

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 190, 2014

Issued by the Authority of the Minister for the Environment

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 2)

Purpose

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it.

The *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the principal regulations) currently prescribe a number of details for the operation of the Carbon Farming Initiative (CFI), such as information, audit and reporting requirements.

The purpose of the changes to principal regulations is to make amendments relating to the commencement of the *Carbon Farming Initiative Amendment Act 2014* (the Amendment Act). The Amendment Act establishes the Emissions Reduction Fund by expanding the crediting of emissions reductions under the CFI to the non-land based sectors of the Australian economy. It repeals a number of sections of the CFI Act which support the principal regulations.

Background to the Emissions Reduction Fund

The Emissions Reduction Fund is the centrepiece of the Australian Government's efforts to reduce emissions. Its primary objective is to assist Australia to meet its emissions reduction target of five per cent below 2000 levels by 2020, consistent with its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

The Emissions Reduction Fund will do this by purchasing approved and verified emissions reductions from registered projects. The Clean Energy Regulator is empowered under the Amendment Act to conduct processes to purchase emissions reductions, and enter into contracts for this purpose.

The Amendment Act also further streamlined the operation of the CFI to simplify making methodology determinations and encourage participation in the Emissions Reduction Fund, further facilitating the ability of the Fund to contribute to Australia's emissions reduction target.

Legislative rules and regulations supporting the Emissions Reduction Fund

The CFI Act is supported by subordinate legislation, including the principal regulations. Section 307 of the CFI Act provides that the Governor-General may make regulations, not inconsistent with the CFI Act, prescribing matters required or permitted by the CFI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the

Act. The principal regulations provide detailed explanations of the way in which the CFI Act will be administered by the Clean Energy Regulator.

The Amendment Act provides for the Minister to make legislative rules (section 308), consistent with the intention that new subordinate legislation under the amended CFI Act will be in the form of rules. Over time, the existing regulations would be transferred to the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rules).

The amendment regulation is the first part of this process to ensure that parts of the principal regulations that no longer reflect the amended CFI Act are repealed. A number of them will be remade by the Minister as sections of the Rules. The date of effect of repealed regulations coincides with the making of new sections in the Rule to ensure there is no overlap between regulations and the Rules.

The regulations affected by the amendment regulation are those that are critical to the ability of the Clean Energy Regulator to conduct the first auction under the Emissions Reduction Fund. The Government has indicated that this auction will be held in early 2015.

Detailed description of the amendments

To ensure a smooth transition and facilitate early applications under the amended CFI Act in relation to the principal regulations:

- regulation 3.1 has been amended to remove unnecessary requirements for project areas to be provided with applications and replace these with relevant statements about the location or project boundary as per Schedule 1
- regulation 17.1 has been amended to require certain records of applications to be kept as per Schedule 1
- regulation 3.16 has been amended to update the reference to regulation 3.3 after its repeal as per Schedule 2.

The amendments to regulations 3.1, 3.16 and 17.1 of the principal regulations are supported by the references to regulations in paragraph 23(1)(c), subsection 29(1) and paragraph 191(1)(a) of the CFI Act respectively and these regulation making powers are not impacted by the Amendment Act.

Most of the regulations in Schedule 2 repealed will be replaced by corresponding sections in the Rule made by the Minister for the Environment in early 2015. A few regulations are entirely spent, and will not be replaced in the Rule: regulation 6.3 Information for offsets reports-projects affected by a prescribed non-CFI offsets scheme and regulation 6.5, Information and documentation for offsets reports-particularly waste diversion projects.

Details of the amended regulations in Schedule 1 and 2 are in [Attachment A](#).

Public consultation

Consultation with businesses was undertaken in December 2014 on the Rules, which included notification of changes to the principal regulations.

Separately, the Government undertook extensive public consultation on the Emission Reduction Fund policy framework (see [Attachment B](#)).

Regulatory Impact

The Department of the Environment certified the Emissions Reduction Fund White Paper as a Regulation Impact Statement for initial decisions on the Emissions Reduction Fund, including the Emissions Reduction Fund crediting and purchasing arrangements, Carbon Farming Initiative arrangements incorporated into the Emissions Reduction Fund, and coverage of the Emissions Reduction Fund safeguard mechanism in accordance with the Australian Government Guide to Regulation. The Regulatory Impact Statement will be finalised after consultation with business on the remaining aspects of the safeguard policy.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment C.

Details of Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 2)

Section 1 – Name

This section provides that the title of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 2)*.

Section 2 – Commencement

This section provides that Schedule 1 of the Regulation would commence at the same time as the *Carbon Farming Initiative Amendment Act 2014*, on 13 December 2014. Schedule 2 of the Regulation will commence upon the Minister for the Environment making the *Carbon Credits (Carbon Farming Initiative) Rule 2015*.

Section 3 – Authority

This section provides the authority to make the regulations is section 307 of the CFI Act.

Section 4 – Amendment of Carbon Credits (Carbon Farming Initiative) Regulations 2011

This section provides that the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulation) is amended as set out in the Schedules.

Regulations repealed in Schedule 1

The following regulations are no longer be supported by the amended CFI Act and are repealed:

- the definition of prescribed audit report in subregulation 1.3(1);
- the application requirements in paragraphs 3.1(1)(j), (k), (l) and (n) relating to project areas and certain Crown Minister consents;
- regulations in 1.8 and Schedule 1 relating to definitions to be removed from section 5 of the CFI Act;
- audit related requirements in regulations 1.11, 1.12 and 1.13 which will no longer be supported by sections 13 and 76 of the CFI Act and are to be in legislative rules;
- spent transitional requirements in regulations 7.1 and 7.2,
- applications for methodology determinations in regulations 9.1 and 9.2 which will no longer provided for in the amended CFI Act;
- recognised offset entity provisions in Part 4 and Schedules 2 and 3 of the principal regulations relating to sections of Part 4 of the CFI Act which are being repealed; and
- crediting period provisions in Part 5 of the principal regulations which will be dealt with by methodology determinations.

These repeals are in items 1, 2, 6, 7, 8 and 10 of Schedule 1.

Regulations amended in Schedule 1

Regulation 3.1(c) – Provision of project area information with an application for declaration of an eligible offsets project

Section 27(3)(b) of the CFI Act states that the project declaration must include the project area(s) in accordance with the regulations or legislative rules. The Amendment Act limits this to only where the project is an area-based offsets project: a sequestration project or a type of area-based emissions avoidance offsets project as identified in regulations or legislative rules. Paragraph 3.1(1)(c) of the principal regulations currently requires all projects to provide project area information with their application for a declaration of an eligible offsets project. This is now unnecessary.

Item 3 of Schedule 1 amends the existing regulation 3.1(1)(c) by only requiring area-based offsets projects to provide project area information.

Item 4 of Schedule 1 requires either location information or information on the boundary of the project where a project area is no longer provided.

Item 5 of Schedule 1 limits paragraph 3.1(1)(g) to area-based offsets projects consistent with the proposed changes above.

Regulation 17.1(2) – Record-keeping requirements – general

Subsection 191(1) of the CFI Act states that regulations or legislative rules may require a person to make and retain records of specified information where it is relevant to the Act. Item 9 of Schedule 1 expands this requirement to include information used to substantiate the project's application under section 22 of the amended CFI Act. This will be important for the new audit framework in the Amendment Act.

Regulations repealed in Schedule 2

The following regulations will be replaced by new legislative rules reflecting the policy contained in the Amendment Act:

- regulations 3.1 and 3.3 of the principal regulations relating to applications for a declaration of an offsets project;
- Division 2.1 of the principal regulations concerning certificates of entitlement;
- reporting and notification requirements in Part 6 of the principal regulations;
- recordkeeping requirements in Part 17 of the principal regulations; and
- provisions relating to the previous Domestic Offset Integrity Committee in Part 26 of the principal regulations which is to be replaced by the Emissions Reduction Assurance Committee.

These repeals are in items 1, 2 and 4 of Schedule 2.

Regulations amended in Schedule 2

Consequential on the repeal of regulation 3.3, it is proposed that the reference to regulation 3.3 in paragraph 3.16(2)(b) is updated to refer to the relevant legislative rules. This is proposed in item 3 of Schedule 2.

Public consultation on Emission Reduction Fund policy framework

In finalising the design of the Emissions Reduction Fund, the Government sought the views of businesses and the community through an extensive consultation process.

Terms of Reference

- Consultation period: 16 October 2013 – 18 November 2013
- Submissions: over 290

Green Paper

- Consultation period: 20 December 2013 – 21 February 2014
- Submissions: over 340
- Information sessions
 - Face to face:
 - Canberra – 3 February 2014 – around 150 RSVPs
 - By phone: 4 public teleconference sessions across 4 and 5 February 2014

White Paper

- Information sessions
 - Face to face:
 - Sydney – 14 May 2014 – 98 RSVPs
 - Canberra – 15 May 2014 – 51 RSVPs
 - Melbourne – 16 May 2014 – 101 RSVPs
 - By phone: 2 sessions – 21 and 22 May 2014 – 28 RSVPs in total

Exposure draft legislation

- Consultation period: 9 May 2014 – 23 May 2014
- Submissions: 49
- Also considered by phone by legal workshop on 20 May 2014

Expert Reference Group

- Has met twice: 12 February 2014 and 28 February 2014

Technical Working Groups

- Policy development as of December 2014
 - Contracts – 1 meeting, consultation on draft contract from 27 June 2014 – 18 July 2014
 - Auctions – 1 meeting
- Industrial sector method development as of December 2014
 - Facility method – 12 face-to-face; 5 teleconferences
 - Waste – 4 face-to-face
 - Transport – 3 face-to-face; 1 teleconference

- Energy Efficiency Industrial – 4 face-to-face; 1 teleconference
- Energy Efficiency Building – 4 face-to-face; 1 teleconference
- Coal Mine Fugitives – 5 face-to-face; 1 teleconference
- Land sector method development
 - Sequestering Carbon in Soils in Grazing Systems – 8 face-to-face since 2011 (3 in 2014)
 - Livestock – 10 face-to-face; 18 teleconferences
 - Savanna method – 4 face-to-face; 9 teleconferences
 - Reforestation - 2 teleconferences
 - Avoided deforestation – No meetings as yet

Exposure draft methodology consultation

- Alternative waste treatment, coal mining and landfill gas: 3 September – 1 October 2014.
- Commercial building energy efficiency and avoided clearing of native regrowth: 25 September – 23 October 2014.
- Facilities, wastewater treatment and transport: 15 October 2014 – 12 November 2014.
- Industrial fuel and energy efficiency, aggregated small energy users, sequestration of carbon in soil using modelled abatement estimates and fertiliser use efficiency in irrigated cotton: 14 November 2014 – 12 December 2014.

Market testing of contract duration

- The Government committed in the Emissions Reduction Fund White Paper to hire a consultant to test the commercial impacts of alternate contract lengths.
 - A market survey was held between 8 and 27 May 2014.
 - 107 organisations were surveyed, with 71 responses in total. The survey respondents' identities are confidential.

Carbon Market Institute information sessions

- Information sessions on the Emissions Reduction Fund by the Carbon Market Institute were held on behalf of the Department on:
 - 21 July in Melbourne;
 - 22 July in Sydney;
 - 28 July in Perth;
 - 29 July in Adelaide;
 - 1 August in Brisbane;
 - 2 August in Townsville;
 - 11 August in Geelong;
 - 12 August in Newcastle; and
 - 26 August in Dubbo.
- Around 500 participants took part overall (including Government representatives).

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 2014 (No. 1)

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (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 Legislative Instrument

The Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as part of the transition to the Emissions Reduction Fund.

Schedule 1 makes minor amendments to the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* to require that only area-based offsets projects provide information on the project area, and also to ensure records of all data and information used to prepare an application for project registration are kept for record keeping and reporting purposes.

Schedule 2 repeals a number of regulations that are no longer consistent with the amended *Carbon Credits (Carbon Farming Initiative) Act 2011* or the Emissions Reduction Fund policy.

Human rights implications

These regulations do not engage any of the applicable rights or freedoms.

A detailed statement of compatibility of the provisions of the Emissions Reduction Fund is provided in the Explanatory Memorandum for the Carbon Farming Initiative Amendment Bill 2014: <http://www.environment.gov.au/system/files/pages/7aef9f12-8ba1-4d9a-bf6a-1bc89a0bd6f5/files/cfi-amendment-bill-explanatory-memorandum.pdf>.

Conclusion

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