Australian Government

# Submission Template

## Carbon Farming Initiative - Comments on CFI draft amendment regulation: Technical amendments - Tranche 2, 2013

## Overview

This submission template should be used to provide comments on the 'Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2013 (No. B): Technical Amendments'.

## Contact Details

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A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

**Do you want this submission to be treated as confidential?** ☐ **Yes** ☒ **No**

## Submission Instructions

Submissions should be made by **close of business** on **17 April 2013**. The Department reserves the right not to consider late submissions.

Where possible, submissions should be lodged electronically, preferably in Microsoft Word or other text based formats, via the email address – **CFI@climatechange.gov.au**.

Submissions may alternatively be sent to the postal address below to arrive by the due date.

CFI Design Section
Land Division
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## Comments on simplified auditing and reporting

This relates to draft regulations 1.13(1) and 6.5.

## Comments on new positive list activity

This relates to draft regulation 3.28(1)(o).

At a general level it is inappropriate to include 'avoided harvesting' in the CFI Regulations in the absence of broader consideration of the range of management options for native forests, across all tenures, that could deliver positive greenhouse gas abatement. The inclusion of 'avoided harvesting' as an eligible project activity should be delayed until both the land management implications and scientific basis are fully understood.

As it is presented in the draft regulations the sub-regulations allowing for avoided harvesting projects are likely to cause some perverse incentives and inequitable outcomes.

Inclusion of the activity allows for crediting under the CFI which is intended to provide an incentive to prevent the clearing or harvesting of areas of native forest on freehold or leasehold land that are at *imminent risk* of being cut down.

The explanatory note states that there is an identified need to differentiate between the *legal right* to clear or harvest and the immediate intention to do so. The explanation is that the CFI should not create a perverse incentive for a proponent to claim that they were intending to cut down trees (when in fact they were not intending to) only so they could receive carbon credits. This would result in crediting non-additional abatement which would undermine the integrity of the CFI.

To address this risk, the amendment is proposing that the activity will only be eligible if there is documentary evidence of the intention to clear or harvest; it does not include all areas where there is a 'legal right' to clear or harvest. The amendment limits the circumstances in which the activity can be undertaken by including specific definitions of harvesting plans and specifying the date by which these plans must have been approved in order to demonstrate *imminent risk* and prove additionality.

The IFA recognises the need to ensure that abatement meets the integrity standards of the CFI Act and that a perverse incentive should not be created, however should the principle of *imminent risk* stand as proposed there is the potential that these provisions will disadvantage land holders who have the legal right to harvest their forest but who have not progressed to a stage of seeking the necessary approvals to do so; there is no imminent risk but there is a real future risk because timber harvesting remains a legal land use option.

The proposed regulations do not accommodate for the diversity of circumstances which may impact decision-making about intention to harvest or clear, such as:

- The land has only recently been acquired and while the legal right to harvest exists there has been insufficient time to act on the opportunity.
- Under developed capacity - .e.g. land owners are in the process of acquiring capital or the skills to harvest;
- Market constraints - e.g. a down turn in the timber market which makes it unviable to harvest at the present time, but which may alter in the future;
- The impact of state policy - e.g. State government policy (e.g QLD government forest reservation and revocation process) has temporarily caused a hiatus in the market or industry;

Other integrity approaches while rigorous still provide some flexibility in demonstrating additionality and

allow for a broader range of circumstances under which land management decisions and project activities might occur. The CER should consider including provisions that are more accommodating of the range of scenarios.

## Comments on exclusion from regulatory additionality test

This relates to draft regulation 3.29(1)(c).

The IFA believes that the proposed draft regulation 3.29(1)(c) could lead to an outcome which will see State governments gaining large volumes of credits for activities that result in non-additional change in net carbon emissions. This potentially undermines the integrity principles of the CFI, particularly the additionality test which is designed to ensure that land managers do not receive credit for undertaking activities that are already required.

This amendment is intended to remove an inference under regulation 3.29 that native forest protection projects achieved through legislation and based on an agreement between a State and the Commonwealth to establish new reserves, undertake activities which reduce native forest harvesting and recognise the potential for carbon offset opportunities for protected areas, are excluded.
Effectively the amendment exempts government land managers from the additionality provisions imposed on other land holders (for example as proposed in draft regulation 3.28(1)(o)).

While the proposed additionality provisions for freehold and leasehold land are stringent and constrained by specific dates, the provisions for government land management decisions are imprecise; they must only demonstrate that there is an agreement "to establish new reserves or reduce annual native forest harvest", and "recognise the potential for carbon offset opportunities" (subregulation 3.29(1)(c)(ii) and no qualifying date is included. This may enable governments to gain access to large volumes of credits through a scenario that is not an option to other land managers who are undertaking, or who have a legal right to undertake, the same project activity.

## Comments on new negative list circumstances

This relates to the draft amendments and additions to regulation 3.36.

Regulation 3.36 forms the negative list of excluded offset projects.

The amendments qualify the additionality provision of being 'required under law' to the date at which the CFI Act Bill was introduced to prevent the repeal or amendment of law to facilitate project eligibility under the CFI Act. Projects required by law as at 24th March 2011 are excluded from the CFI except where the project is undertaken to fulfil an obligation under law to offset GHG emissions, which are still eligible under subregulation 3.36(2) which is an exemption applying to projects that fall under 3.29(1)(b) - native forest protection through an agreement between the state and Commonwealth Government. Through this regulation the additionality requirements that exclude projects required under law are being diluted where this applies to state land.

On freehold or leasehold land, however, this is not the case. The proposed amendment strengthens the control on legal additionality as this relates to private and freehold tenures. Additionally, under amendment 3.36(1)(g), the protection of native forest is excluded (ineligible) where permission has been given to clear or harvest native forest on the basis that this would benefit the environment or manage fire, except where the clearing consent or harvest approval provides for options other than harvesting or clearing in which case the project would be required to undertake one of these other options. Therefore, land-owners who have approval to harvest or clear in a way that benefits the environment or which reduces the risk of fire are ineligible under the CFI even if their proposed activity increases the sequestration or reduces emissions of greenhouse gases.

## Comments on crediting periods

This relates to draft amendments and additions to regulations 5.1 and 5.2.

## Comments on the publication of information on co-benefits

This relates to draft regulation 12.5.

The proposed regulation 12.5 should be rejected on the basis that it provides inadequate options for project proponents to demonstrate claims of 'co-benefits' and provides an unfair advantage to those projects funded under the Biodiversity Fund.

This draft regulation relates to Section 168(1) of The CFI Act which requires the Clean Energy Regulator to publish certain information on the Register of Offsets Projects, in particular, the publication of information provided by a project proponent about the environmental or community benefits (known as 'co-benefits') of a Declared Offset Project, if the information meets the requirements set out in the regulations. The intention of the proposed regulation is that a proponent must provide proof from 'knowledgeable third parties' that such 'co-benefits' claims made by the project proponent are true.

In the absence of established standards for the verification and reporting of co-benefits the amendment focuses on the Government's Biodiversity Fund Program. It requires that in order for assertions of co-benefits to be published on the Register of Offsets Projects, the information 'must state whether the project has received funding under the Australian Government's Biodiversity Fund' (12.5 (a)). Additionally the requested information must be supported by evidence that demonstrates that the information is accurate (12.5 (b)), such as a funding agreement under the Biodiversity Fund' (12.5 (b)).

The general intention of making claims about project co-benefits is to attract a 'price premium' to carbon credit sales. That is, proponents wish to attract buyers who are prepared to pay a higher price because the project delivers benefits that are in addition to the greenhouse gas abatement outcomes.

While the IFA is generally supportive of provisions that allow for attestations of 'co-benefits' to be made it is concerned that the use of the Biodiversity Fund as a surrogate for a co-benefits standard is overly simplistic:

- The Biodiversity Fund is not a co-benefit standard.
- A funding agreement under the Biodiversity Fund is not evidence that environment benefits have been delivered, just that a project is in place that is expected to deliver these benefits.
- There are a range of other government funding programs which have the potential to deliver environmental and social benefits and these are not recognised under the regulation.
- In the absence of alternative standards, requiring that all requests made to the regulator for the publication of 'co-benefit' information state whether the project has received funding under Biodiversity Fund infers that those projects that have not been so funded are of a lesser quality than those that have.
- Those projects funded under the Biodiversity Fund will have an early advantage over those projects without such funding or an equivalent 'standard', gaining early access to the 'co-benefits' market.
- Biodiversity Fund supported CFI projects will have had their co-benefit credentials paid for by the Government and many will have had their CFI project development costs covered through the Funds provided. Self-funded CFI project that have not had access to the Biodiversity Fund will ultimately pay for their own project development and implementation, and should they seek it, third party co-benefit certification.

## Comments on the use of substitute units for the purpose of relinquishment

This relates to draft regulations 15.2 and 15.3.

## Any other comments

While not overtly stated, it is apparent that provisions in the regulatory amendments have been included to specifically enable the reservation of State forests on Crown land by providing a mechanism for delivering 'compensation' to affected industry and State Governments.

Ample evidence exists that native forest tenure changes can have regionally significant adverse impact on industry, the economy and society. The CFI Act has a specific provision which requires such matters to be given due consideration. For the proposed amendments it is not apparent that such matters have been given due consideration.

Unresolved scientific debate exists around the GHG benefits of native forest tenure change suggesting that the decision to introduce regulations supporting such change is premature. The inclusion of activities on the positive list, or their exclusion from the CFI, should be based on sound science that has considered, within the context of realistic forest life cycles, the ecological and silvicultural consequences of a range of management options. A fundamental pre-requisite to this is scientifically robust methods for quantifying the baseline options for the full range of forest management activities that exist, across all tenures.

Lastly, the narrow focus of the regulatory amendments on native forest protection projects gives an impression of imbalance. Significant opportunities to mitigate greenhouse gases exist through active forest management where such activities are undertaken in accordance with the principles of ecologically sustainable forest management (ESFM). To avoid criticism of bias, equal consideration should be given to the recognition of such activities within the amended regulations.