



australian network of environmental defender's offices

Submission to the ACCC on the Issues Paper: *The Trade Practices Act and carbon offset claims* 15 February 2008

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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15 February 2008

1. Introduction

The Australian Network of Environmental Defender's Offices (**ANEDO**) welcomes the opportunity to comment on the Issues Paper: *The Trade Practices Act and Carbon Offset Claims*. ANEDO is a network of 9 community legal centres specialising in public interest environmental law. ANEDO holds an interest in ensuring that carbon offset claims reflect their role as a last step in the response to climate change after firstly avoiding and reducing Green House Gas (GHG) emissions. Furthermore ANEDO stresses the need for greater transparency and monitoring of carbon offset claims by the ACCC to ensure their effectiveness.

Carbon neutrality requires offsetting the greenhouse gas emissions from a particular product, service or company. The notion has risen in popularity in response to the increased awareness of anthropogenic climate change.¹ Organisations as diverse as airlines, car-racing, banks and newspaper publishers have committed to carbon neutrality. In short, it is all things to all people. In the absence of mandatory regulation however, the concept has been marketed by many different offset providers as a (if not the) viable solution to anthropogenic climate change. Furthermore the methodologies used in assessing carbon offsets leaves consumers at risk, and will be the main subject of this submission.

The role of the ACCC is to ensure a high level of transparency to protect consumers from misleading claims of carbon neutrality. With a new market like the burgeoning carbon offset industry both companies and consumers are entering a new foray. Companies should tread carefully, laying out their reasons for labelling products carbon neutral, or how they calculate offsets, or select offset providers. This in turn provides the consumer with the utensils to make an informed decision. Much like how consumers require information about where their superannuation funds are invested, they equally require information as to how premiums for 'neutralised' products are being invested.

This submission will address the three areas of questions identified by the ACCC:

1. General issues
2. Methodologies
3. Current conditions in the marketplace

¹ The term 'Carbon Neutral' was even voted 'word of the year' by the New Oxford Dictionary in 2006. See http://blog.oup.com/2006/11/carbon_neutral/.

2. General issues

2.1 Concerns regarding the types of representations made and the risk of being misled.

(a) The use of terms Carbon 'Neutral' and 'Offsetting'

Labelling a product or an entire corporation 'Carbon Neutral' carries many responsibilities. ANEDO is concerned about the potential for inconsistent, unverified and unsubstantiated claims of neutrality to become widespread in the absence of government regulation. This places environmentally aware consumers at risk of supporting products and projects that are not scientifically sound or subject to strict standards.

The term is frequently used as shorthand to denote environmental responsibility. However what does this mean? Has, for example, the corporation or product simply offset the business as usual scenario or made fundamental change to reduce emissions as well. If there have been ongoing reduction in emissions, has it been integrated into business practice and regularly monitored to ensure the business remains 'neutral' or have the offsets required for neutrality actually taken place or are they only in the planning phase?

At present many of these questions are addressed when acquiring certification from an accredited standard like the Federal Government's Greenhouse Friendly (GF) or similar state based schemes. However, many offset providers operate outside of these schemes and use carbon neutrality and offsetting without the adequate transparency and substantiation that these require. These problems are dealt with in the methodology section.

2.2. Examples of where consumers are at risk of being misled.

(a) Avoid, reduce, offset hierarchy

The motivation of consumers to purchase offsets or carbon neutralised products is to address the GHG emissions they feel responsible for. This responsibility has arisen from twin drivers; first, a greater understanding of the human impact on the climate and a desire to reduce it, and second, the lack of government leadership on the issue. ANEDO believes that offset providers should have a duty to clarify that purchasing carbon neutrality has no objectively positive impact to the climate. There is already enough concentration of GHG's in our atmosphere to cause anthropogenic climate change.² Purchasing carbon neutrality allows individuals and businesses to continue to increase this concentration of gases in a 'business as usual' fashion in the assurance that their contribution will eventually be reabsorbed, providing no aggregate benefit to the environment. It is therefore necessary that consumers are informed of the necessity to reduce their emissions through alterations in their lifestyles and operations before offsetting.

² The change includes certain increases in temperature of approximately 1.5 degrees Celsius. IPCC 2007, 'Climate Change: The Physical Science Basis' Cambridge University Press, Cambridge.

To provide examples of misleading claims many offset providers make no effort to display any information on the many steps required to address climate change. One provider delivers flash graphics on its website discussing the perils of anthropogenic climate change and then jumps straight to the customer's ability to offset their continued lifestyle. There is no mention of the need to alter behaviour and operations as the first step in reducing their climate impact. Providing offsets as a sole solution to climate change prejudices the environmental intentions of consumers and businesses.

Another offset provider lists offset as one of two alternatives: One solution is to reduce your energy used and responsible emission the other solution is to offset. Even this is capable of misleading consumers who could believe either process is equally capable of reducing their carbon impact.

What is necessary is a disclaimer similar to one found on a website of an offset provider who states:

“remember, offsetting your emissions is not the entire solution to climate change - you should AVOID creating an emission wherever possible, REDUCE the emissions that you do create, and OFFSET the emissions that you can't eliminate”

Providers who use the effects of anthropogenic climate change to market offsets should provide such a disclaimer first, including the availability of additional information and sources.

(b) Substantive Green-Washing

Carbon neutrality white-washes the substantive difference between environmentally distinct products. For example, how can a reasonable consumer differentiate between a 'carbon neutral' incandescent light bulb and a 'carbon neutral' compact florescent?³ The substantive benefit comes from the florescent, even if the incandescent has had its whole lifecycle offset because the florescent has a lower carbon impact.

When carbon neutral is used to compete with more environmentally beneficial products that lack neutrality the benefit can be skewed. For example, consider a regular 4WD with one year of assured carbon neutrality compared to a regular Sedan with no neutrality. The 4WD will emit 50% more carbon dioxide than the Sedan. After two years the Sedan will have a lower environmental benefit. Even though the differences in cars is comparable under normal circumstances⁴ carbon neutrality obscures if not misleads the substantive benefit.

3. Methodologies

3.1. Comment on current methods. Do they have the potential to mislead?

Claims of carbon neutrality are difficult to monitor because of the flexibility in choice of standards and offsets.

³ Example taken from a contribution by Reynolds, A. 2007, 'Something for Everyone' in *Neutral and Beyond: A review of Carbon Neutrality and Offsets* ed. Lynch, M., Green Capital, Sydney.

⁴ Through sites like www.greenvehiclesguide.com.au.

Standards

It is generally well accepted that most consumers lack the knowledge to closely judge the value of carbon offsets.⁵ The lack of a single mandatory standard provides a dearth of comparison for consumers. A Federal Government standard, 'Greenhouse Friendly' (GF) exists and yet has not become the common standard for voluntary offset providers. This could be for a number of reasons including the overlap with other government standards both state based and national⁶ or voluntary standards of international calibre.⁷

There are two options available to clarify the voluntary offset market:

1. ACCC can create a safe harbour for certain carbon offset certification standards (e.g. GF, Gold Standard). Acceptance demonstrates that the Commission has satisfied itself upon the merits of the scheme.
2. The Federal government is set to overhaul the carbon offset market in the lead up to a National Emissions Trading Scheme. Upon such an opportunity the Government could take similar steps as that of the UK and create a voluntary Code of Best Practice for the carbon offset industry.⁸ The Code should certify offsets that meet the Kyoto Protocol standard.

(a) Additionality

While many standards do exist there remain offset providers who have failed to gain certification under any scheme. It could be because the providers are trying innovative new ways of reducing emissions, one of the benefits of operating a voluntary market.⁹ If this is the case then the offset provider must clarify that due to its unproven nature it operates outside of accepted and verifiable standards.

One project which involves planting and harvesting trees, attempting to attain GF certification for some time now without success. Like many other providers who have yet to receive any verifiable certification it lists its process as 'Kyoto-compliant' in reference to the methodology for forest sinks under the Kyoto Protocol.¹⁰ Yet the Protocol has an even more stringent compliance standard than GF. Tree-Smart later clarifies that the Kyoto Protocol has yet to recognise its unique sequestration process. However its continued use of 'Kyoto-Compliant' on the remainder of the website implies that but for this unique process of sequestration the provider would otherwise be certified. Such a statement represents the offsets as having characteristics and benefits they do not have.

⁵ Shaheen, R., Mudge A.R., & Shultz, M., 'Carbon Neutral: The New Green – Substantiation Issues for the Next Generation of Environmental Claims.' the Antitrust Source, December 2007, pp 5-11.

⁶ To give two examples of compulsory government standards: The NSW Greenhouse Gas Abatement Scheme and the National Mandatory Renewable Energy Target.

⁷ To give two examples: The Voluntary Carbon Standard jointly produced by World Economic Forum, International Emissions Trading Association and The Climate Group, and the Gold Standard for Voluntary Emission Reductions.

⁸ DEFRA Code of Best Practice Consultation Documents, to see responses to consultation go to <http://www.defra.gov.uk/environment/climatechange/uk/carbonoffset/pdf/cop-summary-responses.pdf>.

⁹ One foreign example is the US offset provider Planktos's ocean seeding project.

¹⁰ Go to http://unfccc.int/essential_background/kyoto_protocol/background/items/1351.php for a copy of the Protocol. The particular modalities and regulations on Clean Development Mechanism's can be found at http://unfccc.int/kyoto_protocol/mechanisms/items/1673.php.

One of the major concerns with providers outside of commonly used certification standards is the ability to create non-additional offsets. Both GF and the Kyoto Protocol include a series of additionality factors which ensure that offset projects are far and above a business as usual scenario. Additionality requires that projects are not financially or logistically feasible but for the additional benefit of being a carbon offset.

For example, ANEDO has identified a for-profit company that harvests planted forests every 40 years. It is possible that the plantation could have occurred without the investment brought by selling the offsets and is thereby non-additional. Additionality reveals the true motivation of the offsets, and the ACCC should take steps to ensure that non-additional offset projects are exposed.

(b) Leakage

Another pertinent factor is leakage. It occurs when a secured offset has simply displaced the emissions elsewhere e.g. avoided deforestation without reducing the demand for forest products, meaning logging is simply occurring in another forest. For Renewable Energy, has the created clean energy actually removed a fossil fuelled power source (or the need for one)?

Certification standards that ensure additionality and avoided leakage provide the certainty that when consumers purchase offsets they have counterbalanced their own emissions. Offset providers who do not reveal leakage risks and the absence of additionality are falsely representing the value of their offsets.

3.2. Specific problem with bio-sequesters

There are a group of bio-sequestration offset providers who have been in the process of applying or moving toward the GF standard for some time. Bio-sequestration in particular has a large potential to mislead customers. Along with leakage and additionality there are a number of other facts that need be considered including timing of plantations and sequestration, permanence, monitoring and verification.

(a) Timing

When a consumer chooses to offset their flight, or sign onto a carbon neutral car loan they should be told exactly when the emissions will be offset. Consumers hold a well-founded expectation that they are purchasing existing offsets to negate their existing (or near future) emissions. It is particularly so if a state of carbon neutrality is sought. This expectation covers all kinds of offset transactions, yet those offsets for energy efficiency, renewable energy and gas flaring have generally earned accredited and verifiable certification¹¹ which ensures credits are not forward sold. As noted by the ACCC in the Green Marketing and the TPA Guidance Paper¹² the timing of offsets from tree planting has a particular potential to mislead. As many bio-sequestration projects are uncertified, their tree-planting offsets do not have to be created before the credits are sold.

¹¹ By commonly accredited and verifiable government certifiers like GF and GGAS.

¹² ACCC 2008, 'Green Marketing and the TPA Guidance Paper', available at <http://www.accc.gov.au/content/index.phtml/itemId/810050>.

Greenhouse Friendly requires tree planting projects to commit to maintaining the forestry sink for a minimum of 70 years, with other standards stipulate 100 years.¹³ This is the generally agreed time frame necessary for the trees to sequester an adequate amount of emissions to qualify as offsets. The question remains whether consumers are clearly informed that their emissions will take upwards of 100 years to be offset.

Time-lag between emissions and the bio-sequestration of these emissions does not address the need to act urgently on climate change. The Intergovernmental Panel on Climate Change's 4th Report released last year is in general agreement that strong emission reductions are now required to halt dangerous climate change.¹⁴ Particular note is given to critical thresholds, which when reached irreversibly thrust our climate into further instability.¹⁵ These thresholds exist within the next couple of decades not the next century.¹⁶ It is therefore imperative that the timeline of emission offsetting is clearly communicated to customers who are interested in removing their climate footprint.

As it stands one provider, states it will plant 17 trees to offset a one years worth of car emissions.¹⁷ It does not inform the customer of how long such a sequestration will take place. Instead, it allows customers to believe they are currently offsetting their lifestyle when in fact they are stretching the offset over the next century. In addition, some offset providers also do not begin planting the trees immediately. One provider states that it waits until the Autumn/Winter months. Another provider doesn't plant any trees until they've reached an economy of scale to finance a large plantation. A consumer website reported that this could take a provider over a year before any trees are actually planted.¹⁸

Where climate change is used to sell emission offsets, providers should clearly explain the delay (if any) in planting dates and slow pace of actual bio-sequestration. An understanding of the current climate science demonstrates that emissions reduced now are far more valuable (in addressing anthropogenic climate change) than in the future¹⁹ which should be communicated to the consumers.

It is submitted that the ACCC should require bio-sequestration project providers to predict the amount of carbon dioxide sequestered for each year over the next 70-100 years. This information, along with the amount of CO₂ equivalent tonnes of offsets they have sold should be published on websites. This would then enable consumers to identify if offsets are being forward sold and will clarify the real effect of forest sinks. Customers can then understand when their offsets are actual being sequestered.

¹³ Three examples include: GGAS, the Voluntary Carbon Standard and the Kyoto Protocol.

¹⁴ IPCC 2007, 'Climate Change: The Physical Science Basis' Cambridge University Press, Cambridge.

¹⁵ One notable tipping point is the melting of the Greenland Ice sheet. See Schellnhuber, H. J., Cramer, W., Nakicenovic, N., Wigley, T. & Yohe, G. 2006, 'Avoiding Dangerous Climate Change' Cambridge University Press, Cambridge.

¹⁶ Lenton, T.M. 2007, 'Tipping the Scales: Nature Reports Climate Change', accessed on 7/02/2008, available at <http://www.nature.com/climate/2007/0712/full/climate.2007.65.html>.

¹⁷ Greenfleet above at n4.

¹⁸ Choice 2007, 'Carbon offset industry requires urgent attention', accessed 06/02/2008, available at <http://www.choice.com.au/viewArticle.aspx?id=105795&catId=100576&tid=100010>.

¹⁹ Monbiot, G. 2006, 'Selling Indulgences', accessed 05/02/2008, available at <http://www.monbiot.com/archives/2006/10/19/selling-indulgences/>.

(b) Permanence

It is difficult to ensure that forestry projects remain alive and operating as a carbon sink for the duration required. Providers operating within verifiable certifications like GF ensure risk management arrangements are in place. Independent auditing is also a requirement of most certification standards. Most providers ensure a buffer of additional forest area to make up any shortfall, yet if forest sinks become emission sources (e.g. as a result of fire, drought or flooding) will customers be liable for those emissions?

With the increase in frequency and intensity are buffers sufficient to cover possible loss? For example, an Australian corporation purchased the land clearing rights off many farmers in order to secure avoided deforestation offset credits as certified under GF. A 20% buffer was secured to cover any losses over the 120 year guarantee. Yet within one year of the purchase one of the forest sites was inundated with exceptional flash flooding. It is unclear what the final damage to the forest site and its sequestration capacity is, but this example serves as a stark reminder of the short term consequences of climate change relative to our long term solutions.

4. Current conduct in the Marketplace

4.1. Traders exercising diligence

One particular offset provider that has performed diligently is Carbon Positive. The provider of both Renewable Energy and Bio-Sequestration offsets clearly explains and provides sources to the science behind climate change. The provider clearly explains that to have a positive effect one must reduce emissions not just neutralise. Finally it differentiates the quality of offsets (and it provides a range of offsets for comparison).

4.2. Diligence usually follows enforcement

One example from the UK is British Airways (BA) who has aggressively marketed themselves as a climate conscious airline since 2005, yet over two years BA have only managed to offset the equivalent of 4 flights between New York and London through their uncertified scheme. It was only revealed when BA were challenged by the House of Commons Environmental Audit Committee, resulting in an overhaul of the offset program.²⁰ On home soil, Virgin Blue has marketed itself as Australia's first 'Green Airline'²¹ when at the same time its passengers offset only 1% of their flights.²² Although Virgin Blue used GF to offset, what level of buy-in must it use before claiming itself green?

4.3. Lack of Rigour

There has been generally a lack of rigour from uncertified bio-sequestration providers as to the value of their offsets in response to climate change. Many of these providers have

²⁰ Environmental Leader 2007, 'BA Tree Planting project "Disappointing"' Online news site, accessed on 13/02/07, available at <http://www.environmentalleader.com/2007/03/14/ba-tree-planting-offset-program-disappointing/>.

²¹ Lee, J. 2008, 'Have Green Baggage, Will Travel', SMH February 9th 2008, available at <http://www.smh.com.au/text/articles/2008/02/08/1202234167337.html>.

²² Murphy, M. 2008 'Jetstar's Carbon-Offset Program Soars Ahead' the Age, January 28th 2008, available at <http://business.theage.com.au/jetstars-carbonoffset-program-soars-ahead/20080127-1ogg.html>.

long held a desire to reverse deforestation in Australia, before the wave of climate change awareness took hold. However, to portray bio-sequestration as the number one solution to climate change is misleading.

To give an example, one provider has stated in relation to tree-planting; 'When purposefully reintroduced into the landscape, they can be the simplest and most effective environmental defence at our disposal.' As the Chair of the IPCC stated²³, changing our lifestyles is the most important step, and the IPCC 4th report concluded that energy efficiency is across the board the first and simplest step in combating dangerous climate change.²⁴ The statement is unsubstantiated and falsely prioritises the provider's type of offsets.

ANEDO appreciates this opportunity to highlight its concerns on carbon offset claims to the ACCC. Please contact Richard.merzian@edo.org.au for further information about this submission.

²³ Dr Rajendra Pachauri 2008, 'Lifestyle changes can curb climate change: IPCC chief', ABC online news, accessed 13/02/2008, available at

<http://www.abc.net.au/news/stories/2008/01/16/2139349.htm>

²⁴ IPCC above at n19 quoted in http://www.eere.energy.gov/news/news_detail.cfm/news_id=10757.