

EXPLANATORY STATEMENT

Select Legislative Instrument No. 96. 2015

(Issued by the Authority of the Minister for the Environment)

Carbon Credits (Carbon Farming Initiative) Amendment (Abolition of National Water Commission) Regulation 2015

made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*

Purpose of the Regulation

The *Carbon Credits (Carbon Farming Initiative) Amendment (Abolition of National Water Commission) Regulation 2015* (the ‘Regulation’) amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the ‘CFI Regulations’) to make consequential amendments that are necessary to give full effect to the closure of the National Water Commission (the ‘Commission’) by transferring its function under regulation 3.37 to the Water Department, as defined below.

Abolition of Commission in 2015

The *National Water Commission (Abolition) Act 2015* (the ‘Act’) gives effect to a Government commitment announced in the 2014-15 Budget to abolish the Commission and transfer its continuing functions to existing Commonwealth agencies.

The Carbon Credits (Carbon Farming Initiative) Act 2011 and the CFI Regulations

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

In 2014, the Australian Parliament passed the *Carbon Farming Initiative Amendment Act 2014*, which establishes the Emissions Reduction Fund (ERF) through the CFI Act. The primary objective of the ERF is to help Australia meet its international obligations under the United Nations Framework Convention on Climate Change, to reduce emissions of greenhouse gases and meet its emissions reduction target of five per cent below 2000 levels by 2020.

The ERF has three elements: crediting emissions reductions, purchasing emissions reductions, and safeguarding emissions reductions. Eligible offsets projects earn Australian Carbon Credit Units, which can be bought by the Australian Government through a reverse auction.

Under Part 3 of the CFI Act, a person may apply to the Clean Energy Regulator (the ‘Regulator’) for a declaration that an offsets project is an eligible offsets project. The Regulator may not make such a declaration where a project is an ‘excluded offsets project’ for the purposes of section 56 of the CFI Act.

Section 56 of the CFI Act provides for the regulations to specify the kinds of offsets projects that are excluded offsets projects. Section 307 also provides that the Governor-General may make regulations 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 CFI Act.

Excluded offsets projects – specified tree planting

Regulations 3.36 and 3.37 of the CFI Regulations set out the kinds of projects that are excluded offsets projects.

Regulation 3.37 provides that specified tree plantings are excluded offsets projects, unless the planting occurs in an area in which the Commission has determined that the relevant state or territory has adequately implemented its National Water Initiative commitments to manage water interception by plantations. Specified tree planting is defined in regulation 3.34 of the CFI Regulations as a planting that occurs in an area that receives more than 600mm long-term average rainfall according to the CFI rainfall map.

Amendments made by the Regulation

The Regulation provides that the Water Department is responsible for determinations under regulation 3.37 following the closure of the Commission. The Regulation also amends regulation 3.34 of the CFI Regulations to define the Water Department as the Department of State that deals with water policy and resources, and is administered by the Minister administering the *Water Act 2007*.

The Regulation also makes minor consequential amendments to the CFI Regulations, repealing the definition of ‘National Water Commission’ from regulation 3.34 and updating the definition of ‘National Water Initiative’ to remove references to the *National Water Commission Act 2004*, which was repealed upon commencement of the Act.

The commencement day of the Regulation is the day after it is registered on the Federal Register of Legislative Instruments.

A statement of the Regulation’s compatibility with human rights is set out in Attachment A.

Details of the Regulation are set out in Attachment B.

Consultation

As the changes made by the Regulation are minor and are necessary to implement an agreed 2014-15 Budget measure, consultation on the Regulation was not required.

Details of the Regulation

The CFI Act does not specify any conditions that need to be satisfied before the power to make the Regulation may be exercised.

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

The Regulation commenced on the day after registration.

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

ATTACHMENT A

Statement of Compatibility with Human Rights

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

Overview of the Legislative Instrument

This legislative instrument amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the ‘CFI Regulations’) to make consequential changes arising from the abolition of the National Water Commission (the ‘Commission’) upon commencement of the *National Water Commission (Abolition) Act 2015*.

In particular, this legislative instrument transfers the Commission’s function under regulation 3.37 of the CFI Regulations to the Water Department (currently the Department of the Environment) following the closure of the Commission.

Human rights implications

This legislative instrument 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* (the ‘Human Rights Act’).

This legislative instrument does not engage any of the applicable rights or freedoms. The amendments are of a machinery of government nature and do not limit any human rights or provide for any offences or penalties.

Conclusion

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights Act.

ATTACHMENT B

Details of the Carbon Credits (Carbon Farming Initiative) Amendment (Abolition of National Water Commission) Regulation 2015

Section 1 – Name of the Regulation

This section provides that the title of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment (Abolition of National Water Commission) Regulation 2015* (the ‘Regulation’).

Section 2 – Commencement

This section provides that the Regulation commences on the day after registration.

Section 3 – Authority

This section provides that the Regulation is made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments

Carbon Credits (Carbon Farming Initiative) Regulations 2011 (the ‘CFI Regulations’)

Item 1 – Regulation 3.34 (definition of *National Water Commission*)

This item repeals the definition of ‘National Water Commission’ from Regulation 3.34, as the National Water Commission (the ‘Commission’) was abolished upon the commencement of the *National Water Commission (Abolition) Act 2015* (the ‘Act’).

Item 2 – Regulation 3.34 (definition of *National Water Initiative*)

This item repeals the existing definition of ‘National Water Initiative’ from Regulation 3.34 of the CFI Regulations and substitutes a new definition of the ‘National Water Initiative’; that is, the Intergovernmental Agreement on a National Water Initiative, between the Commonwealth of Australia and certain state and territory governments, as amended from time to time. This definition is substituted because the definition in the CFI Regulations previously referred to the *National Water Commission Act 2004*, which was repealed upon commencement of the Act.

Item 3 – Regulation 3.34 – definition of *Water Department*

This item provides that ‘Water Department’ means the Department of State that deals with

water policy and resources and that is administered by the Minister administering the *Water Act 2007* (currently the Department of the Environment).

Item 4 – Subregulation 3.37(4)

This item repeals the term ‘National Water Commission’ from subregulation 3.37(4) and replaces it with the term ‘Water Department’. This transfers responsibility from the Commission for making a determination under this subregulation to the Water Department (as defined by amended regulation 3.34).

The effect of the Regulation is that from commencement, the Water Department is responsible for determining whether the relevant state or territory has adequately implemented its National Water Initiative (‘NWI’) commitments to manage water interception by plantations.

If the Water Department were to determine that relevant NWI commitments had been adequately implemented, specified tree plantings would also need to meet all other scheme eligibility requirements to be an eligible offsets project, including being compliant with the state or territory legislative provisions to manage water interception by plantations.