Submission to Senate Environment and Communications Legislation Committee Inquiry into the Carbon Farming Initiative

Introduction and Background

CO2 Group Ltd welcomes the opportunity to make a submission to the Senate Environment and Communications Legislation Committee Inquiry into the Carbon Credits (Carbon Farming Initiative) Bill 2011; Carbon Credits (Consequential Amendments) Bill 2011 and Australian National Registry of Emissions Units Bill 2011.

CO2 Group Ltd is a pioneer in the development of Australian commercially significant and non-government funded carbon sink projects that produce real greenhouse gas abatement. We note that the Carbon Farming Initiative (CFI) in many respects achieves what was available under the Greenhouse Friendly Program. However, the inability of companies seeking to achieve National Carbon Offset Standard recognition through the use of carbon sink off-sets sourced from Australia remains problematic.

Summary points

1. The CFI legislation is much needed and deserves support.
2. Notwithstanding our support for the Bills there are some areas that we have identified where the Bills could be improved:
    a. The start date for crediting projects should be pushed back to 1st January 2008 to align with the first Kyoto Commitment period;
    b. The 'additionality' test ought to be modified to ensure that perverse outcomes are not created and so that the CFI's regulatory oversight is aligned with state and local government initiatives;
    c. Requirements in relation to regional Natural Resource Management (NRM) plans ought to be reconsidered as the current provisions create a potential conflict of interest for regional NRM bodies.

We expand on these points below and are willing to expand upon them if this would assist either committee to assess the bills.

Need for the Bill

We wish to emphasise that the Carbon Farming Initiative is very much needed. In its absence voluntary carbon abatement activity within Australia's landscapes is stymied because the purchasers or investors in voluntary carbon abatement activity cannot be certain of what they are buying or investing in. They cannot be sure that a future government or the market will recognize

current abatement as being legitimate. A self-regulatory approach met difficulties with claims being disputed by the Australian Competition and Consumer Commission.

Regardless of whether land-based abatement is:

- voluntary;
- part of a direct-action approach;
- an off-set within a tax system;
- part of a compliance-based or voluntary emissions trading scheme (either cap-and-trade or baseline-and -credit); or
- a hybrid of these,

there is a need for a rational set of rules and processes to govern what should be recognized as 'land-sector abatement'. The CFI meets this requirement.

It is important that the parliament passes this legislation as it provides the necessary framework for considering, managing and undertaking carbon abatement in Australia's landscapes including on-farm activities. The lack of an agreed approach to land-based abatement is as detrimental to those who have concerns about carbon abatement and its role in the landscape, as it is to those who recognize the importance of reducing greenhouse gas emissions and enhancing Australia's carbon sinks.

We note the extensive consultation that has been undertaken in the preparation of these Bills and that this consultation has generally had the effect of strengthening the provisions related to the fear of perverse outcomes as well as providing greater regulatory flexibility in matters such as determining the crediting period, the application of the 'additionality test', the variety of units that are suitable for relinquishment, and consideration of information that is required to be placed in the public domain.

Start Date

The Bill allows for the effective commencement of abatement to be 'counted' from 1st July 2010. From a 'Kyoto' perspective the start date for recognizing abatement under the CFI should be 2008, to align with the Kyoto first commitment period (2008-2012). The date currently in the Bill means the Commonwealth still benefits from privately-funded sequestration between 1st January 2008 and 30th June 2010.

Both major parties have at various times since the Shergold report in 2006 declared that early action on carbon abatement will not be penalised despite the frameworks for recognising that abatement not having been finalised.

These undertakings cannot be considered to have been honored if the Australian Government is to benefit from privately funded abatement at the experience of those businesses and individuals who have undertaken abatement activities. Given the rather conservative risk of reversal buffer contained within the CFI, there is little excuse to quarantine the early action of private companies and individuals on the basis that a buffer is needed to protect against losses from the scheme.

The amendment required to change the start date is simple: change Section 27 (16) and Part 9 Division 2 Section 122 (3) of the Carbon Credits (Carbon Farming Initiative) Bill 2011.

Additionality Test

We note the conditions under which additionality will be assessed; essentially being recognized through a listing process and an assessment of the project to determine whether it is required to be undertaken by law. Projects required by law are deemed not to be 'additional'. This drafting ought to be reconsidered in its current form as it is vague and will lead to perverse outcomes.

The legislation needs to recognize that there is actually considerable scope to align the aspirations of the CFI with initiatives undertaken by state and local governments. In effect, entities with mandatory obligations may be forced to undertake actions with either no standard applied, or through off-shore standards, simply because a definition of additionality locks them out of the robust processes developed under CFI. The concept of 'additionality' is intended to prevent entities being rewarded for or obtaining benefits from undertaking 'business-as-usual' activities. The lack of clarity in the present drafting opens the opportunity for an entity to be singled-out and penalised twice: the first time through one level of government imposing a specific obligation (beyond business-as -usual) on an individual entity and a second time through a different level of government (in this case the Commonwealth) preventing the actions of that entity being formally acknowledged.

Another problem with this provision is that it leaves open the opportunity for a project developer to purchase renewable energy or acquire Renewable Energy Certificates, but not meet an obligation through land-based abatement.

Safeguards

CO2 Group notes that within the draft legislation there are very strong safeguards designed to mitigate the fear of perverse social and environmental outcomes and notes that the scope of the safeguards considered is very wide. This includes the ability of the Minister to ban any project or kind of project from the CFI.

In this context we question the wisdom of relying so heavily on Regional Natural Resource Management Plans. Regional Natural Resource Management Plans are not well-defined within the Bills and considering that resources in the development and maintenance of regional natural resource management plans have been variable there appears to be no quality control in relation to these plans and how they may affect carbon projects.

Furthermore, since the legislation requires that all Local, State and Commonwealth planning and other regulatory requirements need to be met, it is questionable as to whether the references to potentially out-dated NRM plans add value. From a naïve perspective it appears as if the Australian Government does not believe that three tiers of government represent sufficient oversight into relatively straightforward decision-making.

We also note that there is the significant potential for a material conflict of interest to emerge in that some regional NRM bodies also intend to be 'eligible participants' and 'project proponents' or agents within the CFI.

For these reasons we believe that the references to the Natural Resource Management Plans are unnecessary.

Linking

We welcome the intention of the draft legislation to enable 'like-for-like' creation, transfer and relinquishment of units. Such provisions are essential for the effective functioning of the CFI. The provisions to enable the Track 1 Joint Implementation Hosting of Projects are important notwithstanding the lack of certainty surrounding the Kyoto Protocol because they establish a platform that will assist Australia within the emerging carbon constrained world.

We also note that New Zealand has a functioning Emissions Trading Scheme in which the NZ Government creates NZUs (currently exchangeable with AAUs) we suggest that NZUs be added to the list of *substitute* units (Section 178 of the Carbon Credits (Carbon Farming Initiative) Bill 2011).