



australian network of environmental defender's offices

Submission on the Design of the Carbon Farming Initiative

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The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Executive Summary

The Australian Network of Environmental Defender's Offices (ANEDO) is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy.

ANEDO has been involved in a large number of climate change consultation processes at a federal level, providing comment on range of proposed measures, including the *Carbon Pollution Reduction Scheme Bill*, the expanded renewable energy target, the National Carbon Offset Standard and recently on power station emissions standards.¹ EDO offices have also been engaged in proposals at State level to develop emission and energy efficiency standards, for example under the Victorian *Climate Change Act 2010*. We therefore welcome the opportunity to provide comment on *Design of the Carbon Farming Initiative – Consultation Paper* (Discussion Paper) as well as the Exposure draft of the *Carbon Credits (Carbon Farming Initiative) Bill 2011* (Exposure Bill).

ANEDO has serious reservations about the Carbon Farming Initiative (CFI) as currently proposed. Whilst we appreciate the difficulty of regulating the emissions of the agricultural sector, and acknowledge that an offset scheme could be a useful way to reduce emissions from this sector, the CFI scheme as currently proposed is poorly designed and unlikely to be effective. In summary:

- The proposed scheme will not be effective in isolation and must be linked to a comprehensive regulatory framework. An offset scheme will not succeed in reducing atmospheric greenhouse gas levels unless it is complemented by a carbon price and emissions cap;
- the proposed scheme lacks a clear emissions reduction objective;
- an offset scheme, particularly one that proposes to rely on unproven and untested technologies and methodologies, must include: a mandatory additionality test; a conservative science-based approach to approving eligible offsets; strong monitoring, compliance and enforcement provisions; and strong legislative safeguards to prevent adverse environmental side-effects. The proposed legislation does not include the necessary safeguards to guarantee the integrity of the scheme;
- some of the emissions avoidance activities proposed to be included under the CFI are extremely problematic for a range of reasons including in terms of proving additionality and being measurable, and therefore should not be used to justify increased emissions elsewhere.

This submission provides comment on:

1. Regulatory Framework
2. Coverage
3. Integrity Standards
4. Communities, water and biodiversity
5. Methodologies
6. Scheme Processes

¹ Please see www.edo.org.au for a full list of, and access to, ANEDO submissions.

Our key recommendations are:

Regulatory Framework

- Voluntary offsets cannot be relied on to mitigate climate change. They are an ‘end of the pipe’ solution, and are only acceptable as part of a suite of regulations aimed at mitigating climate change. Therefore, the CFI should not be adopted in the absence of an economy-wide carbon cap and carbon price.
- If a carbon price and emissions cap are established and a CFI scheme commences, it must have a clear objective linked to the overall regulatory framework for addressing climate change. The ‘objects’ section of the legislation should therefore be amended to include the objective of “reducing atmospheric concentrations of greenhouse gases”.
- The following recommendations relate to specific aspects of the proposed scheme, and our indicated support for the various provisions is contingent upon the development of a broader regulatory framework for emissions reductions in Australia.

Coverage

- Emissions avoidance offset projects should not be eligible under the CFI for a number of reasons, including the fact that rewarding persons for *not* polluting violates the polluter pays principle, proving additionality is problematic, and there are significant methodological hurdles that make the measurement of ‘abatement’ difficult, if not impossible; and
- A conservative approach should be taken to approving eligible offset activities, based on best available science. Eligible activities under the CFI should only be approved by an independent scientific body, which must be satisfied that proposed projects meet strict criteria. This role could be fulfilled by an existing organisation such as CSIRO, or a new organisation comprised of experts from scientific academia or practice. This will ensure that eligibility decisions are based on science, not political considerations.

Integrity Standards

- Integrity standards introduced under the CFI relating to additionality, permanence, leakage, measurement and verification, conservatism, international consistency and peer-reviewed science are strongly supported;
- The additionality test in section 39 should be redrafted. The ‘fast-track’ test in section 39(1) should be removed, or at least strictly circumscribed. The ‘general’ test in section 39(2) should be replaced by a simpler, more direct test of additionality. Clear mandatory criteria must be developed for inclusion in the legislation, that must be satisfied to prove additionality;
- The proposed role of the Domestic Offsets Integrity Committee in assessing methodologies and creating a positive list of activities that demonstrate additionality is supported;
- Where a proponent voluntarily withdraws from CFI scheme, in addition to the relinquishment requirement there should also be a ‘break fee’ to discourage reversal;

- Where a natural event such as bushfire destroys a carbon sink, the proponent should be required to relinquish all credits until the sink is re-established;
- Proponents who are establishing carbon sinks should be required to take out insurance to manage the risk of natural disturbances to their projects; and
- A conservative approach to approving eligible offset activities should be adopted in explicit terms as one of the “integrity standards” set out in section 124.

Communities, Water and Biodiversity

- Section 25(4)(i) of the exposure Bill which makes it clear that projects that involve the clearing or harvesting of native forest, or the use of material obtained from a native forest are not eligible offsets projects under the scheme is strongly supported;
- Section 25(4)(j) of the exposure Bill which requires a proponent to have obtained all regulatory approvals for a project before it can be eligible under the CFI is strongly supported;
- The proposal to require project proponents to consider relevant strategic planning instruments, such as regional natural resource management plans, to ensure that CFI projects are consistent with land use planning and priorities for particular regions is supported;
- Section 25 of the exposure Bill should be amended to introduce a requirement that offsets must be ‘environmentally sustainable’ to be eligible under the CFI; and
- The government should consider the introduction of a biodiversity code similar to the Carbon Sequestration and Biodiversity Code proposed under the new *Climate Change Act 2010* in Victoria.

Methodologies

- Methodologies must rely on rigorous scientific processes to ensure data is valid and repeatable. The government should see initial CFI projects as having research and development potential, as the science of carbon farming is unproven, and be primarily responsible for methodology development to ensure consistency.
- The requirement that all draft methodologies are to be published online and that the public is to be given the opportunity to make submissions within 60 days of publication is strongly supported;
- The provisions limiting the ability of the Minister to amend a proposed methodology once it has been endorsed by the Domestic Offsets Integrity Committee is strongly supported. This provision will ensure that methodology determinations are only based on scientific considerations and the expertise of the committee;
- The adoption of three year crediting periods which will allow for new, improved versions of methodologies to be used for future crediting periods in line with advances in carbon estimation, is supported; and
- Government should be responsible for development and design of methodologies for use under the CFI, upon advice from the Domestic Offsets Integrity Committee. This will ensure that a consistent approach is taken based only on scientific considerations, which will engender community confidence in the scientific rigour, transparency and consistency of the methodologies.

Scheme Processes

- The proposal to require project proponents to report on their projects every 12 months is supported;
- The requirement for project reports to be independently audited by suitably accredited auditors is supported;
- The commitment to issuing CFI credits only after emission reductions have been verified is strongly supported. This will ensure that credits are only issued for abatement that has actually occurred;
- The requirement for a register of offset projects to be kept and made publicly available on the Administrator's website is supported;
- The proposal to review the Act every three years is strongly supported; and
- The Act should introduce a merits appeal right for third parties. This should apply to key decisions, like the decision to approve an eligible abatement activity, to approve a project, and to issue CFI credits.

ANEDO would be happy to engage in further discussion on these preliminary issues and the points raised in this submission.

1. Regulatory Framework

ANEDO has some serious concerns that the CFI is currently a stand alone policy proposal that is unlikely to be effective in the absence of the necessary regulatory framework for emissions reduction in Australia. As a result, the CFI lacks a clear legislative context and clear objective.

ANEDO is concerned that the Consultation Paper, draft legislation and draft methodology do not clearly define the objective of what the CFI is actually trying to achieve. Whether the CFI is being introduced to reduce atmospheric concentrations of greenhouse gases, or whether it is being introduced as a stewardship incentive scheme for farmers, is not made explicit. The CFI legislation states that it is being introduced to implement Australia's obligations under international climate change treaties, which is presumably the constitutional basis of Parliament's power to make such a law.² If that is so, then the primary objective of the CFI legislation should be to reduce the atmospheric concentration of greenhouse gases and prevent dangerous climate change, and any financial windfall to farmers is a welcome co-benefit. This should be explicitly reflected in the 'objects' section of the legislation, and be operationalised through the provisions of the Bill and reflected in implementation of projects and development of methodologies.

With the primary objective in mind, ANEDO has significant concerns regarding the use of offsets as a primary means of "reducing" emissions in the agricultural sector in the absence of other regulatory measures. Offsets should not be relied upon as the predominant means of addressing greenhouse gas emissions as they fall at the bottom of the climate action hierarchy. This hierarchy requires environmental impacts to be *avoided* first by using all cost-effective prevention measures. If this is not possible, then emissions should be *reduced* by using mitigation measures on-site. Offsets may then be used to address remaining emissions. ANEDO submits that in light of this hierarchy, the CFI should not be relied upon as a silver bullet in addressing agricultural emissions.

²Draft Carbon Credits (Carbon Farming Initiative) Bill 2010 (Cth) cl 3(2).

Emissions must still be avoided or reduced at the point source of emission. Under no circumstances should the overall level of direct emissions from an agricultural operation or facility increase as a result of “abatement” offset projects being approved under the CFI.

Therefore, although an offsets scheme could be of considerable benefit in reducing agricultural greenhouse gas emissions, it should not be adopted in the absence of a carbon price and emissions cap. Without the pervasive influence of a price on carbon, or the certainty of an economy-wide carbon cap, the environmental integrity of carbon offset credits will always be in doubt. The Consultation Paper seems to recognise this problem in sections dealing with carbon ‘leakage’. There is nothing in the CFI legislation as it stands to prevent the same person reducing emissions through an offsets project at one place, and increasing their emissions to an even greater degree at another. The ‘leakage’ provision in the CFI legislation (section 102) does not address this, merely providing that emissions that occur “as a consequence” of the offset project must be taken into account in any methodology. So long as the increased emissions and offset activity are not causally related, carbon leakage is still allowed to occur. Carbon leakage is an intrinsic weakness of offsets schemes like the CFI, which the current proposal does not adequately address. The best way to ensure that project proponents do not simultaneously increase their carbon emissions elsewhere is to impose an economy-wide price and cap on carbon.

2. Coverage

ANEDO notes that two types of offset projects will be eligible under the CFI: sequestration offsets projects, and emissions avoidance offset projects.

2.1. Sequestration offsets projects

ANEDO generally supports sequestration offsets projects that involve the absorption of carbon from the atmosphere (such as reforestation projects). As the Wentworth Group of Concerned Scientists has noted:

A 15 percent increase in the world’s terrestrial carbon stock would remove the equivalent of all the carbon pollution emitted from fossil fuels since the beginning of the industrial revolution.³

However, ANEDO submits that only projects that are subject to a rigorous methodology (that incorporates accepted international standards) and that are ecologically sustainable should be permitted (discussed below).

ANEDO has previously examined sequestration in the context of forestry projects and there are real concerns relating to the permanence of forestry offsets, the measurement of carbon actually sequestered, and the ecological sustainability of such projects, especially in a drying climate. Hence, it is imperative that any methodology used is based on peer-reviewed science that addresses these key issues. For example there are a number of factors influencing the sequestration potential of reforestation projects that need to be addressed by any methodology. These include: the climate where forests are established, age of the forest, species planted, and the management of forests, including rotation time

³ Wentworth Group of Concerned Scientists, *Optimizing carbon in the Australian landscape*, October 2009, p1.

and woody debris management.⁴ Also, it is not generally the case that carbon dioxide emissions from forestry typically match prior carbon sequestration in the forest. Soil carbon generally decreases as a result of forest establishment,⁵ and biomass sequestration in early years of plantation establishment is slower due to the small size of trees.⁶ Therefore, it typically takes 10-20 years for a plantation forest to become a net carbon sink.⁷ If plantations have short rotations (for example 10-15 years), then soil carbon is expected to continue to decline making these plantations net sources of carbon if carbon in the biomass is assumed to be lost when the forest is harvested.⁸ These issues must be addressed to ensure that only genuine long-term sequestration is credited.

ANEDO's concerns regarding untested and unproven sequestration projects (such as soil carbon sequestration, or reduced methane emissions from livestock) is even greater. As noted above, capturing and storing greenhouse gas emissions is no substitute for preventing those emissions in the first place. In addition, the potential deployment, effectiveness and permanence of sequestration technology remains largely theoretical and unproven and it will be some time before such technology becomes commercially available in an agricultural context. We therefore submit that only sequestration projects that are tested and proven to reduce emissions should be included.

Therefore, ANEDO submits that the decision as to whether a particular offset activity is eligible for CFI credits should be left to an independent scientific body, that must be satisfied that proposed projects meet strict criteria. This would ensure consistency with the integrity principle, stated in the Consultation Paper, that abatement must be "supported by peer-reviewed science". This role could be fulfilled by an existing organisation (like the CSIRO, for example) or a new independent organisation comprised of experts from scientific academia or practice. This will ensure that eligibility decisions are based on science, not political considerations.

2.2. Emissions avoidance offsets projects

ANEDO supports incentives for conservation measures on private land that have multiple environmental benefits (for example, conservation management with biodiversity, salinity, water management benefits as well as carbon sequestration benefits). Incentives can be an appropriate way to reward and encourage good land management. We strongly support conservation of native vegetation for a range of environmental benefits including carbon sequestration, however we do not feel that avoided deforestation projects as proposed are an appropriate mechanism to achieve this in the absence of a clear regulatory framework for emissions reductions.

⁴ Foresster, Barhus and Cowie (2006) 'Carbon allocation in a mixed species plantation of Eucalyptus globules and Acacia meamsii' *Forest Ecology and management* 233:275-284; Johnson (1992) 'Effects of forest management on soil carbon storage', *Water, Air and Soil Pollution* 64:83-120; Turner and Lambert (2000) 'Change in organic carbon in forest plantation soils in eastern Australia' *Forest ecology and management* 133:231-247.

⁵ Chen, Xu, and Mathers (2004) 'Soil carbon pools in adjacent natural plantation forests of subtropical Australia' *Soil Science Society of America Journal* 68:282-291; Turner and Lambert (2000) 'Change in organic carbon in forest plantation soils in eastern Australia' *Forest ecology and management* 133:231-247.

⁶ Laclau (2003) 'Biomass and carbon sequestration in ponderosa pine plantations and native cypress forests in northwest Patagonia' *Forest ecology and management* 180:317-333; Turner and Lambert (2000) 'Change in organic carbon in forest plantation soils in eastern Australia' *Forest ecology and management* 133:231-247.

⁷ Turner and Lambert (2000) 'Change in organic carbon in forest plantation soils in eastern Australia' *Forest ecology and management* 133:231-247.

⁸ Turner and Lambert (2000) 'Change in organic carbon in forest plantation soils in eastern Australia' *Forest ecology and management* 133:231-247.

ANEDO opposes the proposal to grant CFI credits for emissions avoidance offset projects for the reasons listed below.

Granting CFI credits for activities such as avoided deforestation or reduced fertiliser use effectively pays people *not* to pollute. This is inconsistent with the polluter pays principle, which is recognised and enshrined in a wide range of international and Australian law.⁹ The polluter pays principle states that “those who generate pollution and waste should bear the cost of containment, avoidance or abatement.”¹⁰ Making avoided deforestation an eligible offset activity is inconsistent with this principle, inconsistent with sound regulatory practice, and fundamentally inequitable.

ANEDO recognises that the situation is different in an international context, and supports international REDD+ initiatives, especially in developing countries that have significant forestry pressures and less regulation of land clearing. In that context, paying landholders not to clear vegetation is the best available option, because developed countries do not regulate to prohibit vegetation clearing. It is also consistent with the ‘polluter pays’ principle, because the vast majority of anthropogenic greenhouse gases emissions have historically come from developed countries, rather than developing countries. Domestically, these considerations do not apply, and governments’ choice between negative and positive incentives to avoid clearing is unfettered.

There are also significant methodological and technical issues that make the measurement of ‘abatement’ difficult for avoided emissions projects, if not impossible. For example, it will be difficult to prove additionality for an avoided deforestation project. At a most basic level, it will be difficult to determine whether or not the landowner was ever going to clear the forest in question. This could be open for exploitation resulting in credits being issued for forests that were never going to be cleared anyway, meanwhile emissions can be increased elsewhere as a result. The only way to prove otherwise would be to show that an actual clearing approval (for example a clearing or a PNF PVP in NSW) has been approved, but then is surrendered by a landholder who wants to engage in a the CFI instead.

The question becomes complex when applied to the additionality mechanism in section 39. The additionality test under section 39 requires that a project “is not required to be carried out by or under a law of the Commonwealth, a State or a Territory”. This begs the question, when does a law “require” that a person *not* clear a forest? In NSW, broadscale is prohibited unless it maintains or improves environmental outcomes, with some limited exceptions.¹¹ In Victoria, for example, it is not illegal to clear native vegetation, so long as the person has a permit to do so. Does that mean that a project proponent would have to obtain a permit to clear the forest, then apply for CFI credits for not following through with the clearance? Or is it enough that the project proponent shows that they could obtain a permit if they wanted to? Similar problems arise in trying to determine whether “there are reasonable grounds to believe that the project is not likely to be financially viable without the prospect of revenue derived from the sale of Australian carbon credit units issued in relation to the project.” There is confusion and

⁹ Rio Declaration on Environment and Development, A/CONF.151/26 (Vol I) (1992) Principle 16; Council of Australian Governments, Intergovernmental Agreement on the Environment (1992) cl 3.5.4; Sands P, Principles of International Environmental Law (Cambridge University Press, 2003) p 253; *National Environment Protection Council Act 1994* (Cth) Schedule 1 cl 3.5.4; *Environment Protection Act 1970* (Vic) s 1F(2); *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(d)(i).

¹⁰ *Protection of the Environment Administration Act 1991* (NSW) s 6(2)(d)(i).

¹¹ See *Native Vegetation Act 2003*. Exceptions include ‘routine agricultural management activities.’

uncertainty as to when clearing or not clearing may be considered financially viable or unviable.

For these reasons, where the abatement activity involves *preventing* carbon pollution (as opposed to sequestering carbon), it is more appropriate to use a negative incentive than a positive incentive. An abatement incentive scheme for agriculture is therefore no substitute for a carbon price. Given the above, ANEDO therefore does not support the use of emissions avoidance offsets under the CFI.

3. Integrity Standards

ANEDO strongly supports the introduction of internationally recognised integrity standards for all offsets projects in the CFI scheme legislation. We support the inclusion of standards relating to additionality, permanence, leakage, measurement and verification, conservatism, international consistency and peer-reviewed science. However, we make specific comment and recommendations relating to additionality, permanence and conservatism below.

3.1 Additionality

ANEDO submits that additionality is one of the most critical components of any offsetting scheme. ANEDO agrees with the statement in the Discussion Paper that proving additionality can be time consuming, costly and subjective. However, it is also the case that the environmental integrity of offset credits is heavily dependent on strict additionality criteria. A critical problem is the inability to measure additionality domestically compared with international methodologies (for example under the CDM) that measure additionality based on a business as usual rate of clearing at the country level. If the credits from the CFI reflect non-existent or ‘double-counted’ emissions reductions, then the market for these credits will collapse. It is therefore concerning that the key additionality provision in the exposure Bill, section 39, is poorly drafted and likely to be ineffective.

There are two tests of additionality in section 39: a general test in section 39(2), and a ‘fast-track’ test in section 39(1). The fast-track test is a serious problem. It allows certain offset activities to be deemed additional, if they are included in the regulations on the advice of the Domestic Offsets Integrity Committee (DOIC). The DOIC must “have regard to” whether the activity would pass the additionality test, and any other matters it thinks relevant. Therefore, whether or not an offset activity is additional is only one factor to be considered, and the DOIC must only “have regard to” it. There is therefore no certainty that offset activities approved under this section are actually additional, and the environmental and commercial integrity of these offset credits may be undermined. This section should be removed from the CFI legislation.

The general test of additionality in section 39(2) is also unsatisfactory. Subsections (2)(c)-(d) are complex and confusing. They are likely to be ineffective, in that there are cases where the confusing criteria of “common practice” and “financially viable” might be met for a project that is not truly additional. Sub-sections 39(2)(c)-(d) should be redrafted as follows:

- (c) the project would not have occurred in the absence of the scheme established by this Act.

This clause is much easier to understand and apply, and is therefore more likely to actually work.

Clear mandatory criteria must be developed for inclusion in the legislation, which must be satisfied to prove additionality.

3.2. Permanence

Permanence is of most critical importance for offsets that involve the sequestration of carbon from the atmosphere. There would be no genuine abatement if carbon is subsequently released into the atmosphere, either through human action or natural occurrences such as bushfire, or through natural changes to the carbon cycle. Therefore, ANEDO submits that it is important to ensure that, once a project proponent has received their CFI credits, that there are strong incentives for them to maintain their abatement, and penalties for reversal. The CFI scheme contains two key permanence mechanisms; a relinquishment obligation and a risk of reversal buffer relating to natural disturbances.

A relinquishment requirement is activated where a scheme participant wishes to withdraw voluntarily from the scheme. In such a circumstance the participant must relinquish credits already received for abatement. For example, if a participant who has established a reforestation project wants to harvest the forest, they must relinquish all credits received. If the proponent does not relinquish the credits, then they will be subject to a carbon maintenance obligation, which is an obligation not to engage in conduct that will destroy remaining carbon stores on the land.

While ANEDO supports the relinquishment obligation and the carbon maintenance obligation, there are two key issues. The first concern is that a relinquishment obligation might not be enough of a disincentive for proponents to reverse the abatement. Relinquishment does not penalise the project proponent for reversal, it merely ensures that they are not unjustly enriched. This means that the project proponent does not stand to lose anything other than transaction costs. Additional disincentive is therefore required. Considering this is a voluntary scheme, ANEDO deems the following to be appropriate:

- a “break fee” to discourage reversal; and
- penalties for knowingly or recklessly reversing abatement without surrendering CFI credits.

The second issue with the relinquishment obligation is that it may not be workable in practice. Serious thought must be given to how a CFI credit which has been earned, then traded outside the jurisdiction, then acquitted in a foreign compliance scheme, will be relinquished. This will be particularly complex if the abatement is reversed 20 years later. Further, this problem may be compounded by designating CFI credits as “personal property”, with all the legal baggage and constitutional protection that that implies. If CFI credits are intended to be inherently susceptible to relinquishment and recall, then they should not be categorised a property right.

The CFI scheme will also rely on a risk of reversal buffer for sequestration activities. This buffer of 5% is to insure the scheme against losses of carbon in the period while carbon stocks are being re-established following bushfire, drought, disease and pest attack and

against deliberate wrong-doing. ANEDO supports the introduction of the buffer as discounting CFI credits by 5% demonstrates a laudable commitment to the principle of “conservatism” in quantifying emission reductions, although the buffer percentage may also need to be increased as methodologies evolve. However, the Consultation Paper seems to rely on this buffer as a mechanism to ensure permanence. There is no requirement for the proponent to relinquish credits where such a natural disturbance has occurred. If carbon sequestration is reversed by the accidental destruction of the carbon store (for example, a carbon sink forest burning down in a bushfire), project proponents will not have to relinquish credits, as a result of their contribution to the risk buffer, except where they have not taken reasonable steps to mitigate the effect of the natural disturbance on the project. The proponent will, however, be subject to a requirement to re-establish the forest. Whilst ANEDO supports the requirement to re-establish the carbon sink, this does not go far enough. The carbon emissions caused by such an event may be far greater (or far less) than 5%. ANEDO submits that a more pragmatic way of dealing with “acts of God” is to

- require the project proponent to re-establish the carbon sink; and
- require the proponent to relinquish CFI credits until the sink is re-established.

Such an approach will ensure that credits are not being traded where the carbon sequestration that the credits represent has been reversed. Although this will disadvantage proponents who are not at fault, ANEDO submits that proponents should be required to manage the risk of natural disturbances to their carbon stores (such as fire and flood) the same way that businesses usually do – by taking out insurance. The primary consideration of the CFI scheme must be to ensure that only credits for genuine and long-term abatement are available on the market.

The issue of permanence can also be problematic when changing climatic, ecosystem or biological regimes naturally alter the carbon cycle of a system, resulting in increased carbon emissions (or sequestration) from a site. ANEDO submits that not only is the science around sequestering carbon in soils uncertain, but that our understanding of the carbon cycle is incomplete. We are concerned that the CFI is premature in terms of our scientific understanding of carbon processes. We recommend continued research into the carbon cycle and natural fluctuations.

3.3. Conservatism

ANEDO submits that the CFI scheme should require that a conservative approach to approving eligible abatement activities is taken. The Integrity Standards in the Discussion Paper include a commitment to “conservative assumptions” in calculating the quantum of abatement. We submit that a conservative approach should also be taken to determining which activities are eligible abatement activities. To some extent this may already be captured in the “supported by peer-reviewed science” integrity standard.¹² However, this conservative approach should be adopted in explicit terms as one of the “integrity standards” set out in Section 124 of the exposure draft. In its current form, section 124 does not contain a reference to the conservative approach.

¹² Department of Climate Change and Energy Efficiency, *Design of the Carbon Farming Initiative – Consultation Paper*, p 9.

4. Communities, water and biodiversity

ANEDO submits that only projects that demonstrate that they are ecologically sustainable should be eligible to generate credits under the CFI. There should be no adverse environmental impacts resulting from CFI projects. In this context, ANEDO strongly supports the following elements proposed:

- Section 25(4)(i) of the exposure Bill which makes it clear that projects that involve the clearing or harvesting of native forest, or the use of material obtained from a native forest, are not eligible offsets projects under the scheme. This would include the conversion of native forests in biochar;
- Section 25(4)(j) of the exposure Bill which requires a proponent to have obtained all regulatory approvals for a project before it can be eligible under the CFI. This would require compliance with environmental assessment requirements under local, state and federal environmental laws, including planning approvals, biodiversity assessments and water licences; and
- A proposal to require project proponents to consider relevant strategic planning instruments, such as regional natural resource management plans, to ensure that CFI projects are consistent with land use planning and priorities for particular regions.

However, in addition to these requirements, ANEDO submits that section 25 should be further strengthened by introducing a requirement that offsets must be “environmentally sustainable”. That is, that projects must accord with the principles of ecologically sustainable development, including the precautionary principle, before they can be approved. This will ensure that all potential impacts of a project, including environmental and social impacts, are thoroughly assessed to ensure no unforeseen impacts. For example, a reforestation proposal should be assessed holistically including its impacts on water diversion and biodiversity as well as its carbon sequestration potential.

In addition, ANEDO submits that the government should consider the introduction of a biodiversity code similar to the Carbon Sequestration and Biodiversity Code which the previous Victorian Government agreed to develop under the new *Climate Change Act 2010* in Victoria. It is intended that the code would include biodiversity principles for the use and management of land for carbon sequestration purposes (such as preventing the clearing of native vegetation, ensuring threatened species are not negatively affected), and measures to be applied to the use and management of land to maximise biodiversity conservation outcomes in relation to carbon sequestration and storage. All offsets must accord with the code or they cannot be approved. A similar code could be used under the CFI, with the status of subordinate legislation. Landholders should have to show they comply with the code before getting approval under the scheme.

5. Methodologies

ANEDO welcomes the methodology making process outlined in the Discussion Paper and exposure Bill. We support the requirement to publish all draft methodologies online and the ability for the community to make submissions within 60 days of publication. We also support the express requirement in section 107(4)(b) that the Domestic Offsets Integrity Committee consider all public submissions in assessing a methodology.

ANEDO strongly supports the provisions limiting the ability of the Minister to amend a proposed methodology once it has been endorsed by the Domestic Offsets Integrity Committee. Under the proposed section 109, the Minister cannot vary a methodology determination by the committee unless the committee endorses the variation. This provision will ensure that methodology determinations are only based on scientific considerations and the expertise of the committee. This ensures the integrity and credibility of the methodologies adopted.

ANEDO also supports the adoption of three year crediting periods which will allow for new, improved versions of methodologies to be used for future crediting periods in line with advances in carbon estimation.

The *Draft Guidelines for Submitting Methodologies* (Draft Guidelines) outlines a number of steps required to prepare a CFI methodology. ANEDO supports the development of standard or general methodologies that can apply specific technologies to different agricultural areas.

However, we note that that Step 3: Define procedures for identifying a baseline scenario, provides proponents with a number of options to identify feasible baseline scenarios. Given that the number of credits generated will be directly related to the difference in carbon concentrations before and after the abatement activity, ANEDO is concerned that different methods will have different results. We submit that the baseline methodology should be standardised at the outset, stringent, employ best practice according to the latest scientific research, and the result be independently verified before abatement activities begin and before any potential credits are issued.

EDO strongly supports Step 4 of the Draft Guidelines for submitting methodologies, which is concerned about leakage. However we note that the Draft Guidelines are not specific when defining which emissions should be included in the project boundary. We suggest adopting standardised emissions language (such as Stage 1, 2 and 3 emissions) to clarify the definition of project boundary. Further, EDONSW was present at the SBA forum on 18 January in Sydney,¹³ and noted that at least one of the abatement projects presented would not meet the CFI requirements, as the sequestration activity generated a biofuel, which, when used, would release GHG back into the atmosphere.

The Draft Guidelines do not address permanence on a project-specific basis. ANEDO submits that the methodology should include an additional step that requires the proponent to address permanence. The permanence step should include a detailed analysis of the permanent reduction of carbon, and any variables which will affect this permanence.

We agree with Step 5: Define procedures for estimating abatement, that stipulates the proponent should use the same method for estimating project emissions removals as was used to determine the baseline. However, we submit that the government should be responsible for developing a standardised procedure adopted by all proponents. We are concerned with the discussion of variability and averaging. We recognise that soil carbon fluctuates over time, and submit that it is a major problem. Our view is that the science of carbon sequestration is rudimentary and imprecise. However, by allowing proponents to adopt a long term average to determine the number of credits generated, at any given

¹³ Sustainable Business Australia Forum, 18th January 2011, *The Carbon Farming Initiative (CFI) and the role of Bio-CCS to reduce and mitigate greenhouse gas emissions and create new revenue for farmers*, Hosted by Norton Rose Australia.

time the actual concentration of carbon will be more or less (and in some cases much more or less) than the average figure. We submit that as the technology for measuring soil carbon advances, annual measurements will increase in accuracy and decrease in difficulty. We do not agree that models or projected averages should replace actual field data, especially given that carbon sequestration is relatively unproved in Australia, and highly variable.

In addition, at the SBA forum it was suggested that annual abatement measurements could be taken at any time over the reporting year. ANEDO strongly opposes this flexibility. Without repeatable, scientific measurements taken at the same time every year, individual concentrations would be incomparable, and averages would not accurately reflect natural annual fluctuations. We strongly submit that each project measure soil carbon concentrations at the same time of each year. In addition, we note that the requirements for developing a long term average are vague and non-specific. We do not support proponents choosing their own time-frame for developing long term averages, and submit that all projects be subjected to the same monitoring requirements, being an annual requirement, and that long term averages are generated with real data as it is measured. Soil carbon sequestration is a new science, and we do not yet have the technology or expertise to skip integral data collection stages.

We suggest that Step 6: Outline process for monitoring and reporting, should include a “trigger” or indicator for project failure, and the development of a contingency plan to remediate the failure. Should reversal of carbon sequestration begin, (due to natural, climatic or any other changes) ANEDO submits that project managers should be aware of the reversal and activate a remediation plan.

ANEDO therefore submits that only the government should prepare methodologies for use under the CFI, upon advice from the committee. Although the committee will assess methodologies in any event, in our view it is imperative that the government prepares the methodologies, based on expert input and best practice. This will ensure that a consistent approach is taken based only on scientific considerations, which will engender community confidence in the scientific rigour of the methodologies. However, the agricultural sector should have input into the process of methodology creation as a key stakeholder, which will enable existing knowledge and expertise within the sector to be utilised.

6. Scheme Processes

In addition to the scheme processes outlined, ANEDO submits that another step be added to the process that addresses project site suitability. Not all agricultural land will be suitable for a CFI project, as the soil, climate, existing vegetation and landuse will all impact on the ability of the site to sequester carbon. Even if the baseline carbon concentration has been established, it will not be certain that a specific site will be viable as a carbon farming site. We submit that in the scheme process, between Recognised Offset Entity and Project Approval, the process be amended to include Site Suitability Assessment.

ANEDO supports the strong reporting mechanisms outlined in the exposure Bill. We welcome the requirement for project proponents to report every 12 months. We also welcome the provisions requiring project reports to be independently audited by suitably accredited auditors under the National Greenhouse and Energy Reporting Systems

(NGERS). ANEDO also welcomes the commitment to issuing CFI credits after emission reductions have been verified.¹⁴ This will ensure that credits are only issued for abatement that has actually occurred.

ANEDO strongly supports the provisions in the exposure bill that require a register of offset projects to be kept and made publicly available on the Administrator's website. ANEDO supports the requirement that the website include a description of the project, the methodology applied, the name of the project proponent, the location of the project and the number of credits issued to date.

ANEDO strongly supports the proposed provisions relating to the review of the Act every three years, with the first report due on 31 December 2014. We support the requirement for the report to be tabled in each House of Parliament. However, there should be a provision requiring the Minister to prepare a response to the review and table that in parliament also. Furthermore, although section 352(2) makes it clear that a review must make provision for public consultation, ANEDO submits that the Act should further prescribe the form of public consultation. There should, at the very least, be a mandated period for the public to make submissions on the operation of the Act of at least 60 days.

Finally, ANEDO submits that the Act should introduce a merits appeal right for third parties. This should apply to key decisions, like the decision to approve an eligible abatement activity, to approve a project, and to issue CFI credits. Providing third party rights to review key decisions will provide a valuable "quality control" mechanism, to maintain the high quality of decisions and audits. Providing rights to merits review (not merely judicial review) will encourage a focus on the merits of decisions, rather than their technical legal requirements (i.e. on substance over form). This will encourage better decision-making and promote transparency and accountability.

For more information in relation to this submission please contact Rachel Walmsley, Policy and Law Reform Director (EDO NSW) on rachel.walmsley@edo.org.au or (02) 9262 6989.

¹⁴ Department of Climate Change and Energy Efficiency, *Design of the Carbon Farming Initiative – Consultation Paper*, p 18.