

Chapter 3

Environmental and Natural Resource Management Guidelines

Introduction

3.1 Eligibility for the carbon sink forest tax deduction requires adherence to a set of environmental and natural resource management guidelines. Subsection 40-1010(3) of the *Income Tax Assessment Act 1997* (ITAA) requires the Minister for Climate Change to make guidelines about environmental and natural resource management in relation to the planting of carbon sink forests. The Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration (the Guidelines) were introduced on 2 July 2008 and were tabled in the Parliament on 26 August 2008. A copy of the Guidelines is provided at Appendix 4 to this report.

3.2 The committee was told that the purpose of the Guidelines is to reinforce that carbon sink forests are to be established in a manner that is consistent with existing good practice environmental and natural resource management frameworks and regulations. The committee was also told that the Guidelines do not apply any new regulatory arrangement by any level of government and have been developed to avoid negative environmental outcomes, and provide realistic compliance and administration costs for government and taxpayers.¹

3.3 The Guidelines set out three areas for achieving climate change and natural resource management outcomes and provide examples for how each of these outcomes can be met. The Department of Climate Change (DCC) states that the guidelines align with relevant established good practice environmental and natural resource management.²

3.4 Guideline 1 aims to ensure that carbon sink forests are established using regionally applicable best practices approaches for achieving multiple land and water benefits. The committee notes that the expectation underlying this guideline is that carbon sink forests should be established in ways that enhance, or limit significant negative impacts on, water availability and salinity mitigation.

3.5 Guideline 2 aims to ensure that carbon sink forest activities are consistent with regional natural resource management plans and that potential cumulative environmental impacts are assessed at a catchment scale. Guideline 3 aims to ensure

1 *Submission 45*, pp. 9 – 10.

2 Department of Climate Change website, <http://www.climatechange.gov.au/land/tax-deduction.html>, accessed on 28 August 2008.

compliance with Commonwealth, state and territory legislation, and local and regional regulations.³

Flexible nature of the guidelines

3.6 The committee received a number of submissions which commented on the manner in which the Guidelines have been drafted. A number of submissions expressed concern that the Guidelines provided only examples and guidance and do not employ more prescriptive language.⁴ Some submitters consider that the requirements in the Guidelines should be mandatory and preferably set out in the primary legislation.⁵

3.7 Other submitters expressed concern that the Guidelines are not sufficiently comprehensive. For example, Greening Australia expressed concern that the Guidelines do not provide specific direction on a range of environmental impacts including water quality, restoration and protection of carbon stocks, impacts on habitat, permanence or perverse outcomes associated with inappropriate plantings.⁶ The Green Institute expressed concern about the adequacy of environmental planning requirements in the Guidelines, noting that there is no specific mention of the *Environment Protection and Biodiversity Conservation Act 1999* in the Guidelines. Similarly, Greenpeace Australia Pacific considers that the guidelines should include conditions to safeguard the social, cultural and environmental integrity of areas proposed for Carbon Sink Forest establishment.⁷

3.8 The committee notes that the Guidelines are drafted in particularly generic and simple terms. The committee heard that the Guidelines have deliberately been drafted in this way to take account of future legislative and regulatory changes. Mr Ian Carruthers, First Assistant Secretary, Adaptation and Land Management Division, DCC, told the committee that if there were a change in environmental and natural resource guidelines brought in by the Commonwealth or state governments then these Guidelines would automatically adopt it.⁸ Mr Carruthers told the committee:

There is added focus and pressure through this legislation to declare that all the applicable public policy at all levels of government and all the industry codes and whatever are complied with in making a tax deductibility provision. If governments, through public policy, choose to strengthen or change requirements to do with conservation or other matters over time, then these guidelines have built into them the flexibility to require that the

3 Department of Climate Change website, <http://www.climatechange.gov.au/land/tax-deduction.html>, accessed on 28 August 2008.

4 *Submission 56*, p. 7.

5 See for example *Submission 41* and *Submission 56*

6 *Submission 35*, p. 3.

7 *Submission 41*, p. 3.

8 *Committee Transcript*, 24 July 2008, p. 57.

standards of the day are met in making an application for establishment costs.⁹

3.9 The committee heard that the intent of the legislation is to achieve an integrated outcome in terms of climate change objectives, natural resource management objectives and environmental objectives.

Reliance on state and territory regulatory structures

3.10 The committee notes there is also some concern that relying on regionally applicable best practice approaches and State and Territory regulation may not be effective. For example, Greening Australia expressed concern that the Guidelines rely on standards prescribed under, what it describes as, variable and often ambiguous regional natural resource management plans. The Australian Network of Environmental Defender's Offices (ANEDO) perceives problems with the current state regulation of plantations in NSW and is concerned that such problems are exacerbated by poor monitoring and enforcement of legislation by relevant government authorities. ANEDO would prefer that a comprehensive national framework is established to ensure that carbon sinks fulfil their intended purposes and do not cause ancillary environmental harm.¹⁰

3.11 The committee also notes that the various legislative instruments relied upon in the Guidelines are different in each state and territory. For example, Mr Andrew Grant, CO2 Group Limited, explained that his company needs to comply with a range of environmental regulatory requirements from state to state.

part of our site assessment and due diligence in planning application requires securing all of the appropriate approvals before the sink is established. New South Wales has a discrete piece of legislation called the Plantation and Reafforestation Act, and it stipulates all the environmental approval assessments and the regulatory approvals that are critical. There is a government department that administers that, so every planting on every property has to go through that approval. In Victoria, South Australia and Western Australia it will vary, but it is a variation on a common theme. In the case of New South Wales, the landholder has to undertake that application.¹¹

3.12 The committee notes that there may be some benefit in companies seeking to invest in carbon sink forests across states if there were a greater degree of regulatory consistency between jurisdictions.¹² However, the committee notes that the Guidelines have been drafted so as to accommodate such variations.

9 *Committee Transcript*, 24 July 2008, p. 53.

10 *Submission 48*, p. 6.

11 *Committee Transcript*, 24 July 2008, p. 70.

12 Mr Andrew Grant, *Committee Transcript*, 24 July 2008, p. 70.

3.13 The committee was also cautioned against seeking to make the guidelines more specific. Mr Andrew Grant, CO2, told the committee that he did not think it would be possible to improve the guidelines given the degree of variation between legislation and regulations in each State and territory. In Mr Grant's opinion the inclusion of greater detail in the guidelines may render them unworkable.¹³

3.14 The committee notes that there is some support for the current reliance on state and territory legislation.¹⁴ In particular the committee notes the endorsement of the Western Australian Departments of Environment and Conservation and Water.¹⁵

Management of water resource impacts

3.15 The committee was particularly concerned to understand how the impact of carbon sink forests on water resources would be managed under the Guidelines. In particular, the committee examined how the issue of water interception by carbon sink forests would be dealt with under the Guidelines and the implications of the National Water Initiative (NWI) for carbon sink forests.

3.16 The committee notes that under the NWI governments have committed to:

- prepare water plans with provision for the environment;
- deal with overallocated or stressed water systems;
- introduce registers of water rights and standards for water accounting;
- expand the trade in water;
- improve pricing for water storage and delivery; and
- meet and manage urban water demands.

3.17 Under the NWI each state and territory government is required to prepare a NWI implementation plan. These plans, which are accredited by the National Water Commission (NWC), include actions and timelines for implementation of key actions under the NWI. Nine implementation plans have been accredited by the NWC to date.¹⁶

3.18 Mr Russell James, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts told the committee that the legislation is compliant with the NWI.¹⁷ Mr James also clarified that that while the NWI does not specifically deal

13 Mr Andrew Grant, *Committee Transcript*, 24 July 2008, p. 70.

14 See *Submission 11*, *Submission 30* and *Submission 50*.

15 *Submission 53* and *Submission 54*.

16 National Water Commission website, <http://www.nwc.gov.au/www/html/117-national-water-initiative.asp?intSiteID=1>, accessed on 28 August 2008.

17 Mr Russell James, Assistant Secretary, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts, *Committee Transcript*, 24 July 2008 p. 101.

with the implications of plantation forests, including plantations for the purpose of carbon sinks, it commits states and territories to having in place, by no later than 2011, arrangements to ensure that such water intercepting activities are considered in the water planning process. In cases where such activities are expected to intercept significant volumes of water, the NWI ensures that they are managed appropriately. Mr James explained to the committee that:

The basic approach of the National Water Initiative is that commercial water use should be limited so as to ensure environmental objectives can be met and that the allocation of water for commercial use should be through the market. While much water use is regulated in the form of water access entitlements, the NWI recognises that a number of water-using activities, such as farm dams, bores and plantation forests, have potentially significant water use. If this is not taken into account in the water planning process, there is a risk that the environment will get less water than intended and that the water access entitlement system will be eroded.¹⁸

3.19 The committee heard that if comprehensive water planning arrangements are in place, proposals for carbon sink forests would need to be assessed within the context of these arrangements. In systems that are overallocated, fully allocated or approaching full allocation, the NWI indicates that proposals above a certain threshold size should be required to obtain a water access entitlement and that a suitable monitoring regime is put in place.¹⁹

3.20 The committee notes that most states are actively addressing the development of water sharing plans. Under the NWI this work is to be completed by 2011. However, the committee notes that the Council of Australian Governments (COAG) Working Group on Climate Change and Water is currently preparing advice on a forward work program for water reform. One of the issues to be addressed as part of this forward work program is the acceleration of the NWI commitments on interception in recognition of the potentially significant impact of growth-intercepting activities. The Working Group is expected to report to COAG in October 2008.²⁰ Mr James explained to the committee

Regarding concern about intercepting activities broadly, carbon sink forests are only one possible form of those activities. For example, in the Murray-Darling Basin there are estimates that in the next 10 years something like an additional 1,500 gigalitres of water might be taken out of the system by growth in activities like farm dams or plantations. There is nothing specific about carbon sink forests in that estimate. In a sense, that is why COAG has asked us to look at this issue more closely. There is already a commitment

18 Mr Russell James, Assistant Secretary, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts, *Committee Transcript*, 24 July 2008, p.

19 Mr Russell James, Assistant Secretary, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts, *Committee Transcript*, 24 July 2008, p. 98.

20 Mr Russell James, Assistant Secretary, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts, *Committee Transcript*, 24 July 2008, p. 99.

in the NWI to ramp up the regulation of these activities by 2011, and COAG has asked us to make that happen even faster.²¹

3.21 In its Report to COAG in February 2008, the NWC noted that significant progress has been made across a broad range of areas of water reform. The NWC reports that almost all states and territories have made good progress in developing water access entitlement and planning frameworks as prescribed by the NWI, particularly in high priority water systems. The report notes that almost all states have made statutory provision for environmental and public benefit outcomes within water plans to protect water sources and their dependent ecosystems.²²

3.22 The NWC provided the committee with a summary of the processes and practices for water planning in each state and territory and an updated report on the current status of water planning for each water system, including both surface water catchment and groundwater systems. The committee notes that water plans have been commenced in relation to most water systems, but that a significant amount of work remains to be completed in most states.²³

3.23 The committee also notes that all water plans have a statutory review period. While this review period varies significantly from state to state, ranging from 5 years to 15 years, the committee considers that this provision for review is important in ensuring that each water plan is responsive to changes within the water system to which it applies. Such changes will include climatic changes as well as changes in the availability of information and knowledge in relation to water usage, environmental water needs and the impact of adaptive management practices.

3.24 In evidence to the committee, the NWC clarified that it has previously observed a need for more concerted action by the states and territories on interception and has expressed some concerns in relation to the slow rate of rollout of completed plans across Australia. The NWC has also expressed concern in relation to the lack of a shared national definition of sustainable levels of extraction. However, the NWC does not consider that the provisions of this legislation on their own will lead to large-scale land use change and large-scale interception of water.²⁴

3.25 Mr Matthews explained to the committee that the basis for this view is that within each state the development of water plans has been subject to a prioritisation process. He told the committee that the water plans across Australia have been

21 Mr Russell James, Assistant Secretary, Water Policy Branch, Department of the Environment, Water, Heritage and the Arts, *Committee Transcript*, 24 July 2008, p. 99.

22 National Water Commission, Update of progress in water reform: input into the water sub group (WSG) stocktake report, 15 February 2008, pp. 3-4

23 National Water Commission, answer to question on notice, 11 September 2008, (received 22 September 2008).

24 *Committee Transcript*, 11 September 2008, p. 40

sequenced by the state governments according to those catchments where the water systems are under the greatest pressure. Mr Matthews said

... for a long time now the most stressed areas—water systems—have had intensive planning activity across them. That gives me some confidence that, if there are water systems that are approaching full allocation or are overallocated, they are under notice now. Where the systems are not approaching overallocation, and given what I have said about our expectation that this will not be an additional major demand on water, I am confident that the sequencing and the timing can be accommodated.²⁵

3.26 While the committee notes that the Guidelines appear to be compliant with the NWI, it also notes the improvements to the Guidelines suggested by the Department of Water WA (DOW). While DOW agrees with the basic principles which underly each guideline, it suggests that the Guidelines should also include a requirement to avoid the establishment of carbon sink forests in areas of shallow groundwater where there is a potential for acid sulphate soil generation.²⁶ DOW goes on to suggest that 'catchment' should be replaced by 'water system' throughout the Guidelines to account for both surface water and groundwater systems.²⁷ DOW also suggests that it would be beneficial for the legislation underpinning Carbon Sink Forests to include a guideline that 'other legislation pertinent to tree plantations for the purpose of carbon sequestration must take into consideration water interception activities.'²⁸

3.27 The committee notes from the status report of water plans prepared by the NWC that most states and territories are considering the interrelationship between ground water and surface water, including overland flow, in the development of water plans. Water sharing plans are also being developed specifically for groundwater systems in most states.²⁹

3.28 The committee explored the suggestion that the Guidelines could be amended to limit tax deductions to carbon sink forests in catchments where there is a signed off water plan and catchment management plan. Mr Matthews told the committee that because the NWI has prioritised the development of plans in fully allocated systems or those approaching full allocation, such an amendment to the Guidelines could have a perverse outcome.

I think that could run the risk of having a perverse outcome—that is, it might direct these forests to the most overallocated systems because the most overallocated systems are where the planning has been. The least overallocated systems often have not yet finished their planning. I suggest

25 *Committee Transcript*, 11 September 2008, p. 43.

26 *Submission 54*, p. 1.

27 *Submission 54*, p. 2.

28 *Submission 54*, p. 2.

29 National Water Commission, answer to question on notice, 11 September 2008, (received 22 September 2008).

to the committee that you have a think about making that condition, because it might have a perverse outcome.³⁰

Land clearance

3.29 The committee received a range of evidence expressing concern that these provisions could lead to the clearance of remnant vegetation. The committee notes that all mainland jurisdictions have some form of control on the large scale removal of native vegetation.³¹ However, the committee recognises that as with other legislative structures there is some variation between land clearance requirements between the various jurisdictions.

3.30 The committee was disappointed that DCC appeared unable to allay concerns that a lack of enforceable legislation in some jurisdictions may result in clearance of remnant native vegetation. In particular, the committee sought clarification of the status of land clearance legislation in the Northern Territory and Tasmania. Mr Paul Ryan told the committee

I do not think we are able to comment specifically on state legislation. Our understanding is that there is clearing legislation in place in all jurisdictions.³²

Compliance with the Guidelines

3.31 Under Sub-section 40-1010(h) of the ITAA the owner of the trees must give a notice to the Commissioner of Taxation providing all information necessary to determine whether all of the conditions in subsection 40-1010(2) are met. One of these conditions is that the establishment of the trees meets the requirements of the Guidelines. In addition to this requirement, Subsection 40-1010(6) requires the Secretary of DCC to establish whether there are reasonable grounds for believing that the environmental and natural resource requirements set out in the Guidelines have been fulfilled.³³ Where the Secretary is satisfied that one or more of the conditions in subsection 40-1010(2) has not been met, the Secretary must give notice of this to the Commissioner for Taxation and no tax deduction can be claimed in these circumstances.

3.32 To receive the carbon sink forest tax deduction, tax payers must complete a Notice of Establishment of Trees in a Carbon Sink Forest Form. The notice requires the taxpayer to declare the locations where trees have been established, the species planted and that the trees meet the forest characteristic requirements and comply with the environmental and natural resource management Guidelines. These claims will be

30 Mr Ken Matthews, CEO, National Water Commission, *Committee Transcript*, p. 44.

31 Mr Peter Cosier, Wentworth Group, *Committee Transcript*, 18 August 2008, p. 29.

32 Mr Paul Ryan, *Committee Transcript*, 11 September 2008, p. 59.

33 *Committee Transcript*, 24 July 2008, p. 54.

assessed by the Department of Climate Change, taking into account the information submitted by the taxpayer.³⁴

3.33 Mr Carruthers also explained to the committee that DCC would be assisted in its assessment of a taxpayers claim by satellite records developed under the National Carbon Accounting System. Mr Carruthers said:

Through the National Carbon Accounting System we have a record of the tree cover of Australia at the subhectare scale over more than 30 years, so we know what is happening out there in the landscape in terms of cluster of trees. It is a very simple matter to check the GPS coordinates on somebody's claim against what satellite records show at the point from establishment out in time.³⁵

3.34 Mr Carruthers told the committee that, as these satellite records are publicly available, taxpayers would be able to use them to demonstrate their claim that they are planting on non-forested lands.³⁶ Mr Carruthers also told the committee that

Given the keen public interest in these matters, I am sure that it would not just be the Department of Climate Change that would have its eyes and ears open in determining and assessing conformity with the legislative provisions to see whether there may be nonconformity. I am sure that there will be many interested parties, including the buyers of the carbon credits and organisations like Greening Australia and other public voices.³⁷

Committee view

3.35 The committee notes the concerns raised in relation to the simple and generic nature of the Guidelines. The committee recognises that many submitters would like to see greater clarity in relation to how specific environmental and natural resource implications of carbon sink forests will be managed. At the same time the committee recognises that the reliance on existing state and territory regulatory structures will provide realistic compliance and administration costs for both government and taxpayers.

3.36 More significantly, the committee recognises that establishment of uniformity across the states and territories in relation to the full range of relevant legislative instruments would be no small undertaking. The committee also accepts the proposition that the inclusion of a greater level of detail within the regulations may render them unworkable or result in perverse outcomes. The committee notes that the Guidelines appear to be consistent with other government initiatives at both a state

34 *Submission 45*, p. 11.

35 *Committee Transcript*, 24 July 2008, p. 57.

36 *Committee Transcript*, 24 July 2008, p. 57

37 *Committee Transcript*, 24 July 2008, p. 54.

and Commonwealth level and appear to be capable of responding to changes in regulatory requirements over time.

3.37 However, the committee also notes the concerns raised in relation to the consideration of ground water in hydrological analysis within water systems. This committee is aware of the complex interrelationship between ground water and surface water. The committee's predecessor registered its concerns in relation to the regulation of ground water extraction and the need for state and territory governments to undertake reviews of ground water allocations in its inquiry into Water Policy Initiatives.³⁸ In this context, the committee supports the inclusion of specific reference to ground water in the Guidelines.

38 Rural and Regional Affairs and Transport References Committee, Water policy initiatives, Final Report, December 2006.