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Aotearoa New Zealand Climate Standard (NZ CS 1, 2 & 3)

Submissions by PFS Certification Ltd
(NZ Company Number 8344502)

www.pfs-carbonstandard.com

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RE: Aotearoa New Zealand Climate Standard (NZ CS 1)

The ERX has released a final consultation document in Climate-Related Disclosures and has called for public submissions by 26 September 2022.

Dated 23 September 2022

To: External Reporting Board

PO Box 11250; Manners St Central; Wellington 6142
New Zealand

Submission made by:

Directors of PFS Certification Limited

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Submission Contents

1. INTRODUCTORY STATEMENTS

1.1. About us

PFS Certification Ltd has as its objective ensuring that there is a standard of the highest integrity used to assess emitters' claims that they are helping the planet meet its IPCC targets when they have acquired forestry-related carbon credits in the voluntary market. In such circumstances, emitters make claims based on CO_2-e emissions reductions created by photosynthesis.

PFS Certification Ltd is not primarily concerned with Government issued carbon credits (NZUs issued under the ETS) because the Government makes its own rules and is not bound by any published standard. The ETS does not, for example, require additionality for qualifying forests, and it applies a country-centric approach to forestry offsets which is not supported by logic or scientific proof.

Nor is PFS Certification Ltd concerned with non-forestry carbon reductions.

1.2. Primary concerns

PFS's primary concern is that when a tree is planted, it will be there until at least 2100 to guarantee that it helps the planet meet the IPCC goal of limiting global warming by 2100 to no more than 1.5^{o}C compared with pre-industrial times.

PFS Certification Ltd approaches its primary concern by:

1. Recognising that to meet IPCC goals, it is necessary that emitters:

    (a) Make deep cuts in emissions, as the most crucial step, before 2030 and further deep cuts by 2050, in line with identified IPCC trend lines.

    (b) Do not seek relief from the required cuts through claims of spending or other offsetting claims that do not best accomplish the IPCC goals. Examples of such ameliorating claims may be to "offset" the obligation to reduce of emissions by planting a tree. Such ameliorating spending may include planting of slow sequestering trees instead of those that sequester CO_2 at much higher rates.[1]

    (c) Act to remove past equivalent emissions they are responsible for by planting trees, carbon capture, or the like.

2. Testing public views by independent polling.

3. Seeking opinions from King's Counsel and supporting climate litigation.

[1] On the fallacy of offsetting see comments by Dr Rod Carr, Chairman Climate Change Commission, and the Prime Minister, as reported 19 September 2022, http://amp.rnz/article/38b1665a-f246-40ff-93fb-161cf4752. See Appendix One.

Recognising the necessity for emitters to both reduce and remove emissions to achieve the IPCC goal, PFS seeks to:

(a) Assist others, such as courts, auditors, regulatory authorities, auditors, bankers and so forth, in understanding emitters' obligations and ensure any form of forestry does not excuse them.

(b) Expose those who threaten IPCC goals being met, actively or *sub silento,* permitting, allowing or making claims or suggesting spending which will not enable the meeting of those goals.

1.3. The motivation behind these submissions

PFS believes the XRB Exposure Draft overlooks the need to make special rules (qualifications in effect) for forestry-based carbon credits. While the objectives pursued may be justifiable in other circumstances (a matter PFS does not submit on), it is submitted that the XRB proposals are not sufficiently robust to allow IPCC goals to be achieved.

It needs to be recognised that:

(a) Fast-sequestering forests must be planted to help achieve IPCC goals.

(b) The resulting sequestration cannot offset concomitant obligations to *both* reduce emissions as well as remove them.

This failure to reinforce the IPCC goal is doubtless an oversight. But failing to address it is inconsistent with the objectives the XRB seeks to achieve. It may also involve the Government, unwillingly, in future climate litigation if emitters seek to defend themselves against greenwashing claims by reliance on defective rules and call into question the motivations behind publishing defective rules. This is expanded on below.

1.4. Recognising that IPCC goals require *both* emission reductions and removals to be maximised

This reasoning is explained in Appendix Two to these submissions: *"The truth about forestry green claims and IPCC goals."*

Essentially, cutting down a tree before 2100, even if it is replanted and salvageable lumber from it is guaranteed to be stored in furniture and the like until 2100, the planet will be worse off in terms of meeting IPCC goals than if the tree was not felled. This truism exposes several current fallacies about forestry-based carbon credits. The most obvious is to claim or imply that CO_2-e sequestered by planting a tree best helps the planet meet the IPCC goals, and it is deceptive and misleading to do so.

It also becomes deceptive and misleading to claim or imply:

(a) That reliable evidence of helping the planet reach its IPCC goals can be deduced by calculating a country's emissions and sequestration and drawing conclusions from that (country-centric claims). Global warming is a global problem, and because GHGs do not recognise territorial borders, all countries are equally affected by the activities of each other.

(b) Planting a tree relieves an emitter of an obligation (regulatory or consumer-driven) to reduce its emissions, and this will allow the planet to meet the IPCC goals. Companies that claim "offsetting" directly or indirectly are, in essence, claiming that their obligation to reduce emissions is met by planting a tree. This is usually accompanied by a country-centric claim (*e.g.*, like those made by Governments under the Paris Agreement). In reality, planting a tree may just be offsetting the carbon released by another tree being cut down or burnt somewhere else in the world; so planting a tree does not guarantee that global temperature rises will be arrested, let alone reduced.

(c) CO_2-e removals will last until at least 2100, knowing that CO_2-e emissions (or the damage they will do)[2] will remain in the atmosphere until at least 2100. Except under a stringent test of permanence, there is no certainty that CO_2-e sequestered by a forest will remain sequestered until 2100.

(d) CO_2-e removals or reductions equivalent to Scope 1, 2 and 3 emissions best help the world meet its IPCC goals. This is unprovable for two reasons:

i. First, it does not prove that emissions are reducing as they must if those goals are to be met.

ii. Second, Scope 1-3 calculations do not include indirect emissions directly caused by scope 1 to 3 emissions, such as increased forest fires and melting of the permafrost, each of which adds GHG to the atmosphere but for which no emitter is presently held responsible for. Each emitter has, albeit incrementally, been responsible for the GHGs that cause these indirect emissions.

The most an emitter can say is it has been responsible for one tonne of CO_2-e emissions that will last in the atmosphere until at least 2100 (or, in the case of methane, has caused global temperatures to rise and not reduce before 2100), but it has also sequestered one tonne CO_2-e for at least that period. This may not allow the planet to meet the IPCC goals, but it should prevent them from becoming less attainable. ***The XRB Exposure Draft needs to recognise this.***

1.5. Views of the Public

Consumer sentiment and public opinion are the standards by which an emitter's actions are ultimately judged. Recognising this, PFS Certification Ltd wanted to understand the views of the New Zealand public regarding a range of global warming/climate change issues and emitters' behaviour. This included establishing what the public believes the behaviour of businesses should be concerning carbon sequestration and with regards to 'green marketing'. The market research firm Mobius was retained to conduct the survey and establish consumer beliefs and expectations benchmarks. The results of that survey are included in Appendix Three.

Overall, the public was very sympathetic to the above conclusions. The XRB Exposure Draft is ambiguous whether the public is a "primary user" (see further below). If it is, the XRB appears not to have done any independent public polling to gauge public views, but PFS has.

[2] Methane, for example, is absorbed within 20 years but the damage is long-lasting. It is *circa* 81 times that of CO_2 over 20 years and 25 times over 80 years. Recent research indicates absorption time may be significantly lengthening due to the decreasing ability of the atmosphere to do so.

1.6. King's Counsel Advice

In addition to the above, PFS Certification Ltd sought King's Counsel's advice on whether certain types of claims relating to offset of carbon emission removals (Claims) may breach s 9 of the Fair Trading Act. In relation to the time carbon should be sequestered, counsel opined:

> I do, however, consider that the reasonable consumer, if they turned their mind to the issue, would be likely to take carbon offsetting to mean that the carbon is sequestered for a significant or reasonable period of time, or at least that a series of forests are grown to continuously store the equivalent carbon for a reasonable period of time. I do not consider it likely that there needs to be certainty that the carbon will remain stored for up to 1,000 years. Given the trajectory of the climate crisis, I do not consider the average consumer would understand each tonne of emissions offset to be traced and guaranteed for the next 1,000 years. Generally, in my view, the public's focus for climate change related matters is focused on the next 30 years (for the world's 2050 net zero goal) and until 2100 (in relation to the 1.5 degree C target).

To find out what the public thought, the Mobius poll commissioned by PFS specifically asked: *"Should countries take into account the longer-term impact of their carbon emissions (and also offsetting activities) say to the year 2100 and beyond, and not just the shorter-term impacts?"* Over 75% agreed that "zero carbon" should mean this for countries.

1.7. Summary Position

Forestry carbon sequestration should only be the basis for a green claim by emitters if it can be proved, to a high degree of certainty, that the forests which are the basis for such claims will remain standing until 2100, both from a legal and silviculture point of view. If this is so, the entities may claim that they are reducing the impact of their emissions and thereby managing their Climate-Related Risks. However, investment in forestry carbon sequestration must not be used as an excuse for emitters not to reduce their emissions.

These are not of themselves all that is required of those relying on forestry-based submissions to avoid greenwashing claims and regulatory and court action, but they will be sufficient to address the most egregious aspects of forestry carbon sequestration claims that are being made at present. Other proofs, such as additionality, will also be required.

Crucially, they must be recognised if the planet is to meet the IPCC goals.

The XRB Exposure Draft fails to take sufficient account of these truisms.

Yours sincerely,

Dr Earl Stevens
CEO & Director
PFS Certification Limited

For more detailed content, please see the specific proposals below.

2. SUBMISSIONS

2.1. Submissions refer to

This submission (submissions) is in relation to the following disclosure objectives of the Climate Related Exposure Draft dated July 2022 (hereafter "ED NZ CS 1, ED NZ CS 2 and ED NZ CS 3, as appropriate).

2.1.1. From ED NZ CS 1:

Strategy Disclosure objective

9. To enable primary users to understand how climate change is currently impacting an entity and how it may do so in the future. This includes the scenario analysis an entity has undertaken, the climate-related risks and opportunities an entity has identified, the anticipated impacts and financial impacts of these, and how an entity will position itself as the global and domestic economy transitions towards a low-emissions, climate-resilient future.

Risk Management Disclosure objective

16. To enable primary users to understand how an entity's climate-related risks are identified, assessed, and managed and how those processes are integrated in existing risk management processes.

Assurance of GHG emissions

24. Legislation requires that the disclosure of an entity's GHG emissions as required by Aotearoa New Zealand Climate Standards are the subject of an assurance engagement. This [draft] Standard requires that this assurance engagement is a limited assurance engagement at a minimum.

25. For the avoidance of doubt, the following information required by Aotearoa New Zealand Climate Standards is subject to an assurance engagement: (a) GHG emissions: gross emissions in metric tonnes of CO_2-e classified as (see paragraph 21(a)): (if) scope 1; (ii) scope 2; (iii) scope 3.

2.1.2. From ED NZ CS 3:

Fair presentation

5. An entity must fairly present its climate-related disclosures. Fair presentation requires an entity to disclose information in accordance with the principles in this [draft] Standard and the disclosure objectives and requirements in Aotearoa New Zealand Climate Standards.

6. Applying Aotearoa New Zealand Climate Standards is presumed to result in climate-related disclosures that achieve a fair presentation. When compliance with the specific requirements in Aotearoa New Zealand Climate Standards is insufficient to show a fair presentation, additional disclosures must be provided.

Accuracy

11. Information is accurate if it is free from material error or misstatement. Climate-related disclosures are based on estimates and judgements of the current position as well as future

expectations and uncertain pathways. Accurate information implies the entity has implemented adequate processes and internal controls to ensure information is free from material error or misstatement. However, in this context accuracy does not mean certainty of outcome. Estimates should be presented with a clear emphasis on their possible limitations and related uncertain

Verifiability

11. Information is verifiable if it is possible to corroborate either the information itself or the inputs used to derive it. Climate-related disclosures should be defined, collected, recorded, and analysed in such a way that the information reported is verifiable. In the context of future-oriented information, verifiability means that the assumptions used can be traced back to their sources. Future-oriented disclosures will inherently involve the entity's judgement (which should be adequately explained). To the extent possible, climate-related disclosures should be based on objective data and use best-in-class measurement methodologies, which may include common industry practice as it evolves.

Completeness

12. Presenting all information that is necessary for an understanding of the matter that it purports to represent and does not leave out details that could cause the information to be false or misleading to primary users. Climate-related disclosures should be sufficiently comprehensive to allow primary users to assess future expectations and performance, and also evaluate actual performance relative to previously disclosed expectations. To avoid obscuring relevant information, disclosures should be eliminated if they are immaterial or redundant. However, where a particular risk or issue might be expected by primary users, but it is not considered material by the entity, it may, to achieve the principle of completeness, consider including a statement that the risk or issue is not considered to be significant. This will show the risk or issue has not been overlooked.

2.2. Need for defendable normative assumptions

PFS Certification notes ED NZ CS 1, ED NZ CS2 and 1 ED NZ CS 3 refer to proposed rules based on normative assumptions. As such, it presumes that ERX seeks informed input on the validity of those assumed normative rules and will make changes if those assumptions are shown to be in error.

As far as can be discerned from ED NZ CS 1, ED NZ CS 2 and ED NZ CS 3, the sources for the normative assumptions are:

(a) Views expressed by New Zealand-based individuals, who do not appear, or claim to be, professed experts on what Climate-Related Disclosures should include with respect to forestry carbon sequestration (hence the call for submissions) and,

(b) The requirements for international standards, which do not appear to make exceptions for forestry-based claims or profess to include them (ED NZ CS 1, ED NZ CS 2 and ED NZ CS 3 are silent on this).

For example, in ED NZ CS 1:

BC5. When the XRB Board started its project to develop a climate-related disclosure framework for Aotearoa New Zealand, it also developed several design principles to guide its process. The XRB Board was aware of the relatively ambitious timeframe it had set for

delivering the framework (i.e., intending to issue the framework by December 2022) and that having defined parameters and principles would assist. The design principles included that:

(a) the XRB would be guided by the qualitative characteristics of information that are useful for decision making: relevance, faithful representation (information being complete, neutral, and free from error), comparability, verifiability, timeliness and understandability;

(b) NZ CS 1 would be principles-based and succinct, with decisions about what is in NZ CS 1 and what is in accompanying guidance to be made on a case-by-case basis;

The XRB Board have had the added challenge of developing the climate-related disclosure framework in a rapidly evolving international environment. Since the XRB Board started its project, global developments include the following:

(a) TCFD issuing new guidance and amendments to its original recommendations;

(b) Establishment of the International Sustainability Standards Board (ISSB);

(c) United States Securities and Exchange Commission (US SEC) released its proposed framework for mandatory climate-related disclosures for public consultation; and

(d) European Commission launched a public consultation on its first set of draft European Sustainability Reporting Standards (ESRS).

BC11. The developments that have the most bearing on the initial approach adopted by the XRB Board in developing Aotearoa New Zealand Climate Standards are the establishment of the ISSB and the subsequent issue by the ISSB of two proposed standards:

(a) Draft IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information; and

(b) Draft IFRS S2 Climate-related Disclosures.

BC12. While the XRB Board has retained the TCFD as its base for developing [draft] Aotearoa New Zealand Climate Standards, it acknowledges the need for alignment with ISSB while still developing appropriate requirements for Aotearoa New Zealand. As a result, in some cases, the XRB Board has decided to align more closely with the provisions in the ISSB draft standards rather than with the original TCFD recommendations and guidance.

Defensible normative assumptions are to be understood in terms of their context.

If the context is *what "consumers" need to know to make value judgments concerning the activities of entities required to disclose how they are dealing with climate-related risks,* then the public feedback that PFS has should prove invaluable to the XRB.

Some support for this approach is evident in the very first paragraph of ED NZ CS 1, where it states, "the objective of this [draft] Standard is to enable primary users to assess the merits of how entities are considering those risks and opportunities, and then make decisions based on these assessments."

So far, so good. However, the controlling input here is who "primary consumers" are.

Despite submissions to the contrary, the ERX has limited the definition of "primary users" so as to exclude, *inter alia*, "consumers". There is no defensible reasoning to support this normative decision. Given we know the public has strong views on what should and should not be claimed

in relation to forestry-related green claims (see Appendix Two), and we also know that emitters:

(a) Shareholders will contain members of the public;

(b) Will likely not survive if they make false green claims to the public who are their "end users".

(c) Will be publishing their accounts to inform members of the public whether or not to buy their shares.

It is submitted that this normative decision to exclude "consumers" from "primary consumers" must be an oversight. It is tantamount to saying consumers can buy products but are not protected if emitters make a false claim about them in documents they can prove they have had access to unless they are fortuitously members of, or lenders to, an emitter.

- We note that in the submissions for "Lawyers for Climate Action", 2 May 2022, *paras* 4.1 to 4.4*,* they submitted that a broader range of persons should be included, including consumers. We agree.

We fail to understand how corporate governance can justifiably ignore consumer preferences that, if not accommodated, will almost inevitably result in adverse financial outcomes. The world, and companies, face existential threats. There are over 2,000 other consumer-led, climate-related proceedings worldwide at present, and this will only increase.

- In the USA, Exxon-Mobile has had three Board members elected by activist shareholders. In the Netherlands, Shell was ordered to reduce its emissions by 45% by 2030 in proceedings brought by climate-invigorated plaintiffs. A fuller list of current climate litigation is found at https://climate-laws.org/litigation_cases.

In the first paragraph of ED NZ CS 1, the following sentence states: "The ultimate aim is to support the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future."

Until the definition of "primary users" is clarified in a defensible way, which we submit should include "consumers", and then unless that sentence is understood to mean that aim will only be achieved when the objective referred to in the previous sentence is also achieved, and therefore dependent upon it, there is a bifurcation of objectives, and no sensible, defensible normative assumptions can be posited because the two objectives will in many cases lead to opposing outcomes.

Unless the ERX is deliberately pursuing two opposing goals, in the sense the desired outcomes will often be different, it needs to be clearer on what it is seeking to achieve. It can do this but indeed needs to:

(a) Define "primary consumer" logically and explain why it has done so.

(b) Make clear that the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future depends ultimately upon consumer's preferences, not those of company boards, lenders and the like, because when consumers turn against companies because they are making false green claims, a company may no longer exist to make the desired transition.

2.3. Need for forestry carbon sequestration carve out or qualification

2.3.1. Widespread use of dubious "carbon offsets"

It is difficult to quantify the number of emitters using or proposing to use forestry carbon sequestration to "offset" their obligation to reduce GHG emissions.

Based on industry knowledge and reports from various commentators, forestry carbon "offsets" are increasingly seen as an easy way for emitters to avoid reducing their emissions. We should all be wiser when entities begin to make their Climate-Related Disclosures. Still, a present guestimate would be that forestry carbon "offsets" are one of the leading emission reduction avoidance strategies adopted.

The New Zealand Government "offsets" forestry sequestration to meet its Paris Agreement obligations, which is an unfortunate signal to the voluntary carbon market. Another unfortunate signal would be for the ERX to appear to sanction it by not interdicting it. This is not an omission that will be easily corrected. Entities may be locking themselves into long-term forestry carbon "offset" contracts that are likely to become worthless once regulatory or court action prevents companies from making misleading claims about being "green" based on offsetting.

If corporate entities lose money because they have not foreseen the demise of forestry carbon "offsets", they may blame ERX for appearing to endorse offsetting. ED NZ CS 1 refers to offsetting and the need to report it in some circumstances. As a minimum, this should be deleted.

2.3.2. Recommendation

We strongly recommend that the use of forestry-based carbon credits for offsetting not be permitted by ERX rules. Permitting offsetting does not encourage emitters to reduce emissions, ameliorate environmentally harmful processes generating GHGs, or help the planet reach the IPCC targets.

Emitters can always plant trees or, by providing capital, induce others to do so in an attempt to demonstrate that they are "good corporate citizens". However, if they are not helping the planet meet its IPCC targets, they are enabling global temperatures to increase to the point where we cannot possibly reach the IPCC targets.

2.4. Risk assessments should reflect whether actions help achieve IPCC goals

As contemplated by the ED NZ CS 1, PFS Certification submits that any risk analysis should reflect the overriding need to meet IPCC goals, as outlined in the introduction to these submissions. That is necessary for the following reasons:

(a) Consumers will not necessarily be constrained by any Climate-Related Disclosures rules mandated by the ERX. If mandated as both a minimum and maximum of what entities should do, the XRB Exposure Draft does not go far enough to embrace consumer concerns, and there will be a bifurcation between:

- Climate-Related Disclosures and consumer preferences;

- Fair Trading Act 1986 requirements;
- Investigations and litigation (which are determined by what consumers understand and not whether XRB rules have been complied with);
- FMA investigations and litigation; and
- General litigation seeking to hold emitters responsible for the effects of their emissions on the planet and indirectly on plaintiffs.

(b) Court and regulatory bodies will not be bound by Climate-Related Disclosures in any Fair Trading Act 1986/FMA investigations and litigation and general litigation (as in (a) above).

(c) Auditors will not be bound by any Climate-Related Disclosures mandated by the ERX unless they are legislatively stipulated to be both a minimum and maximum requirement for reporting by entities required to make them. If they are not, then an auditor may seek to defend failure to adopt higher standards by reliance on ERX mandated Climate Related Disclosures, but if joined in an action by a shareholder against a company, this is unlikely to provide a complete defence.

(d) Professional indemnity insurers will not be bound by any Climate-Related Disclosures mandated by the ERX. They may deny cover to directors and auditors that seek to plead reliance on ERX-mandated Climate-Related Disclosures not meeting something equivalent to PFS Certification Ltd's approach to proven permanent forests.

(e) Insurers will not be bound by any Climate-Related Disclosures mandated by the ERX and may refuse pay-outs if it is a policy condition, *e.g.,* that climate-related risks must be managed according to defensible scientific premises.

(f) Overseas countries setting climate-related import restrictions (*e.g.,* the EU's CBAM) will not be bound by any Climate-Related Disclosures mandated by the ERX.

2.5. Global temperatures and GHGs continue to rise

It is indisputable that global temperatures continue to rise as concentrations of GHG continue to rise. Climate-Related Disclosure rules will quickly become outdated if they do not reflect this and anticipate the consequences of this constant dynamism and the direction it will likely take.

Accordingly, it is submitted that the ERX must ensure its Climate-Related Disclosure rules, at least as they relate to carbon sequestration and claims based on it, do not quickly become redundant.

PFS takes the view that emitters are only one court case away, and not one they are necessarily a party to, to become liable for misleading and deceptive, if not negligent, green claims.

It may be that emitters will have to change their behaviour in relation to forestry sequestration in advance of being forced to because of consumer pressure. Research shows both that being green has a real impact on company revenues and that "green" litigation is increasing.

PFS submits that failure to take these factors into account when publishing Climate-Related Disclosure rules will, in a brief time, be seen as a failure to understand the current dynamics and as an endorsement of practices that do not help the planet meet its IPCC targets.

3. SPECIFIC PROPOSALS

PFS Certification Ltd proposes the following changes to ED NZ CS 1 to ensure the principles of fair presentation, accuracy and verifiability are complied with (ED NZ CS 3) when Climate-Related Disclosures are made concerning carbon sequestration.

3.1. Statements on total emissions

There being no normative assumption for limiting the measurement of GHG emissions to Scope 1, 2 and 3 emissions, there should be a statement added where an emitter is making a statement concerning the measurement of forest-based sequestration, that:

"total emissions that an emitter is responsible for cannot be measured because their indirect emissions have not and cannot be measured" (*cf.* ED NZ CS 1 *paras* 21,23 and 24)

Or such statements should not be made.

3.2. Trees will not be cut down before 2100

There being no normative assumption for the length of time sequestered carbon should remain sequestered, where an emitter is making a statement concerning the measurement of forest-based sequestration, there should be a statement that:

"forests sequestering carbon will not be cut down until 2100 because doing so (cutting them down) will not help the planet meet the IPCC targets" (*cf*. ED NZ CS 1 *para* 22).

Or such statements should not be made.

3.3. Offsets are not proven to help the planet

There being no normative assumption regarding the integrity of offsets,[3] where an emitter is making a statement concerning the measurement of forest-based sequestration, there should be a statement that:

"Forestry offsets are not proved to help the planet meet the IPCC targets nor to help the planet reduce GHG already in the atmosphere where they are being matched by equivalent emissions" (*cf*. ED NZ CS 1 *para* 22(e)(iii))

Or such statements should not be made.

3.4. All emissions are not quantified

Where an emitter is making a statement about Scope 1, Scope 2 or Scope 3 emissions, it should always be qualified with the statement that:

> **"This calculation of our GHG emissions does not include indirect emissions all emitters, including us, are collectively responsible for."**

[3] Professor Andrew Macintosh is an environmental law and policy expert at The Australian National University (ANU). He is one of Australia's preeminent experts on climate change mitigation and adaptation, particularly in relation to the land and forest sectors and the management of the elevated risks of bushfires and coastal hazards associated with climate change (Australian Royal Commission into National Natural Disaster Arrangements). He has called carbon offsetting a fraud on the environment.

Or such statements should not be made.

3.5. Required Statements under ERX Standards

Generally, ERX Standards should recognise the Statements an entity must make to meet its Climate-Related Disclosures (*cf*. ED NZ CS 1 *para* 23(a)).

Specifically, in relation to the objectives the XRB seeks to achieve, we submit that it should:

(a) Define "primary consumer" logically and explain why it has done so.

(b) Make clear the allocation of capital towards activities that are consistent with a transition to a low-emissions, climate-resilient future depends ultimately upon consumers' preferences, not those of company boards, because when consumers turn against companies because they are making false green claims, a company may no longer exist to make the desired transition.

APPENDIX ONE – News Article

Climate Change Commission Chair Dr Rod Carr calls for reform of emissions trading scheme [4]

Dr Rod Carr Photo: RNZ / Dom Thomas

The emissions trading scheme allows companies to "plant and pollute" and needs reform, Climate Change Commission chairperson Dr Rod Carr says.

Carr spoke to more than 500 business and policy leaders at the business and climate conference in Auckland today.

He was one of a number of speakers who said the country's plans to reduce emissions rely too heavily on planting trees to absorb carbon dioxide planting, instead of actually cutting the amount of damaging climate gases being released.

They said the practice was not in keeping with international efforts to keep warming below catastrophic levels.

The Government is currently reviewing the emission trading scheme.

Carr said other countries were becoming increasingly sceptical about the use of offsets at all.

Businesses here needed to get with the new paradigm or lose international customers to those who could make more sustainable products elsewhere, he said.

"Those are the biggest threat to a business, it's not some regulator coming along and putting a price on emissions.

[4] Climate Change Commission chair Dr Rod Carr calls for reform of emissions trading scheme | RNZ News; 7:05 pm on 19 September 2022; Hamish Cardwell, senior journalist, @HamishCardwell hamish.cardwell@rnz.co.nz

"It's the banks not willing to lend you the money, the investor is not willing to provide the equity, the customer is not willing to buy your products because basically your competitors got the equity, got the funding, got your customers - that's what will put you out of business."

Prime Minister Jacinda Ardern said businesses that did not start cutting emissions faced being left behind in the global marketplace.

Aotearoa businesses should aim to be the best in the world and make the greenest products, she said.

Climate change become 'weaponised' in global protection racket'

A New Zealand business leader warned exporters that other countries were itching to slap tariffs on products, with the excuse that producers were not doing enough to cut their emissions.

Malcolm Johns heads the Christchurch Airport and chairs APEC climate business leaders group.

"Globally, climate change is becoming weaponised as a trade protection racket," he said.

"Carbon across borders is being used as the mechanism to protect that trade."

There was no international avenue for working though these issues right now, Johns said

That highlighted how making actual cuts to emissions was crucial if exporters wanted to thrive, he said.

International business expert Stephen Jacobi told RNZ the risk of a trade war over climate issues was very real.

While it was not a reality yet, pressure was mounting, he said.

"When economies start to put in place policies to meet Paris targets that really impact on [their] own business sectors, they will come under pressure from those business sectors to adopt protectionist devices that will keep out others."

Talks on the issue were already underway internationally and New Zealand needed a seat at that table, Jacobi said.

APPENDIX TWO – PFS Position Paper

The truth about forestry green claims and IPCC goals

PFS team publication

Ideally, the planet needs to limit average global warming to no more than 1.5 degrees C over pre-industrial levels by 2100 or face catastrophic consequences (IPCC).

That means emitters must do at least two things:

i. Reduce their GHG emissions drastically in the next eight years.

ii. Take out of the atmosphere emissions equivalent to what they have been responsible for (forest sequestration).

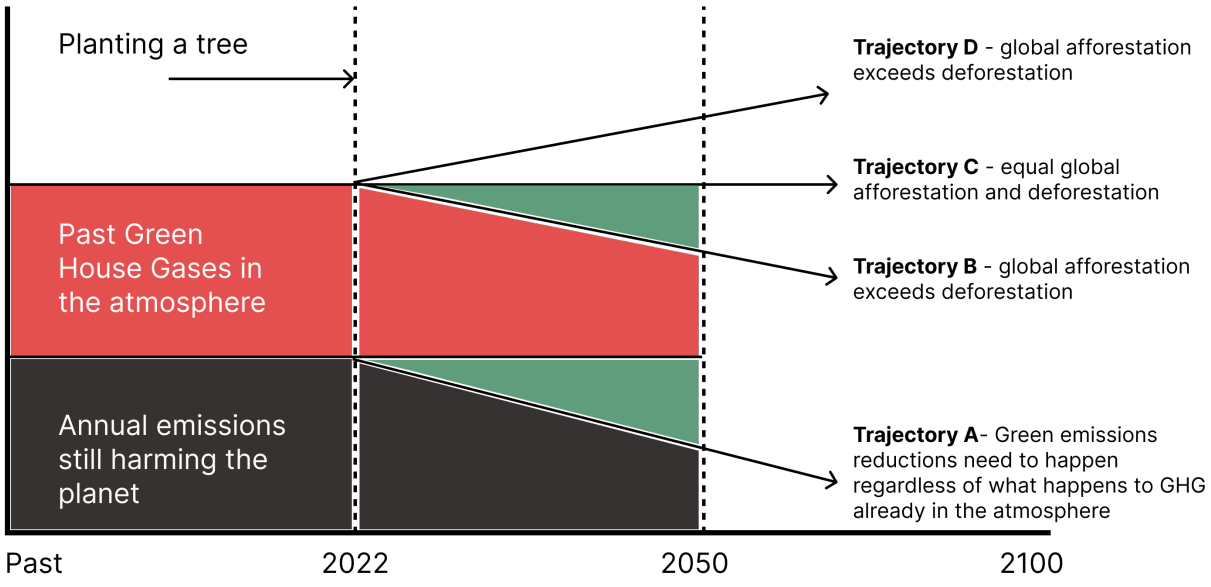
The first will likely not be enough, and using the second as an excuse for not doing the first will not help the planet. Emitters doing the most they can on both fronts is critical to any hope of reaching IPCC goals.

How this translated to the use of forestry carbon credits is as follows.

First, we do not know the state of worldwide forestry, but the suspicion is there is annually more deforestation than reafforestation. That means planting a tree doesn't get us closer to the IPCC goal but only stops us from getting too far away from achieving it. But not just any tree, only one guaranteed to be still sequestering in 2100. And not every species, only the ones that will get us to that goal faster.

Second, in any scenario, cutting down a tree before 2100, even if it is replanted and salvageable lumber from it is guaranteed to be stored in furniture and the like until 2100, the planet will be worse off than if the tree was not felled. So, cutting down a tree gets us further away from achieving the IPCC goal than if the tree was not felled.

Impact of emissions and tree planting on global GHG levels



What emitters need to do between now and 2050 if we are to meet the IPCC goals is to maximise both green triangles in the above diagram.

The above diagram supposes that a tree, after planting, will remain standing until 2100. If there is no proof it will, then even if it could be proved there is globally more afforestation than deforestation, the emission removals shown between trajectories B and C in the diagram cannot be assumed.

Until we know the state of worldwide forestry CO_2-e removals and additions, the most we can say is:

- Permanently planting trees prevents CO_2-e concentrations from increasing more than they would otherwise, but whether or not it helps us reach the IPCC goals will not be known until we ascertain whether global forestry CO_2-e removals exceed global forestry CO_2-e emissions.
- To have any hope of reaching the IPCC goals, we have to maximise the removals of CO_2-e, including by ensuring planted trees are permanent and are fast CO_2-e sequesters. Anything less is not good for the planet because it gives less chance of meeting the IPCC goal.

These conclusions limit what an emitter whose intervention has planted or maintained a tree can claim to have done.

If it can be proven the tree will remain until 2100, the emitter can defensibly claim (Claim A):

> In [making/providing this service], we put x tonnes of CO_2-e into the atmosphere where it will continue to harm the planet until at least 2100, but by planting trees, we took x tonnes out of the atmosphere until at least that long [there would need to be some relationship between the two].

Or, if the emitter cannot say this, the most it can claim (Claim B) is:

> In [making/providing this service], we put x tonnes of CO_2-e into the atmosphere where it will continue to harm the planet until at least 2100, but by planting a tree, we took x tonnes out of the atmosphere but cannot guarantee it will not be put back there before 2100.

Currently, emitters do not want to make the lesser claim, so all they say is, "our product is carbon neutral" or something similar. They do not want to explain that "carbon neutral" (or whatever term they use) is a temporal state that may be reversed before 2100.

Emitters fail to make this critical qualification because that would not help sell their products and is likely to have the opposite result, especially relative to competitors that can make Claim A. That omission is likely to be deceptive and misleading if consumers believe the omission is intended to convey Claim A and not Claim B applies to the product or services.

PFS asked Mobius to conduct a random public poll to gauge public awareness of the distinction. Most of those polled thought longer-term sequestration is better than shorter-term sequestration. PFS then asked a KC specialising in climate-related risks about Fair Trading implications. That advice concluded: *"Generally, in my view, the public's focus for climate change related matters is focused on the next 30 years (for the world's 2050 net zero goal), and until 2100 (in relation to the 1.5 degree C target)."*

To find out what the public thought, the Mobius poll specifically asked: *"Should countries take into account the longer-term impact of their carbon emissions (and also offsetting activities) say to the year 2100 and beyond, and not just the shorter-term impacts?"* Just over 75% agreed that "zero carbon" should mean this for countries.

Emitters often go further than failing to state critical qualifications to their green claims to ensure that consumers do not mistakenly believe they are making Claim A when they can only make Claim B. The most egregious representation they often make is that by planting a tree, they are "offsetting"

their obligations to reduce emissions or their responsibility to accurately report how they meet the climate risks they face.

As the above diagram shows, that is false, and because it is false, it is a deceptive and misleading claim when made. While some countries "offset" their tree plantings to meet their Paris Agreement obligations, a "meet the letter but not the spirit" accounting trick, this does not protect private emitters from the consequences of making false, deceptive or misleading green claims.

The second claim emitters often make, expressly or impliedly, is planting a tree helps achieve IPCC goals, and this has been rebutted above.

The third claim emitters often make is that an entity or country can calculate its net emissions without considering the state of global emissions. GHGs do not respect territorial borders, so this is manifestly deceptive and misleading if not heavily qualified. Governments might get away with such deceptive claims, but private emitters cannot.

Holding or buying NZUs will not assuage these concerns because they are issued by a government that does not consider itself bound to meet the same legal standards as private emitters.

There is a range of sanctions for making false or deceptive and misleading claims. First is litigation. It need not be against every emitter; a successful claim against one will likely be enough to influence others. Even the threat of a successful claim, *e.g.,* by someone filing litigation, could have this result. The second is regulatory action. The FMA is already looking at green claims in both Australia and New Zealand, and in either jurisdiction, the FMA will likely be forced to act by successful litigation against emitters, although this is not necessary to do so.

Many emitters are also at the whim of their banks, auditors and insurers. The first will be concerned by the emitter's exposure to climate risks, litigation and regulations, and customers buying into long-term positions on low-integrity carbon credits they will be unable to use. Auditors will be concerned not to sign off accounts that contain misleading climate risk disclosure information, especially in the light of recent changes to the Financial Reporting Act. Insurers will be concerned about litigation risks and loss of profit insurance.

All this is in addition to customer pushback against green claims. The days of spin are fast disappearing.

Of course, emitters can choose to make no environmental claims other than for emissions reductions above trajectory A on the above diagram. However, large emitters are likely caught by the Financial Reporting Act and must make climate risk disclosures

What all these fore sages are that most green claims now being made are unlikely to continue to be made in the short to intermediate future.

APPENDIX THREE – NZ Public Survey Results

Public views on green claims: results of Mobius random independent public poll

Methodology

The survey that Mobius conducted was:

(a) With n=503 New Zealanders (n=499 of these were between 18 and 49 years of age). Note that these were respondents who did not state (to question 2 of the survey) that global warming is not a threat to people and the planet. N=19 people who started the survey (3.5% of initial respondents) stated that they do not see global warming as a threat – these people were excluded from the remainder of the survey questions. This provides an overall margin of error (for the n=503 respondents to the full survey) of +/- 4.4% at the 95% confidence level.

(b) Run on Verint EFM, one of the world's leading survey platforms, and conducted with the participant's from Dynata's online research-only panel across New Zealand. Dynata is ISO20252 accredited and is the world's largest research panel provider.

Survey outcomes

The following questions and responses were recorded:

> ***Q.*** *Should a product or service that is marketed as being 'green' be one that has no negative impact on the planet, either in terms of how it is manufactured, delivered to the consumer or used (from a global warming i.e. carbon impact perspective)?*
>
> **R.** Just over two-thirds believe that if a good or service is marketed as being 'green' then it should not have a negative impact on the planet – while a relatively small minority (just over 10%) disagree with this, and around one-fifth are unsure.
>
> ***Q****. A business should ensure that all claims that they make with regards to their carbon emissions related activities and impacts are accurate?*
>
> **R.** The majority (89% combined) of respondents agree that any and all claims that a business makes in regards their carbon emissions and related activities and impacts should be accurate (44.1% agree and 44.9% strongly agree) while a minority (2.2% combined) disagree with this (2% Disagree and 0.2% Strongly disagree). 8.7% were Unsure.

The Mobius survey asked the following questions specifically relating to rule of logic (a) above:

> ***Q.*** *To what extent do you disagree or agree that sequestering (removing and storing) carbon in trees that won't be cut down for at least 70 or 80 years (say until around the year 2100) is better than sequestering carbon in trees that could be cut down in the much nearer future e.g., 5 to 30 years time?*

The public response was:

> **R.** The majority think longer-term sequestration is better than shorter-term sequestration, while just under 10% do not believe this is better – though around one-third of respondents were unsure.

And:

> ***Q.*** *For a country or a business to take appropriate action with regards to their carbon emissions and to manage their impact on global warming, they need to take into account both the short term and also the longer term (out to year 2100 and even beyond) impact of their current activities?*

The public response was:

> **R.** The majority of respondents agreed that both short and also longer-term impacts should be taken into account when managing global warming impacts.

The Mobius survey asked the following questions specifically relating to the rule of logic (b) above:

Addressing logic conclusion (b) in paragraph 18 above, the Mobius survey asked the question:

> ***Q.*** *Given that trees are a key "tool" for combating global warming, should the planting of a tree in Country A be counted as positive i.e., a "win" for our fight against global warming if, at the same time, a tree is cut down and can no longer act to store carbon in Country B, i.e., a "loss" in our fight against global warming? This would mean the total number of trees has remained unchanged.*

The public response was:

> **R.** The majority are aware that more trees are being cut down globally each year than are being planted – though just over one-quarter did not know this. The majority think that a tree being planted in one country while a tree is cut down in another (no net extra trees) is not a 'win' for fighting global warming – though just over one-quarter do think that this is a win.

The Mobius survey asked the following question specifically relating to rule of logic (c) above:

> ***Q.*** *To what extent do you disagree or agree that, to accurately calculate the carbon footprint of a country or a business, they should also take into account the indirect impacts that their own direct carbon emissions cause. For example, the extent to which their direct carbon emissions cause the likes of forest fires and the melting of permafrost (land that is normally permanently frozen – and which, when thawed, releases methane, another greenhouse gas) in other parts of the world.*

The public response was:

> **R.** The majority think that indirect impacts of activities should be taken into account (with regards to calculating carbon footprints) while under 10% do not think this should be the case – though just over one-quarter of respondents were unsure.

PFS Certification Ltd believes the rules of logic (d) and (e) are self-evident.

The Mobius survey asked the following questions specifically relating to rule of logic (f) above:

> ***Q.*** *A 'carbon footprint' is the total net carbon dioxide of a person, a business (or other organisation) or even a country.*

The public response was:

> **R.** Most think that countries and also businesses should take into account both the local and also the global impacts of their activities – when managing their carbon emission-related actions and impacts.

The Mobius poll specifically asked

> ***Q.*** *"Should countries take into account the longer-term impact of their carbon emissions (and also any offsetting activities) say out to the year 2100 and beyond, and not just the shorter term impacts?"*
>
> **R.** Just over 75% agreed that "carbon zero" should mean this for countries.

APPENDIX FOUR – Directors Profiles

MEET THE TEAM

PFS CERTIFICATION LIMITED

PERMANENT FOREST SEQUESTRATION UNTIL 2100

LEADING THE WAY IN CARBON STANDARDS

The objective of the team at PFS Certification Ltd is to ensure that there is a globally appliable standard of the highest integrity which can be used to assess emitters' claims that they are helping the planet when they acquire forestry-related carbon credits in the voluntary market.

Dr. Earl Stevens

B.AGR.SCI (HONS 1), PHD (BIOCHEMISTRY)

CEO & DIRECTOR

Earl has over 35 years global industry experience in the public and private business sectors. He has extensive experience in business development, start-ups, joint ventures, company management, investment banking, mergers and acquisitions, commercialization, strategy, and execution.

Hugh Riddiford

DIP AGR COM (AGRICULTURE)

DIRECTOR

Hugh has over 50 years' experience in agricultural, forestry and property, with his first forest in 1981.He has since owned/managed several other forests around NZ.

Hugh's involvement with carbon began in 1989 and he was an advisor on the design of the NZ ETS and the set up of the Carbon Trading platform for OMF (now Jardens).

Tony Hannon

BCOM. ACCOUNTING & ECONOMICS

DIRECTOR

Tony is an investment banker with with 30 years experience in corporate advisory, M&A capital raising, investment management, mergers & acquisitions, venture capital, and corporate advisory.

Tony is an experienced Director in both public and private sectors. He is the Chairman of General Capital Technologies, Transition Capital and OmniHealth and director of other companies including Sealord Group, Moana New Zealand, and Vomo Island Resort Group amongst others.

Sheldon Drummond

NZCERT FORESTRY, B.FOREST ENG, DIP. WOOD TECH, POST GRAD.

DIRECTOR

Sheldon has been involved in forestry since 1974 with a depth of experience in forestry management, in NZ and offshore in Malaysia nd PNG.

Sheldon was General Manager of Juken NZ's forestry business for 26 years before setting up his own business.

Sheldon has been a member and chair of many Boards including the NZ Logging Industry Research Assn, NZ Forest Owners Association, NZ Wood Manufacturing Research Association and Scion (NZ Forest Research Ltd).