

## GOVERNMENT RESPONSE TO THE RURAL AND REGIONAL AFFAIRS AND TRANSPORT SENATE COMMITTEE REPORT

### Implementation, operation and administration of the legislation underpinning Carbon Sink Forests

On 26 June 2008, the Senate referred the following matter to the Senate Standing Committee on Rural and Regional Affairs and Transport for inquiry and report:

The implementation, operation and administration of the legislation underpinning Carbon Sink Forests and any related matters.

On 23 September 2008 the Senate Committee report, which included dissenting reports, was tabled in the Senate.

The Government has prepared a response to the Senate Committee report, including dissenting reports, in accordance with the Department of the Prime Minister and Cabinet Guidelines for the presentation of Government documents to the Parliament.

The Senate Committee report made nine conclusions:

1. The committee considers that the tax deductions for carbon sink forests under the *Income Tax Assessment Act (1997)* represent a valuable policy addition that will promote greenhouse gas reductions. The structures and processes outlined in the Act provide for a sensible legislative and administrative framework relating to the tax treatment around the establishment of forest carbon sinks.
2. The committee notes that other forms of greenhouse gas emissions reduction activities by industries are tax deductible. The change in the tax treatment of carbon sink forests addresses this anomaly in the tax system.
3. The committee believes that the tax deductions will provide incentives for corporate investment into greenhouse gas abatement activities which represents an ideal opportunity to direct necessary capital to achieve positive environmental outcomes.
4. The new tax arrangements provide a short-term incentive to encourage early establishment of carbon sink forests that will contribute to a medium-term emissions target, while other options for delivering significant emissions reductions are further developed. Carbon sink forests also contribute to the achievement of national policy objectives for sustainable natural resource management.
5. The committee considers that if Australia is to meet its carbon pollution reduction goals at least cost, the support of a viable carbon sink industry is important. Appropriate taxation arrangements are one part of a range of measures needed to encourage the role of carbon sink forests in Australia's carbon pollution reduction effort.
6. The committee recognises the benefits of relying on existing state and territory regulatory structures for the management of the impacts of carbon sink forests on the environment. The committee has some concerns that in certain key areas, such as land clearance legislation, natural resource management and water sharing, some states and regions may not currently have in place appropriate regulations or plans to manage the impacts of carbon sink forests. The committee notes that through the National Water Initiative, states and territories are committed to completing comprehensive water planning arrangements by 2011 and that COAG is currently seeking to accelerate the pace of this planning. The committee also notes that under this process steps have been taken to ensure that those water systems under the greatest pressure receive early attention. The committee considers that it would be desirable if a similar focus could be directed to regulation of land clearance and natural resource management.



7. More specifically, the committee notes the concerns raised in relation to the need to include ground water within water sharing plans. The committee supports the inclusion of specific reference to ground water in the Guidelines.
8. The committee notes the significant support expressed during this inquiry for specific incentives to encourage the establishment of biodiverse forests. The legislation as drafted does not distinguish between the type of forest planted and the committee is satisfied that it provides no disincentive for the plantation of biodiverse carbon sink forests. The committee also notes that biodiversity considerations have been taken into account in the development of the Guidelines and that these should contribute to the establishment of carbon sink forests in conformity with good practice environmental and natural resource management frameworks. The committee considers that any proposal to offer specific incentives for the establishment of biodiverse plantings must be considered within the context of existing environmentally focussed taxation incentives.
9. Finally, the committee welcomes the evidence received in relation to alternative options for terrestrial carbon stores, particularly in relation to perennial pasture cropping. While there clearly is some work to be done to demonstrate the benefits of such an approach within a carbon trading scheme, the committee considers that the wider benefits of improved soil structures and the potential increases in productivity of such systems warrant further examination. The committee considers that the government should request CSIRO to assess the data being accumulated from pasture cropping trials in Western Australia and New South Wales.

The dissenting report by Senators Milne, Joyce, Nash, Boswell and Heffernan made the following recommendations:

1. The guidelines should be mandatory regulations.
2. There should be incorporated into the regulation conditions which must be met before the tax deductions would apply, namely:
  - a) The carbon sink forests must be registered on the property title.
  - b) No native vegetation can be cleared for or converted to carbon sink forests.
  - c) Carbon sink forests should be biodiverse and cannot be harvested or cleared, and
  - d) No carbon sink forest can be established in the absence of a hydrological analysis including groundwater and interception, of the proposed area to be planted.
3. To avoid the destruction of rural communities and the displacement of food crops, prime agricultural land must be excluded from carbon sink plantings.

The dissenting report by Senator McGauran raised concerns including the potential for carbon sink forests to displace agriculture.

## Government Response

The Government has considered the findings of the Senate Committee report and the concerns indicated in the dissenting reports. In considering these matters, the Government has taken into account the nature of the issues raised, the objectives of the tax measure, implications for administration of the *Income Tax Assessment Act (1997)* and for taxpayers, and the extent to which the issues raised fall within the responsibilities of the Commonwealth. The Government's response to the issues raised is as follows.

The Government notes that the matters raised in the Senate Committee report were debated in the Senate on 1 December 2008.

### *a) Amendments to the Environmental and Natural Resource Management Guidelines*

The Government has amended the Environmental and Natural Resource Management Guidelines to address a number of the issues raised.

- The guideline relating to establishing carbon sink forests based on regionally applicable best practice approaches for achieving multiple land and water environmental benefits has been amended to include specific reference to avoiding significant negative impacts on groundwater activity. This addresses Conclusion 7 in the Senate Committee report.
- A new paragraph under the guideline relating to the recognition and adherence to all government regulatory requirements has been added to include a requirement to comply with applicable state and territory, and local government land use planning legislation regarding the establishment of alternative land uses on agricultural land. This addresses concerns raised in the dissenting reports related to the displacement of prime agricultural land for carbon sink forest establishment (Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 3; Dissenting Report (McGauran)).
- A new guideline has been added to include a requirement that legal rights concerning carbon sequestration in carbon sink forests be registered on the land title in accordance with applicable state government legislation. This addresses concerns related to the registration of carbon sink forests on property title (Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 2(a)).

Amended guidelines were registered on the Federal Register of Legislative Instruments on 10 December 2008, and took effect on 11 December 2008.

### *b) Other findings of the Senate Committee Report and the Dissenting Reports not addressed under (a)*

- Senate Committee report Conclusions 1, 2, 3, 4, 5 and 8:

The Government agrees with these conclusions.

- Senate Committee report Conclusion 6:

There are existing national environmental policy frameworks in place which provide agreed objectives and management approaches for all jurisdictions to protect native vegetation, including regrowth and remnant habitats. Such frameworks include the National Strategy for the Conservation of Australia's Biological Diversity and the National Framework for the Management and Monitoring of Australia's Native Vegetation (Native Vegetation Framework). These national frameworks are agreed between all jurisdictions and are underpinned by specific policies, legislation and management approaches within each jurisdiction.



The Government is conscious of the need for an effective national framework for tackling land clearing. In April 2008 the Natural Resource Management Ministerial Council (NRMMC) agreed to finalise the review of the Native Vegetation Framework. The NRMMC confirmed the importance of the Native Vegetation Framework as the national policy framework for achieving a reversal in the long-term decline of Australia's native vegetation and improving the condition of existing native vegetation. The Native Vegetation Framework provides a mechanism through which the native vegetation management commitments agreed to by all state and territory governments can be progressed in a consistent and coherent manner.

The Commonwealth, state and territory governments have also enacted legislation for environmental protection, including to regulate the broad scale clearing of native vegetation and to protect threatened species and ecological communities. The Government protects certain specific and defined matters of National Environmental Significance under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), including listed threatened species and ecological communities. Proposals that are likely to have a significant impact on those matters must be referred to the Commonwealth Environment Minister for assessment. Land Clearance is listed as a Key Threatening Process under the EPBC Act. On the advice of the Threatened Species Scientific Committee, the previous government decided not to establish a Threat Abatement Plan for this process primarily because such a plan would not contribute any threat mitigation over and above existing measures such as the Native Vegetation Framework and state and territory vegetation legislation. In accordance with the requirements of the EPBC Act this decision is now under review by the Threatened Species Scientific Committee, which will advise the Government about whether this decision is still appropriate.

In addition, the Government will invest \$2.25 billion from July 2008 to June 2013 through Caring for our Country to secure improved strategic natural resource management outcomes across six national priority areas:

- the National Reserve System
- biodiversity and natural icons
- coastal environments and critical aquatic habitats
- sustainable farm practices
- natural resource management in northern and remote Australia, and
- community skills, knowledge and engagement.

Caring for our Country will be delivered in partnership with regional natural resource management groups, local, state and territory governments, Indigenous groups, industry bodies, land managers, farmers, landcare groups and communities.

• Senate Committee report Conclusion 9:

Better soil management, including carbon in soils, is being addressed as a priority under the \$46.2 million Climate Change Research Program component of the Australia's Farming Future Initiative. The Minister for Agriculture, Fisheries and Forestry, the Hon Tony Burke MP announced on 3 March 2009 \$20 million for soil carbon research under this Program.

- Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 1:

The Government notes that complying with the guidelines is a mandatory requirement of the legislation, however, the guidelines offer some flexibility in how taxpayers may comply. Extending the guidelines to involve mandatory requirements or additional regulatory requirements would significantly increase the cost of compliance for forest growers, increase the cost of administering the tax deduction, and would raise issues about the bounds of Commonwealth jurisdiction.

- Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 2(b):

Concerns regarding the potential for native vegetation to be cleared, or converted to, carbon sink forests are already addressed in the legislation. Subsection 40-1010(2)(c) notes that to obtain the tax deduction the area occupied by the carbon sink forest must have been clear of trees on 1 January 1990. In addition, the guidelines provide that all government regulatory requirements be adhered to in order to obtain the tax deduction, and this includes relevant state and territory land clearing regulations.

- Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 2(c):

Concerns that carbon sink forests should be biodiverse and cannot be harvested or cleared are also addressed in the legislation. The Government notes that it is not the primary objective of the legislation to promote biodiversity. However, the guidelines require the carbon sink forest grower to consider regional natural resource management plans and apply best practice approaches for achieving multiple land and water objectives. This will facilitate a focus on providing habitat for local flora and fauna, and providing biodiversity benefits for the region. In addition, national policy frameworks and programs as described above promote biodiversity conservation.

A requirement for obtaining the tax deduction is that the trees are established for the purpose of carbon sequestration, and are not for felling or for commercial horticulture.

- Dissenting Report (Milne, Joyce, Nash, Boswell and Heffernan) Recommendation 2(d):

The recommendation in the dissenting report that a hydrological analysis be required before a carbon sink forest could be established would be cost-prohibitive. The guidelines require water access entitlements be obtained for catchments that have been identified as fully allocated, over-allocated or approaching full allocation, consistent with the National Water Initiative commitment relating to interception that poses a significant risk to water resources.

