

SUBMISSION TO CARBON POLLUTION REDUCTION SCHEME - GREEN PAPER

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10 September 2008

Green Paper Submissions
Department of Climate Change
GPO Box 854
Canberra Act 2601



By email: emissionstrading@climatechange.gov.au

Dear Sir or Madam

SUBMISSION ON CARBON POLLUTION REDUCTION SCHEME GREEN PAPER

1. Introduction

1.1 In Principle Support of Carbon Pollution Reduction Scheme

Lawyers for Forests Inc (“**LFF**”) agrees in principle with a comprehensive approach to the reduction of carbon pollution envisaged by the Department’s proposed Carbon Pollution Reduction Scheme (“**the Scheme**”).

1.2 Concerns with Specifics of the Scheme

Whilst LFF welcomes the Department’s initiative in a general sense, LFF has significant concerns about two specific aspects of the Scheme outlined in the Carbon Pollution Reduction Scheme Green Paper (“**the Paper**”).

It is convenient to address these concerns by reference to the relevant Preferred Positions in the Paper, namely:

“2.17 Scheme obligations would not apply to emissions from combustion of biofuels and biomass for energy; they would receive a ‘zero rating’, and;

“2.21 After careful deliberation the Government does not propose to include deforestation in the Carbon Pollution Reduction Scheme. Australian deforestation emissions have reduced markedly since 1990, largely due to increased protections against land clearing.”

2. Combustion of Biofuels and Biomass for Energy

LFF has deep concerns with Preferred Position 2.17 for two main reasons. Firstly, there is the potential creation of a market incentive for the forestry industry to burn old-growth forests when convenient. Under the Scheme, burning old growth forests can be considered as utilising a renewable energy source which would in fact be

rewarded by the grant of carbon credits. Secondly, there is a complete lack of any disincentive to burn old-growth forest under the Scheme.

2.1 Market Incentives

The recent submission to the Department by Drs. Peter Wood and Judith Adjani¹ (“**the Wood submission**”) demonstrates that the Scheme may in fact create a market incentive for the forestry industry to clear natural forest and replace it with plantations in order to capitalise on carbon credits.

Even taken at its very weakest, the Wood submission highlights the possibility that a carbon emissions market, particularly in its early stages, could create market forces which encourage clearing of natural forests and their replacement with plantations.

2.2 Market Reactions

The situation outlined above is extremely undesirable. LFF understands that scientific consensus accepts that natural forests are generally more effective “carbon sinks” than plantations, as the carbon they sequester remains in the forest for a longer period of time. Indeed, recent research² strongly suggests that natural forests are in fact anywhere between three and twenty times better at storing carbon than official *Intergovernmental Panel on Climate Change* estimates.

Given the above, and given that it is possible if not probable that an emissions trading scheme could create a market incentive to “slash-and-burn” natural forests, the question then becomes what market disincentives exist to prevent this happening.

2.3 Lack of Disincentive

If legislatively implemented in its current form, Preferred Position 2.17 could enable forestry operators to burn natural forests with impunity under the guise of “combustion of biofuels and biomass for energy”. When combined with the factors outlined above, it is conceivable that the Scheme could create a market incentive for forestry operators to (1) destroy existing natural forests, which are on any reading highly effective carbon sinks and (2) achieve this by way of a process which itself releases enormous amounts of carbon (i.e. “slash-and-burn clearing”). Such a scenario is a total anathema to the policy objectives of the Scheme, and in fact runs the risk of the government effectively bankrolling a net *increase* in carbon emissions.

2.4 Recommendation #1: Inclusion of Combustion of Biofuels and Biomass in the Scheme

LFF submits that the combustion of biofuels and biomass for energy should fall within the ambit of the Scheme. This would provide an inbuilt safeguard against any unforeseen and undesirable effects of market forces, particularly during the initial phase of the Scheme. Provision may be made for review of this safeguard once the

¹ Of the Australian National University Department of Applied Mathematics and Fenner School of Environment and Society respectively

² *Green Carbon - The Role of Natural Forests in Carbon Storage* led by Professor Brendan Mackey of the Australian National University (released 6 August 2008) (“the Mackey Report”)

Scheme has become established and the dynamics of the carbon market more established and predictable.

3. Exclusion of Deforestation

LFF has deep concerns with Preferred Position 2.21 for three main reasons, these being (1) the inadequacy of the Department's justification for the exclusion of deforestation from the Scheme, (2) Australia's international reputation in tackling climate change and its consequent ability to influence global climate change prevention, and (3) inadequate recognition of the importance of the protection and restoration of natural forests and a lack of any market incentive to achieve this.

3.1 Bases of Exclusion in the Paper

The Paper puts forward 3 main bases upon which deforestation is excluded, namely:

- (a) that land clearing is already heavily regulated;
- (b) risk of pre-emptive land clearing; and
- (c) difficulty in ensuring compliance for small landholdings.

Firstly, existing regulation is demonstrably inadequate. LFF understands that Australia has the fifth highest rate of land clearing in the world and clears more bush annually than poverty-stricken developing countries such as Burma, Mexico, Zimbabwe, Nigeria and the Congo.

Secondly, bases (a) and (b) are inconsistent as a matter of logic. If existing regulation were sufficient to protect against land clearing, there would be no risk of the occurrence of pre-emptive land clearing.

Finally, "difficulty in ensuring compliance for small landholdings" is simply an inadequate reason for excluding deforestation, as "small landholdings" can and do engage in massive deforestation. By way of example, a recent application by King River station in the Northern Territory³ for the clearing of nearly 4600ha of savanna woodlands for cattle grazing could release an estimated 450,000 tonnes of greenhouse gas. The conditions outlined in the Scheme apply to industries with direct emissions of 25,000 tonnes of carbon dioxide a year, but not to an instance of deforestation that will release twenty times this amount.

3.1 Australia's International Role

Lowering deforestation has become a high priority in international climate change discourse and is expected to figure prominently in discussions on the next international framework for climate change.

Australia has indicated it will play a key role in international climate change forums and in working with other countries to "promote the development of market-based approaches to reducing emissions from deforestation and forest degradation"⁴. The

³ "Kiely Evasive on Land Clearing Scrutiny", ABC Online, 4 June 2008, <http://www.abc.net.au/news/stories/2008/06/04/2264962.htm>

⁴ Australian Government Department of Climate Change, <http://www.climatechange.gov.au/international/publications/fs-ifci.html> <accessed 17 August 2008>.

Paper itself commits Australia to “acting with the rest of the world” to combat climate change⁵.

By failing to include deforestation in the Scheme, Australia is effectively undermining its own efforts to be a leader in this area. LFF is of the view that it may appear hypocritical to the international community that the Australian government calls upon developing nations to preserve their forests while our own domestic emissions trading Scheme comprehensively fails to address the issue of deforestation.

Given that consensus and cooperation are the necessary and guiding principles of international law (particularly in the area of climate change), it is vital that if the Australian government does wish to take a leadership role in tackling climate change, it must lead by example and vigorously protect its own natural forests.

3.2 The Importance of Natural Forests

As discussed earlier in this submission, recent research has strongly indicated that natural forests are, on any reading, extremely effective at carbon sequestration. The Mackey Report referred to above goes on to draw a negative correlation between the extent to which a forest is disturbed by intensive human activity such as logging, and its ability to sequester carbon.

An extension of this finding is that “there is substantial potential for carbon sequestration in forest areas that have been logged if they are allowed to re-grow undisturbed...”⁶. It is abundantly clear that natural forests are a vital and effective means of carbon sequestration.

Whilst the Scheme partially recognises that replanting cleared areas is important and desirable, the protection, and particularly the regeneration of existing natural forests is not addressed at all. It is simply ignored under the blanket exclusion of Preferred Position 2.21. LFF is of the view that this oversight is critical to the protection and conservation of the environment.

3.3 Recommendation # 2: Inclusion of Deforestation in the Scheme

LFF submits that deforestation must be recognised as a significant source of carbon emissions within the Scheme. This could be achieved by establishing a system of required offsets for any logging or other intensive-use operations in natural forests. The offsets required should accurately reflect the scientifically demonstrated quantum of any emissions caused by the operation, with any loss of carbon sequestration being of equal weight to direct emissions from the operation.

3.4 Recommendation # 3: Incentives to Protect and Restore Forests

LFF submits that the Scheme should offer incentives to protect intact forests and to restore forests damaged by logging by allowing them to regenerate and reach their full sequestration potential.

⁵ Carbon Pollution Reduction Scheme Green Paper, Foreword, page V

⁶ Above n 2

This could be achieved by creating legally binding enduring covenants to protect areas of natural forest, and to ensure that the area remains undisturbed.

4. Conclusion

The introduction of market forces into carbon emissions should not be seen as a panacea or “magic bullet”. Any emissions trading scheme must be introduced in a considered and logical manner, designed towards the protection and conservation of the environment.

LFF believes that the inclusion of combustion of biofuels and biomass in the Scheme, the inclusion of deforestation, and the creation of market incentives to protect and restore natural forests would go some way towards alleviating the concerns raised in the above submission. It will ensure that the carbon emissions associated with these activities are taken into account. Failure to do so will mean that the significant carbon emissions from these activities are not taken into account in the Government's response to the climate change issue. This will result in the government not meeting its obligations to reduce Australia's carbon emissions and to protect the environment, to the detriment and regret of future generations.

If you have any queries please contact the President of Lawyers for Forests, Isabelle Border, by email: isabelleb@lawyersforforests.asn.au.

Yours faithfully



PER Isabelle Border
President
Lawyers for Forests Inc
on behalf of the executive committee of LFF