integration of the industry, NAFI recognises the importance of ensuring that those parts of the industry with covered emissions liabilities, such as pulp and paper manufacturing, are not unfairly disadvantaged through a carbon cost compared to our international competitors.

NAFI broadly supports the principles of administrative allocation of permits to offset the loss of competitiveness on EITE sectors based on the extent of trade exposure. However, EITE measures need to be designed in a manner that allow for the long term competitiveness of the industry to be maintained as part of the transition to a lower emissions future. A poorly designed EITE framework may jeopardize opportunities for a vibrant wood and paper processing sector, with significant downstream effects on existing and future forestry activities given the integrated nature of the industry.

Compliance and transaction costs

Given the significant potential contribution of forestry activities to greenhouse gas removals and reducing the overall costs to the economy of an emissions target, it is imperative that reforestation compliance and transaction costs are kept to a minimum. This will facilitate greater voluntary participation of reforestation activities from small forest growers through to larger forest entities. Particular emphasis will need to be given to streamlining registration and reporting costs for projects involving multiple land areas and land titles as part of carbon pooling arrangements.

Timeframe for consultation

NAFI is also concerned about the relatively short time frame for industry consultation on the draft CPRS Bill, given its significant and wide ranging impact on the Australian economy including both the forest growing and processing sectors.

The relevant parts of the Bill dealing with reforestation would also be easier to interpret if they followed the stepwise processes and requirements under the scheme as described in the flow diagram in the explanatory commentary (section 6.7).

| Carbon Pollution Reduction Scheme Bill | | | |
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| Part/s | Division/s | Clause/s | Comment |
| 10 | 3 | 195 (3) | As outlined in this clause and the simplified outline (clause 190), the net total number of tonnes of greenhouse gases removed from eligible reforestation projects will be calculated according to the corresponding regulations. At this stage, the regulations are unspecified but the White Paper states that 'Emissions and removals will be estimated using a |

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| | | | <p>prescribed methodology such as the National Carbon Accounting Toolbox’.</p> <p>NAFI is concerned about the unspecified nature of the methodology and lack of detail about the proposed use of the NCAT approach for emission and removal estimations, as the choice of methodology will fundamentally influence the amount of emission reductions and therefore decisions by reforestation project entities to ‘opt in’ under the scheme.</p> <p>While NAFI acknowledges the efforts of the Australian Government in developing the National Carbon Accounting System (NCAS) as a national system for land and forest based carbon accounting, and the related development of NCAT as a tool to assist local project planning, the allowable methodology will need to meet a number of important criteria, including:</p> <ul style="list-style-type: none"> • scientifically robust estimation; • ease of application across the range of reforestation project types; • low compliance and/or transaction costs for eligible reforestation entities; • flexibility to incorporate more accurate and reliable forest site and stand level data; and • protection of any intellectual property provided by forest entities. <p>Recommendation: That the Australian Government and Department of Climate Change (DCC) work collaboratively with the forest industry to ensure the proposed methodology meet these important criterion.</p> |
| 10 | 3 | 195 | <p>The number of unit entitlements issued under clause 195 will be determined by the crediting approach. Presently, the draft legislation is silent on this issue (i.e. to be determined by the regulations). However, the DCC discussion paper on reforestation design issues (2008) outlined two broad approaches: full annual crediting and average crediting based on projected net removals. The explanatory commentary states that ‘it is intended’ that this calculation will be based on the averaging approach.</p> <p>The NAFI position is to allow for both approaches in the scheme. This would allow the flexibility for reforestation entities to make a choice between approaches to meet their own risk and forest management profiles. While the averaging approach may suit small scale growers with limited ability to manage inter-year fluctuations, larger scale growers or projects based on carbon pooling arrangements may prefer full crediting to take advantage of early growth of new plantations while managing annual fluctuations across the project.</p> <p>Recommendation: That the regulations allow for the flexibility of choosing between full annual crediting and average crediting for eligible reforestation projects, taking into account the size and capabilities of different forest owners and entities.</p> |
| 10 | 5 | 209 (4)(b) | <p>This sub-clause states ‘The Authority must not declare that the reforestation is an eligible reforestation project unless the Authority is satisfied that: (b) if the project is, or the project areas are, Torrens system land – the project area is, or the project areas are, held under a <u>single title</u>’.</p> <p>As described in the explanatory commentary, this clause has the effect</p> |

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| | | | <p>that each project must be confined to an area of land under single title.</p> <p>NAFI has serious concerns regarding the restrictions on single title as this would create significant administrative and cost burdens on reforestation entities, since many carbon based projects are likely to include multiple areas of forest and land titles under agreed carbon pooling arrangements. Commercial forestry entities will require flexibility for eligible reforestation projects to include multiple property titles.</p> <p>However, NAFI notes in the commentary that 'it is envisaged that this requirement will be removed' (section 6.35 of the commentary).</p> <p>Recommendation: That the restrictions on single land title be removed and allow for multiple forest areas and land titles to be recognised as eligible reforestation projects. That any changes to recognise multiple land titles for eligible projects ensure compatible treatment of rights and obligations as per single land title projects in a practical and low cost manner.</p> |
| 10 | 6 | 220 | <p>This clause relates to the calculation of the reforestation unit limit for reforestation projects. Sub-clause (3) (b) restricts reforestation credits (i.e. free emission units) to net removals less the '2008 carbon stock baseline number for the project'.</p> <p>This effectively ignores the contribution of Kyoto compliant forests and projects (i.e. established post 1990 and pre-2008) to Australia's emissions reduction effort. Furthermore NAFI has concerns that subsequent rotations of forests already established will only receive credits for net removals above the 2008 baseline. Failure to credit for carbon sequestration in subsequent rotations could lead to highly undesirable outcomes whereby plantation growers may choose to relocate their plantations following harvest in order to receive full credit or have insufficient incentive to replant at all.</p> <p>Furthermore, the explanatory commentary states that in order to calculate the unit limit, the reforestation entity will be required to provide information on forest management actions and natural disturbances. As outlined in the White Paper, this would enable a 'risk of reversal buffer' to be determined to protect forest entities against the effects of natural disturbance such as fire and insect attack. This would have the effect of reducing the total unit limit, and if set too conservatively, may inhibit voluntary participation in the scheme. Further information regarding the methodology and principles for calculating the risk buffer is required.</p> <p>NAFI also has concerns regarding the unspecified methodology for the calculation of the 2008 baseline carbon stocks, which presumably would follow the NCAS and NCAT approaches as outlined in the White Paper. Such methodologies would need to adopt the criterion identified above for section 195 (3) to promote transparency and market tradability.</p> <p>Recommendation: That the DCC work collaboratively with the forest industry on aspects of the scheme dealing with the 'risk reversal buffer' to ensure an appropriate balance between managing for risk and providing adequate incentive for forest entities to 'opt' into the scheme.</p> |

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| 10 | 9 | 226 | <p>NAFI acknowledges that enforcement of scheme obligations will be important in determining scheme credibility. This clause provides for the enforcement of forest maintenance obligations (FMO) to maintain or establish a forest should a person holding the 'carbon right' fail to comply with a relinquishment order (i.e. obligation to surrender units) within 90 days.</p> <p>NAFI has serious concerns with the structure of these enforcement arrangements since the FMO will apply to the 'forest right' holder rather than the owner of the carbon right. Depending on the commercial business model for reforestation projects, the forest right holder may or may not be the same person as the landowner and/or carbon right owner. These enforcement provisions consequently break the connection between the owner of the carbon credits (i.e. free emissions units) and liabilities (i.e. surrender of units), as the forestry right owner may not hold such proprietary interests. This may seriously impede investment and the attractiveness of participation in the scheme given the 'cascading' nature of liabilities.</p> <p>Furthermore, such maintenance obligations have no comparable precedent elsewhere in the scheme for separate parties to make good for other liable entities (e.g. covered entities that fail to surrender permits).</p> <p>NAFI does note that clauses 236 and 237 make provision for the creation of notes on parcels of land where carbon sequestration rights, and forestry rights and obligations, are held. These requirements will help promote a transparent market so long as the FMO obligations are not unnecessarily tied to parties other than the carbon right owner.</p> <p>Recommendation: That forest maintenance obligations be tied to the carbon right owner without the unnecessary requirement for 'cascading' liabilities to separate entities. That the Australian Government and DCC work collaboratively with the forest industry to ensure adequate provisions for achieving compliance without adversely affecting business investment models for reforestation.</p> |
| 10 | 10 | 232 (5) | <p>This sub-clause effectively states that reforestation projects will need to be maintained for 130 years to avoid relinquishment provisions (i.e. surrender of permits issued). NAFI acknowledges the purpose of such a provision to meet 'permanence' objectives and have an effective impact on net emission reductions and global warming potentials.</p> <p>However, the basis of the 130 year rule is not explained and diverges significantly from the White Paper position that 'The Government will enforce Scheme obligations against the forest entity for a defined period, for example 70 years following the issue of the last permit for an individual forest stand, rather than indefinitely'.</p> <p>NAFI believes the 130 year rule is unnecessarily arduous and extends well beyond the maturity stage for many reforestation projects, such as shorter rotation pulpwood plantings, environmental carbon 'sink' plantings and high yielding sawlog plantations. NAFI is concerned that this figure may have been based on a traditional 30 year softwood sawlog plantation plus 100 years.</p> <p>Recommendation: That the permanence and relinquishment requirements better reflect the nature and type of reforestation project, so as to remove unnecessarily lengthy obligations for specific projects.</p> |

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| 1 | | 5 | <p>This clause defines 'eligible international emissions units' in order to link the domestic scheme with international markets. NAFI broadly supports international trading as a means of achieving low cost emissions reductions, given appropriate international rule sets and policy settings to reduce the risks of carbon leakage.</p> <p>The accompanying commentary states that under the CPRS there will be no limit on the importation of eligible international emissions units while at the same time a blanket restriction will be placed on exports of Australian units to foreign schemes. Furthermore, any changes to this policy would not occur until the market has been given 5 years' notice of a decision to allow for export.</p> <p>Such trading restrictions impede domestic potential for reforestation activities and emission removal exports to high cost emitters, while allowing imports of other units including eligible forestry activities such as 'removal units' from developed countries under the Kyoto Protocol.</p> <p>Recommendation: That a review be undertaken of export trading restrictions on emissions units and the lengthy timeline for notice of allowance of exports, in light of their impact on domestic investment opportunities in emission removals such as eligible reforestation projects.</p> |
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Please return **by 5pm (AEST) on 14 April 2009** to:

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