

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 120, 2015

Issued by the Authority of the Minister for the Environment

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015 (No.1)

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 Farming Initiative Amendment Act 2014* (Amendment Act) established 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 It also repealed a number of sections of the CFI Act which supported some of the Principal Regulations.

The *Carbon Farming Initiative Amendment Act 2014* (Amendment Act) established 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 It also repealed a number of sections of the CFI Act which supported some of the Principal Regulations.

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015 (No.1)* (the amendment Regulation) updates terminology and streamlines administrative processes for applicants. It does this by amending the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the principal Regulations) to repeal spent provisions, in accordance with the amended CFI Act.

The amendment Regulation is the second stage of this process and ensures that parts of the Principal Regulations that no longer reflect the amended CFI Act are repealed. A number of the Principal Regulations will be remade by the Minister as sections of the legislative rules. The regulations to be amended are those existing Principal Regulations that are necessary to transfer from the Principal Regulations to the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rules).

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 amended CFI 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. The amendment Regulation is the second stage of this process to repeal spent provisions and transfer remaining operational provisions in the Principal Regulations to the legislative 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.

Detailed description of the amendments

To ensure a smooth transition, in relation to the Principal Regulations:

- subregulation 1.3(1) is amended to remove unnecessary definitions that no longer have a head of power or are already defined in the enabling legislation.
- subregulation 1.3(1) is amended to insert a number of new definitions that are necessary to update terminology in accordance with the amended CFI Act.
- division 3.12 is amended to remove the reference to paragraph 55(1)(c) of the CFI Act, as the relevant head of power in the CFI Act has been removed.

The amendments to subregulation 1.3(1) and Division 3.12 of the Principal Regulations are supported by the references to regulations in section 5 and 307 of the CFI Act. Most of the regulations in Schedule 1 have been replaced by corresponding sections in the amendment Rule made by the Minister for the Environment at the same time as the amendment Regulation.

Details of the regulations for amendment and repeal in Schedule 1 are set out in **Attachment A**.

Public consultation

Consultation with businesses was undertaken during a two-week period from 5 June 2015 to 19 June 2015 on amendments to the Principal Rule, which included notification of changes to the Principal Regulations. Key stakeholders were notified of the consultation period and no submissions were received.

Separately, the Government undertook extensive public consultation on the Emissions 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. These decisions included 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 the sections in the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015(No. 1)*

Section 1 – Name

Section 1 provides that the title of the amendment Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015 (No. 1)*.

Section 2 – Commencement

Section 2 provides for Schedule 1 of the amendment Regulation to commence at the same time as the *Carbon Credits (Carbon Farming Initiative) Amendment Rule 2015 (No. 1)*. This rule commences on 1 August 2015.

Section 3 – Authority

Section 3 provides that the legislative authority for the amendment Regulation is the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

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

Section 4 provides that the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) is amended as set out in the Schedule.

Regulations for Repeal in Schedule 1

The following regulations will no longer be supported by the amended CFI Act or will be included in the legislative rules by the *Carbon Credits (Carbon Farming Initiative) Amendment Rule 2015 (No. 1)*. They are repealed to reflect the amended CFI Act:

Item [1]

- the definition of ‘Aboriginal person’ in subregulation 1.3(1);
- the definition of ‘accounted for’ in subregulation 1.3(1);
- the definition of ‘approved form’ in subregulation 1.3(1);
- the definition of ‘associated provisions’ in subregulation 1.3(1);
- the definition of ‘authorised representative’ in subregulation 1.3(1);
- the definition of ‘certified copy’ in subregulation 1.3(1);

Item [6]

- the definition of ‘entity’ in subregulation 1.3(1);

Item [8]

- the definition of ‘multiple project proponents’ in subregulation 1.3(1);

Item [10]

- the definition of ‘nominee’ in subregulation 1.3(1);
- the definition of ‘non-CFI scheme’ in subregulation 1.3(1);
- the definition of ‘prescribed non-CFI offsets scheme’ in subregulation 1.3(1);
- the definition of ‘Registry Act’ in subregulation 1.3(1);
- the definition of ‘Registry Regulations’ in subregulation 1.3(1);

- the definition of ‘relevant area’ in subregulation 1.3(1);

Item [11]

- the definition of ‘section 27 declaration’ in subregulation 1.3(1);
- the definition of ‘Torres Strait Islander’ in subregulation 1.3(1);
- the definition of ‘transferee offsets project’ in subregulation 1.3(1);
- the definition of ‘transferor offsets project’ in subregulation 1.3(1);

Item [12]

- the note in subregulation 1.3(1), as expressions used in the Regulations have the same meaning as in the enabling legislation;

Item [13]

- subregulation 1.3(2), (3) and (4) in relation to the accounting of greenhouse gas abatement under non-CFI offsets schemes, which is no longer provided for in the amended CFI Act;

Item [14]

- regulation 1.4 that sets out the Crown lands Ministers for each State and Territory in accordance with the definition contained in section 5 of the CFI Act, which will be included in the legislative rules.
- regulation 1.5 regarding the Kyoto abatement deadline, which is no longer provided for in the amended CFI Act;
- regulation 1.6 relating to the meaning of tree, which has been included in the definition of ‘native forest’ and tree in subregulation 1.3(1);;
- regulation 1.7 including the definition of prescribed non-CFI offsets schemes, which are no longer provided for in the amended CFI Act;
- regulation 1.8A concerning specified statutory authorities in accordance with section 5 of the CFI Act, which will be dealt with in the legislative rules;
- regulation 1.9 that deals with approved forms, which will be included in the legislative rules;
- regulation 1.10 setting out formalities for electronic notices transmitted to Regulator, which will be included in the legislative rules;

Item [15]

- Part 2 relating to the issue of Australian carbon credit units in respect of native forest protection or offsets projects, which is no longer provided for in the amended CFI Act;

Item [16]

- Divisions 3.1, 3.2 and 3.3 of Part 3, for applications concerning eligible offsets projects requirements, which will be included in the legislative rules.
- Division 3.6 of Part 3, including definitions and requirements related to additionality tests, which are no longer provided for in the amended CFI Act after the consideration of ERF transitional applications;

- Division 3.9 of Part 3, relating to eligible interests in areas of land in the context of transferring land to an Aboriginal land council, which will be included in the legislative rules;

Item [18]

- regulations 3.35 and 3.35A concerning Kyoto offsets projects, which are no longer provided for in the amended CFI Act;

Item [19]

- subregulation 3.36(2) for excluded offsets projects, which is no longer provided for in the amended CFI Act;

Item [20]

- Division 3.13 of Part 3, for the restructure of eligible offsets projects, which will be included in the legislative rules;

Item [21]

- Part 7 relating to requirements to relinquish Australian carbon credit units, which will be included in the legislative rules;
- Part 9 for methodology determinations, which will be included in the legislative rules;
- Part 10 for multiple project proponents, which will be included in the legislative rules;
- Part 11 relating to the transmission of Australian carbon credit units, which will be provided for in the legislative rules, with the exception of the following regulations:
 - regulation 11.2 relating to outgoing international transfers of Australian carbon credit units, which is no longer provided for in the amended CFI Act;
 - regulation 11.5 containing the conditions for the exchange of Kyoto Australian carbon credit units, which is no longer provided for in the amended CFI Act; and
 - regulation 11.6 containing the required steps for the exchange of Kyoto Australian carbon credit units, which is no longer provided for in the amended CFI Act.
- Part 12 regarding the publication of information pertaining to entries in the register and the Biodiversity Fund, which is no longer required;
- Part 15 concerning the relinquishment of Australian carbon credit units, which will be included in the legislative rules, except for the following regulations:
 - regulation 15.2 relating to the transfer of certain units instead of relinquishment of Kyoto Australian carbon credit units, which is no longer provided for in the amended CFI Act; and
 - regulation 15.3 relating to the transfer of certain units instead of relinquishment of non-Kyoto Australian carbon credit units, which is no longer provided for in the amended CFI Act.
- Part 18 in relation to monitoring powers and identity cards, which will be included in the legislative rules; and
- Part 19 relating to the requirements for reimbursements for compliance audits, which will be included in the legislative rules.

Regulations for Amendment in Schedule 1

Item [1] amends the existing regulation 1.3(1) by increasing the scope of the definitions to apply to methodology determinations continuing to apply under subsection 125(2), 126(2) or 127(2) of the amended CFI Act, which currently reference the definitions. Item [1] also removes the (1) from the current subregulation 1.3(1), as regulation 1.3 will be the only regulation in Part 1.

Item [3] amends the definition of ‘CFI rainfall map’ in regulation 1.3 to remove the restriction of CFI rainfall maps being limited to those collected by the Bureau of Meteorology between 1921 and 2010. This ensures that the most recent version of the CFI rainfall map is captured by the definition, should an update by the Bureau of Meteorology occur.

Item [4] amends the definition of ‘consent’ to remove the reference to Divisions 3.6 and 3.12 in regulation 1.3, as Division 3.12 will be the only remaining division in the Regulations.

Item [5] inserts a new definition of ‘conservation land’ into regulation 1.3, which is relevant to certain methodology determinations, such as the human induced regeneration methods. It is the same as the definition previously in regulation 3.27.

Item [7] inserts a new definition of ‘farm’ into regulation 1.3, which is relevant to certain methodology determinations, such as the new farm forestry method. It is the same as the definition previously in regulation 3.27.

Item [9] inserts a new definition of ‘native forest’ into regulation 1.3, consistent with the definition in the CFI Act before it was amended, and which is relevant to certain methodology determinations, such as new farm forestry method and the negative list regulations currently in Division 3.12.

Item [17] amends the existing regulation 3.33 by removing the reference to paragraph 55(1)(c) of the CFI Act, as the relevant paragraph has been repealed.

Public consultation on Emissions 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 individuals
 - By phone: 4 public teleconference sessions across 4 and 5 February 2014

White Paper

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

Exposure draft legislation

- *Carbon Credits (Carbon Farming Initiative) Amendment Act 2014*
 - Consultation period: 9 May 2014 – 23 May 2014
 - Submissions: 49
 - Also considered by phone by legal workshop on 20 May 2014
- *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No.1)*
 - Consultation Period: 11 April 2014 – 2 May 2014
 - Submissions: 1
- *Carbon Credits (Carbon Farming Initiative) Rule 2015 and Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No. 2)*
 - Consultation period: 5 December 2014 – 19 December 2014
 - Submissions: 5
- *Carbon Credits (Carbon Farming Initiative) Amendment Rule 2015(No. 1) and Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015 (No. 1)*

- Consultation period: 8 June 2015 – 19 June 2015
- Submissions: 0
- Key stakeholders were notified of the consultation period.
- Teleconference discussions were held with companies and individuals with direct interests in the Emissions Reduction Fund.

Expert Reference Group

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

Technical Working Groups

- Technical working groups have been established to assist in developing methods for estimating emissions reductions under the Emissions Reduction Fund.
- Within the technical working groups, methods are developed by nominated technical and industry experts with other technical working group members serving as a reference group.
- The groups provide direction and feedback on development priorities and draft methods.

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, aviation and land and sea 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.
- Avoided land clearing: 5 December 2014 – 19 December 2014.
- Savanna fire management and designated verified carbon standard projects: 10 December 2014 – 9 January 2015.
- High energy commercial appliances, commercial and public lighting, oil and gas fugitives and refrigeration and ventilation fan upgrades: 17 March 2015 to 15 April 2015.
- High energy fan installations: 11 June 2015 – 9 July 2015.

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.

Aggregation guidance materials

- A fact sheet, a guidance document and some case studies designed to inform potential aggregators and participants of the responsibilities inherent in aggregated arrangements were released for public consultation from 1 June 2015 to 19 June 2015.

Safeguard Mechanism consultation paper

- The Government released a consultation paper outlining design options for the Emissions Reduction Fund safeguard mechanism during 26 March 2015 to 27 April 2015.

Transition and revocation instruments consultation

- The Government released transition and revocation instruments relevant to the transition of Carbon Farming Initiative projects to the Emissions Reduction Fund during a two-week consultation period from 19 May 2015 to 2 June 2015.

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 2014 in Melbourne;
 - 22 July 2014 in Sydney;
 - 28 July 2014 in Perth;
 - 29 July 2014 in Adelaide;
 - 1 August 2014 in Brisbane;
 - 2 August 2014 in Townsville;
 - 11 August 2014 in Geelong;
 - 12 August 2014 in Newcastle;
 - 26 August 2014 in Dubbo;
 - 17 June 2015 in Geelong;
 - 18 June 2015 in Melbourne;
 - 22 June 2015 in Adelaide;
 - 23 June 2015 in Perth;
 - 25 June 2015 in Brisbane;
 - 26 June 2015 in Townsville;
 - 29 June 2015 in Sydney; and
 - 30 June 2015 in Newcastle
- Around 980 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 2015 (No. 1)

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2015 (No. 1)* (the amendment 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 amendment Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* as the second part of the transition to the Emissions Reduction Fund. The Emissions Reduction Fund is the centrepiece of the Australian Government's efforts to reduce emissions and was given effect to be the *Carbon Farming Initiative Amendment Act 2014*.

Schedule 1 makes minor amendments to the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* to repeal spent provisions and transfer remaining operational provisions in the Principal Regulations to the legislative rules, in accordance with the amended *Carbon Credits (Carbon Farming Initiative) Act 2011*.

The amendments and repeals ensure that parts of the Principal Regulations that no longer reflect the amended Act are repealed. A number of the Principal Regulations will be remade by the Minister as sections of the legislative rules.

Human rights implications

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

Conclusion

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

Greg Hunt, Minister for the Environment