

The Tasmanian Forests Agreement Bill / Act 2012.

Critique. Attachment Two

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N.B. It is to be noted that as of the 15th January, approximately 160 amendments were made to the Bill /Act critiqued below.

The Act copies much from the Agreement, however it has some nasty surprises.

1. Choice of words is exceedingly important. Plain English ought to be a requisite. The real intent of the legislation ought to be stated at the outset. It hasn't happened.

2. At Part 5, Section, 10 and 13; Making of a Proposed Reserve Order one begins to sense what the real intent of the legislation is. It appears to link closely to an Occasional Paper No 1. (AFPA) and the TFA (see Clause 1. Shared Objectives, A, "increasingly in the future, plantation", See Clauses 22-32 and 26. Establishment of Plantation Manufacturing Innovation Fund, Clause 29 ... "These solutions should be consistent with the terms of this agreement and a transition to a greater reliance on plantations.")

3. This is a part of Section 10 (8) from the proposed Bill /Act. (p.22)

Before the making of the protection order the Minister is to obtain the durability report referred to in subsection (7) and advice in writing, from the Minister administering the Carbon Credits (Carbon Farming Initiative) Act 2011 of the Commonwealth as to whether any changed management practices on land referred to in subsection (4) (d) when reserved under this Act, constitute a project that is not required to be carried out under a law of the State for the purposes of section 41 of the Carbon Credits (Carbon Farming Initiative) Act 2011 of the Commonwealth.

The Carbon Credits (Carbon Farming Initiative) Act 2011 is hereafter referred to as CC(CFI)A 2011. Some parts of the CC(CFI)A 2011 are placed at the end of this document.

4. There is more about carbon credits; Section 13 (5) (b) which mimics Section 10 (8) above.

5. And even more. Part 6. the Making of Reserves, Section 16, (10) (a, b, c, d, e, f,) and 11.

(f) identify whether the reserve is being declared for the additional purpose of removing carbon dioxide from the atmosphere by all or any of the following means:

- (i) sequestering carbon in native forest;
- (ii) avoiding emissions of greenhouse gas attributable to changed forest management practices including the clearing or harvesting of native forest.

6. For the purposes of subsection 10(f) –

greenhouse gas has the same meaning as in the CC(CFI)A, 2011 of the Commonwealth,

native forest has the same meaning as in the CC(CFI)A, 2011 of the Commonwealth.

7. The precise intent of the parts (above) of the Tasmanian Forests Agreement Bill /Act need urgent clarification. It has to be coupled to the CC(CFI)A 2011 with the two read very closely together. The Nature Conservation Act 2002, is to have the same insertion such as that at Section 16 (10) (f) and 11 inserted in that Act, altering what was there previously.

8. The Act contains what are considered other nasty surprises. Returning to the beginning, at **Part 1** is Section 5. (p.8).

If there is an inconsistency between this Tas. Forests Agreement Act and the Nature Conservation Act 2002, NPWS Act 2002, Forestry Act 1920, FPA Act 1985, Crown Lands Act 1976, LUPAA 1993, Land titles Act 1980, etc. the provisions of the Tas. Forests Agreement Act 2012 will prevail.

9. Nomination of these specific Acts and any perceived inconsistency with them on the face of it, seems to make references (in Parts 5 and 6, TFAA) to the reserve status in the Nature Conservation Act, 2002, irrelevant.

10. The real intent of the legislation begins to come into play. In Tasmania, the forest industry has always been self regulated, having precedence over other important land management acts. There is no equity in this position but it is apparently to continue into the future.

11. **Part 2:** 7 (p.10-) Makes watertight that the new zones will be called Permanent Timber Production Zones (thus a string of amendments to the Forestry Act pp. 12-14).

12. The Named zones have gone from Multiple Use Forest Land suddenly to a single entity, a Permanent Timber Production zone. The titles are important. Does it mean we raze the existing “forest” and commence plantations to Sequester carbon (Active Forest Management)? “Turning over” the forest has been a preferred option for decades.

13. There is provision for 137,000 cubic metres p.a. as a minimum. However the “maximum” is shrouded in mist. Clearly at **Part 2**, 6 (22AA) (1), (2) (2) [p11], it can apparently go up to 300,000 cubic metres, plus whatever veneer and sawmilling industries require to “meet the prescribed specifications” as well as “other prescribed timber”. (pp.10-11)

14. There is provision for the Council (called Special Council) to be set up **Part 4** (pp. 16-19).

15. The Special Council have to prepare “Durability Reports”, promote the Vision from the TFA (Schedule 1), provide advice to the Minister re the TFA. There are eleven on the Committee, the exact same organisations as with the TFA. A quorum is a majority for proposed meetings. That would seem to indicate that as Industry already has 7 if not 8 voices (CMFEU) if all are present, there’s no need for any conservation voices at all.

16. **Part 5** pp. 20-30. Making of Proposed Reserves

There has to be first a Protection Order with the land to be called at Section 10 (9) (a) “future reserve land” p.22. What is to stop it becoming a Carbon Sequestration Reserve? See also 10 (8) and the reference to Section 41 of CC[CFI]Act 2011, see also Section 13 (5) (b) which is the making of the Proposed Reserve Order.

17. In my opinion there is far too much Ministerial control in Parts 5 and 6 of the TFAA. The “Ministers” are mentioned no less than 44 times in these sections. They will be working overtime. Detailed in the Act is a “Minister” (which one?) a Nature Conservation Minister (which Tasmania doesn’t have). Green is listed on the parliamentary website for Primary Industry and Water, Wightman for Environment, Parks and Heritage so the “nature” reference is confusing. The Act also makes reference to the Reserves Minister which is obscure; it is the Parks Minister. The reference to “the Minister” is likewise obscure; it might mean Green as Minister for Energy and Resources, it might also mean O’Byrne as Minister for Infrastructure. There has always existed a “forest” division tucked away in the Department of Infrastructure.

18. Section 16 (10) (d) is regarded as disingenuous. The Reserve has to be called one of the reserves in the Nature Conservation Act, but any inconsistency to this Act was surely bowled over and out by the Tas. Forests Agreements Bill /Act at Section 5 (p. 9) (see above) where the provisions of the Act prevail over the other specific Acts.

19. To make matters more obtuse it is considered that the two houses of parliament will be potentially deciding on boundaries for the reserves, reserve orders etc. See from Section 13 (7) and then Section 14, Part 6, Making of Reserves. This is plainly ridiculous, unworkable, completely unwieldy and not the business of a parliament.

This seems more certain given “amendments” as of 15th January. The idea of a parliament having to decide on the fate of 295 separate “reserve” parcels is just

considered a nonsense. Part of the farce as it works its way forward.

20. **Part 7. Section 22: Amendments to the Nature Conservation Act 2002.** This is to have the additives of the Carbon sequestration in it as illustrated above.

21. **The Schedule 1** (Vision in the Tasmanian Forest Agreement, Attachment A). The Vision in the TFA must not be allowed to become Schedule 1 in the Bill /Act.

There are too many “motherhood” statements in the Vision; they simply could not stand up to rigorous scrutiny in any court of law or Tribunal. What is missing is the finer grained forests detail in whatever direction one looks. The entire industry has to be re-structured. Rather by its very clauses, use of words, incorporation of other acts, it points in the opposite direction. What has been presented to parliament does not represent any sort of rigorous restructure. This submission has merely pointed to particular issues lying behind further potential plantation development; issues which never get aired in the wash-up, either by industry or conservationists.

22. Reserves might be seen to be light years away from being proclaimed as “secure”; that is statutorily protected. Fundamental structural reform is required. Equity of purpose, transparency in intent, rigour in decision making....

Conclusion

The three pieces have shown the complexity of the issue. At the beginning the question was posed, what is wrong (if anything) with greater carbon sequestration, tree planting, biomass and energy development, meeting climate change in a supposedly “green” way?

What is wrong is this.

It’s the lack of “up-front” transparency. It’s the potential for moving in through a back door in a big way just as the MIS, and 2020 Vision did previously without rigorous detail and regulation. It’s leaving an industry self regulated. Not coming through the front door with openness, equity, transparency, community awareness, community input, community equity. It’s the lack of integrity, the lack of rigorous process detail across a number of land use jurisdictions. Interpreted as one, seemingly carefully engineered and manipulated to achieve a perceived end result. Given the TFA, it’s vision, the composition of the “Committee”, (which will be ongoing), the Tasmanian Forests Agreement Act there is no Australian iconic "Fair Go for the mate." That is all mates, all people, all the community with co-operation, in unison. This is only for selected mates. It can be likened to the gas seam fiasco (mining), the coal mining fiasco (mining). This is another form of industrialised mining (trees for energy).

Appendix

Extracts from the Carbon Credits (Carbon Farming Initiative) Act 2011

Commonwealth Act.

From the CC (CFI) B 2011 (Commonwealth Act). It's been put it into blue for ease. Agricultural emissions, (definition) burning of forestry residue is NOT included. I detect confusion. Forestry in some instances wants to be forests, or plantations, but of course tree farms are a "crop", likened to an agricultural crop which they are not.

Part 5 Definitions

greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*.

native forest means an area of land that:

- (a) is dominated by trees that:
 - (i) are located within their natural range; and
 - (ii) have attained, or have the potential to attain, a crown cover of at least 20% of the area of land; and
 - (iii) have reached, or have the potential to reach, a height of at least 2 metres; and
- (b) is not a plantation.

It is immaterial whether any of the trees have been established with human assistance following any of the following events:

- (c) flood;
- (b) bushfire;
- (d) drought;
- (e) pest attack;
- (f) disease;
- (g) an event specified in the regulations.

The regulations may provide that, for the purposes of this definition, **trees** and **crown cover** have the respective meanings given by the regulations.

offsets project means:

- (a) a sequestration offsets project; or
- (b) an emissions avoidance offsets project.

For this purpose, it is immaterial whether the project has been carried out.

prescribed native forest protection project means a native forest protection project that meets the requirements specified in regulations made for the purposes of this definition.

prescribed non-CFI offsets scheme has the meaning given by the regulations.

regulatory approval, in relation to an offsets project, means an approval, licence or permit (however described) that:

- (a) relates to, or to an element of, the project; and
- (b) is required under a law of the Commonwealth, a State or Territory that relates to:
 - (i) land use or development; or
 - (ii) the environment; or

(iii) water.

relevant carbon pool, in relation to a sequestration offsets project:

- (a) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular living biomass—means the biomass; or
- (b) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular dead organic matter—means the dead organic matter; or
- (c) to the extent (if any) to which the project is a project to remove carbon dioxide from the atmosphere by sequestering carbon in particular soil—means the soil.

Division 1—Introduction

10 Simplified outline

The following is a simplified outline of this Part:

- Australian carbon credit units may be issued in relation to an eligible offsets project.
- The number of Australian carbon credit units issued will be worked out by reference to:
 - (a) the relevant abatement amount calculated under the applicable methodology determination; or
 - (b) if the project is a native forest protection project—the relevant sequestration amount calculated under the applicable methodology determination.

• For sequestration offsets projects, a risk of reversal buffer applies

Division 6—Additionality test CC(CFI) Act 2011.

This is the Section mentioned in the Tas. Forests Agreement Bill.

41 Additionality test

- (1) For the purposes of this Act, an offsets project **passes the additionality test** if:
 - (a) the project is of a kind specified in the regulations; and
 - (b) the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory.
- (2) Before recommending to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying a particular kind of project, the Minister must request the Domestic Offsets Integrity Committee to advise the Minister about whether such a project should, or should not, be specified in those regulations.

- (3) In deciding whether to recommend to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying a particular kind of project, the Minister must have regard to:
- (a) whether carrying out such a project is not common practice in:
 - (i) the relevant industry or the relevant part of the relevant industry; or
 - (ii) the kind of environment in which such a project is to be carried out; and
 - (b) whether, apart from Part 2, carrying out such a project would not be common practice in:
 - (i) the relevant industry or the relevant part of the relevant industry; or
 - (ii) the kind of environment in which such a project is to be carried out; and
 - (c) any advice given by the Domestic Offsets Integrity Committee under subsection (2); and
 - (d) such other matters (if any) as the Minister considers relevant.
- (4) Paragraph (1)(a) of this section does not, by implication, limit the application of subsection 13(3) of the *Legislative Instruments Act 2003* to another instrument under this Act.
- (5) If:
- (a) the Domestic Offsets Integrity Committee gives advice to the Minister under subsection (2) in relation to a particular kind of project; and
 - (b) the Minister decides:
 - (i) to recommend to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying that kind of project; or
 - (ii) not to recommend to the Governor-General that regulations should be made for the purposes of paragraph (1)(a) specifying that kind of project;

the Minister must, as soon as practicable after making the decision, cause a copy of the Domestic Offset Integrity Committee's advice under subsection (2) to be published on the Department's website.

17 Unit entitlement—native forest protection projects

Scope

- (1) This section applies to an eligible offsets project if the project is a native forest protection project.

Note: For **native forest protection project**, see section 5.

Unit entitlement—prescribed native forest protection projects

- (2) If the project is a prescribed native forest protection project, the number to be specified in a certificate of entitlement in respect of the project for a reporting period as the unit entitlement in respect of the certificate is the number worked out using the formula:

$$\text{Net sequestration number} - \frac{\text{Risk of reversal}}{\text{buffer number}}$$

where:

net sequestration number means the total number of tonnes in the amount that, under the applicable methodology determination, is the carbon dioxide equivalent net sequestration amount for the project for the crediting period in which the reporting period is included.

risk of reversal buffer number means:

- (a) 5%; or
 - (b) if:
 - (i) at the start of the crediting period in which the reporting period is included, another percentage is specified in the regulations in relation to a particular kind of project; and
 - (ii) the project is of that kind;
- that other percentage;

of the net sequestration number.

Note: For **prescribed native forest protection project**, see section 5.

Unit entitlement—other native forest protection projects

- (3) If the project is not a prescribed native forest protection project, the number to be specified in a certificate of entitlement in respect of the project for a reporting period as the unit entitlement in respect of the certificate is the number worked out using the formula:

$$\left(\frac{\text{Net sequestration number} - \text{Risk of reversal buffer number}}{\text{Reporting period number}} \right) \times \frac{\text{Reporting period number}}{\text{Crediting period number}}$$

where:

crediting period number means the number of years in the crediting period in which the reporting period is included.

net sequestration number means the total number of tonnes in the amount that, under the applicable methodology determination, is the carbon dioxide equivalent net sequestration amount for the project for the crediting period in which the reporting period is included.

reporting period number means the number of years in the reporting period.

risk of reversal buffer number means:

- (a) 5%; or
 - (b) if:
 - (i) at the start of the crediting period in which the reporting period is included, another percentage is specified in the regulations in relation to a particular kind of project; and
 - (ii) the project is of that kind;
- that other percentage;

of the net sequestration number.

Rounding down

- (4) If the number worked out using the formula in subsection (2) or (3) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded down).
- (5) For the purposes of subsection (4), zero is taken to be a whole number.

18 Unit entitlement—emissions avoidance offsets project

Scope

- (1) This section applies to an eligible offsets project if the project is an emissions avoidance offsets project.

Note: For *emissions avoidance offsets project*, see section 53.

Unit entitlement

- (2) The number to be specified in a certificate of entitlement in respect of the project for a reporting period as the unit entitlement in respect of the certificate is the total number of tonnes in the amount that, under the applicable methodology determination for the reporting period, is the carbon dioxide equivalent net abatement amount for the project in relation to the reporting period.

Greenhouse gas Taken from *National Greenhouse and Energy Reporting Act 2007*.

"greenhouse gas" means:

- (a) carbon dioxide; or
- (b) methane; or
- (c) nitrous oxide; or
- (d) sulphur hexafluoride; or
- (e) a hydrofluorocarbon of a kind specified in the regulations; or
- (f) a perfluorocarbon of a kind specified in the regulations.