

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 125

Issued by the Authority of the Minister for Climate Change and Energy Efficiency

Carbon Credits (Carbon Farming Initiative) Act 2011

*Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012
(No. 2)*

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) establishes the Carbon Farming Initiative (the CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural, landfill and forestry sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural, landfill and forestry practices. The *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the CFI Regulations) provides necessary details supporting the administration of the CFI Act.

Applications for recognition as an offsets entity for CFI purposes must be made in the approved form and be accompanied by certified copies of relevant documents. The effect of an amendment made to the definition of 'certified copy' by item [38] of Schedule 1 to the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)* was to narrow the list of persons who can certify that a copy of a document is a true copy of the document for these purposes. Before the amendment was made, a copy could be certified by any person before whom a statutory declaration could be made; since the amendment a copy can only be certified by certain bank, building society or credit union officers, judicial officers, legal or medical practitioners, ministers of religion and police officers. This amendment commenced on 29 May 2012.

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 2)* (the Regulation) provides that this amendment does not apply in relation to applications that were signed no later than 29 May 2012 and given to the Clean Energy Regulator no later than 12 June 2012. In effect, the Regulation preserves the more liberal certification procedures that applied at the time the applications were prepared and signed, thus ensuring that applicants are not required to re-certify and re-submit relevant documents. Any applicant who complied with the later, more restrictive certification procedures would still be compliant with the more liberal procedures, and so would be unaffected by the Regulation.

Details of the Regulation are set out in [Attachment A](#).

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation is taken to have commenced on 29 May 2012.

Subsection 12(2) of the *Legislative Instruments Act 2003* provides that a legislative instrument has no effect if, apart from that subsection, it would take effect before it is registered and as a result, the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage the person, or liabilities would be imposed on a person (other than the

Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration. The Regulation is taken to have commenced before it is registered, but no rights of any person are affected so as to disadvantage the person, and no liabilities are imposed on any person in respect of anything done or omitted to be done before the date of registration. Subsection 12(2) therefore does not render the Regulation ineffective.

A statement of compatibility with human rights is set out in Attachment B.

Consultation

The amendment is of a minor nature and does not alter existing arrangements. Rather it preserves the certification arrangements that applied before the commencement of the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)* in relation to applications signed before the commencement of that instrument and given to the Clean Energy Regulator within two weeks of that date. Consultation was therefore not required.

Authority: Section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*

ATTACHMENT A**Details of the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 2)*****1 – Name of regulation**

Section 1 provides that the name of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 2)*.

2 – Commencement

Section 2 provides that the Regulation is taken to have commenced on 29 May 2012.

3 – Amendment of *Carbon Credits (Carbon Farming Initiative) Regulations 2011*

Section 3 provides that Schedule 1 to the Regulation amends the CFI Regulations.

SCHEDULE 1 – Amendment**Item [1] – After regulation 4.2**

Item [1] inserts new subregulation 4.2(4) into the CFI Regulations.

The effect of this subregulation is to preserve the certification procedures that applied before the commencement of the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)* in respect of applications under Division 4 of the CFI Regulations that were signed no later than 29 May 2012 and given to the Clean Energy Regulator no later than 12 June 2012. Applications signed and given by or before these dates may be accompanied by copies of relevant documents certified by any person before whom a statutory declaration may be made.

Applications signed or given after these dates will need to be accompanied by copies of relevant documents certified by one of the following persons who is in Australia:

- i. a bank, building society or credit union officer with five or more continuous years service;
- ii. a commissioner for declarations;
- iii. a judge of a court;
- iv. a justice of the peace;
- v. a legal practitioner;
- vi. a medical practitioner;
- vii. a minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*;
- viii. a police officer;
- ix. a sheriff or a sheriff's officer.

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 2)

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The Regulation makes transitional provisions in relation to an amendment made to the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* by the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)*. In particular, the Regulation preserves the certification procedures that applied before the commencement of the amendment in relation to applications signed before, and received within two weeks of, the commencement of the amendment.

Human rights implications

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Regulation is compatible with human rights as it does not raise any human rights issues.

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