

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Industry, Energy and Emissions Reduction

*Carbon Credits (Carbon Farming Initiative) Act 2011*

*Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022*

### **Purpose**

The *Carbon Credits (Carbon Farming Initiative) Act 2011* (the 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) Amendment (Regeneration Projects) Rule 2022* (the Amendment Rule) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule). The Amendment Rule details additional administrative procedures under the Act associated with methodology determinations to credit the storage of carbon by regeneration projects. The Amendment Rule restricts eligibility of new regeneration projects where the Australian Government Agriculture Minister has assessed that they would have a material adverse impact on agricultural production or local communities in the region where the project would be located. Additional offset reporting requirements relating to weeds and pests are also added.

### **Background: Emissions Reduction Fund**

In 2014, the Australian Government amended the Act with the *Carbon Farming Initiative Amendment Act 2014* (CFI Amendment Act). The CFI Amendment Act established the Emissions Reduction Fund (ERF) by expanding the crediting of emissions reductions under the Carbon Farming Initiative to non-land based sectors of the Australian economy.

The primary objective of the ERF is to assist Australia to meet its greenhouse gas emissions reduction targets, consistent with its international obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement.

The ERF does this by purchasing approved and verified emissions reductions from registered projects. The Clean Energy Regulator (the Regulator) is empowered under the Act to conduct processes to purchase emissions reductions, and enter into contracts for this purpose.

The ERF has provided significant benefits to regional Australia. The Australian Government is investing over \$2.2 billion in carbon farming projects in regional Australia that are providing new opportunities for land managers to increase agricultural productivity and generate revenue by earning credits for reducing greenhouse gas emissions. The benefits for productivity and land resilience from these projects include windbreaks and shade for livestock, reduced erosion and improved soil quality.

### **Background: Regeneration Projects**

Eligible activities under the ERF include changing management of land to regenerate native forests. There are two ERF methods for this type of activity, referred to as the Human-Induced Regeneration (HIR) and the Native Forest from Managed Regrowth (NFMR) methods. Projects under these methods are commonly undertaken on grazing land in rangeland regions. There has been widespread adoption of projects in New South Wales, Queensland and Western Australia.

However it is important to ensure that such projects do not have unintended adverse effects on local communities through inadequate management of weeds, pests and fire risks, or through negative impacts on agricultural production or regional communities. Concerns have been raised in particular in regions where HIR and NFMR projects are in higher concentrations and where individual projects are conducted over a substantial proportion of a property.

In making any methodology determination the Minister for Industry, Energy and Emissions Reduction is required to consider any likely adverse environmental, economic or social impacts under paragraph 106(4)(c) of the Act. Consideration of certain material adverse impacts is also required under subsection 56(2) of the Act. This includes consideration of potential material adverse impacts on land access for agricultural production.

Regeneration projects often occur on land used for agriculture. The Amendment Rule restricts eligibility of new regeneration projects where the Australian Government Agriculture Minister or their delegate (hereafter referred to as the Agriculture Minister) has assessed that they would have a material adverse impact on agricultural production or local communities in the region. The requirement applies only to projects involving areas greater than 15 hectares and taking up more than a third of a farm. For clarity, conservation land, exclusive possession native title and land rights land are not covered by the requirements. Notifiable projects could be a new project applying under section 22 of the Act or the addition of land to an existing project by applying to vary a project area under section 23 of the Principal Rule.

In making this rule the Minister for Industry, Energy and Emissions Reduction has considered whether there is a material risk that new regeneration forests will have a material adverse impact on land access for agricultural production or local communities, and considers this additional excluded offsets project definition will help mitigate these risks.

The provisions are based on section 20B of the Principal Rule which applies in the same way to new or expanded plantation projects. That has been operating successfully since 2017. Over 35 projects have been registered and around 20 project area variations have been made utilising the notification provisions.

In addition, to ensure that ERF projects are appropriately managing pests and weeds the amendments are made to the Principal Rule to improve monitoring of compliance with state, territory and local government requirements for managing pests and weeds. The additional reporting of weed and pest control by regeneration projects would be implemented by an amendment to offsets reporting requirements in section 70 of the Principal Rule. These amendments would require projects to report on their compliance with state, territory, and local government rules for managing pests and weeds.

## **Operation**

The Act is supported by subordinate legislation, including the Principal Rule, and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations). The Principal Rule and the Regulations provide detailed provisions about how the Act is administered by the Regulator.

The Minister for Industry, Energy and Emissions Reduction is empowered to make legislative rules under section 308 of the Act. The Amendment Rule inserts in the Principal Rule section 20C, which provides that some regeneration projects are an excluded offsets project under specified circumstances. An excluded offsets project cannot be declared an eligible offsets project.

The Amendment Rule inserts subsection 23(3A), to require any application to the Regulator to vary a regeneration project already declared as an eligible offsets project, where the variation involves adding an area of land to the project, to include the notification required under section 20C and supporting information sent to a designated email account as published by the Agriculture Minister on their department's website (hereafter referred to as the Department of Agriculture, Water and the Environment's website). New subsection 13(4) requires the same information for an application to establish a new regeneration project.

The Amendment Rule amends section 70 of the Principal Rule to add offsets reporting requirements related to the management of weeds and pests.

### **Detailed description of the Amendment Rule**

Attachment A outlines and describes the sections in the Amendment Rule.

### **Public consultation**

Public consultation was undertaken from 10 December 2021 to 14 January 2022 on a consultation paper and draft of the proposed amendments. Submissions were received both in support of and opposing the proposed amendments. A number of implementation issues were identified with the draft and suggestions made to avoid unintended impacts of the proposed amendments. In light of consultation a number of modifications were made to ease implementation while maintaining the policy intent of the proposed change. These are principally:

- Removing the retrospective commencement so that the rule only applies to applications to register or expand projects submitted on or after 8 April 2022.
- Allowing the Agriculture Minister (or delegate) to tell proponents that there will not be an adverse finding so they can more quickly progress their projects
- Simplifying the farm definition to avoid the need for 10 years of no agricultural activities and instead make this only 5 years.
- Clarifying that conservation land owned by Commonwealth, State or Territory Governments for biodiversity is not covered.
- Clarifying exclusive possession native title and similar land rights land is not covered.
- Explicitly allowing applicants to set out benefits of their projects if they want to bring that to the attention of the Minister.
- Recognising that any potential adverse finding notice will need to state the basis of that finding.

### **Review**

The Government will monitor the implementation of the changes to the Principal Rule, including their impacts on ERF project registrations and regional communities.

The Government's Long-Term Emissions Reduction Plan includes five-yearly reviews of: domestic emissions reduction policies, to inform Australia's Nationally Determined Contributions under the United Nations Framework Convention on Climate Change; and impacts on households and regions of Commonwealth, State and Territory emissions reduction policies. The Government proposes these five-yearly reviews consider the new requirements.

**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 B.

**Regulatory impact**

A Regulation Impact Statement is at Attachment C.

**Details of the sections in the Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022**

**1. Name**

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022*.

**2. Commencement**

Section 2 provides that the Amendment Rule commences on 8 April 2022.

**3. Authority**

Section 3 clarifies that the Amendment Rule is made under the Act. In particular, section 308 of the Act provides the Minister with the power to make legislative rules. The power to make rules in section 308 of the Act includes the power to amend rules already made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

**4. Schedules**

Section 4 provides that the draft Amendment Rule would, when made, amend the Principal Rule in the manner set out in the Schedule.

## Schedule 1—Amendments

This Schedule sets out amendments to the Principal Rule.

### 1. Subsection 4(1)

This item inserts the definition of regeneration project into subsection 4(1). The definition was previously contained in subsection 9AA(7) and is moved to subsection 4(1) because it now applies to a number of sections in the Principal Rule. The definition includes projects on the *Carbon Credits (Carbon Farming Initiative) (Human-Induced Regeneration of a Permanent Even-Aged Native Forest—1.1) Methodology Determination 2013* (known as HIR projects) and the *Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013* (known as NFMR projects). It applies to projects on the current version of the determinations or earlier versions of the determinations.

### 2. Subsection 9AA(7) (definition of regeneration project)

This item removes the definition which is now contained in subsection 4(1).

### 3. At the end of section 13

New subsection 13(4) is inserted and applies when the proponent submits an application to declare a project for the establishment of a regeneration project an eligible offsets project of over 15 hectares. These applications must include the notification required under section 20C or a map outlining any farms wholly or partly within the project area to prove that a notification is not required. Project proponents should be aware that if false or misleading information is provided in these documents, section 88 of the Act may apply to seek the relinquishment of Australian carbon credit units issued directly or indirectly as a result of that false or misleading information.

### 4. After section 20B

Section 27 of the Act provides requirements for declaring an eligible offsets project. One of the requirements is that a project is not an excluded offsets project (see paragraph 27(4)(m)). The Principal Rule provides further details to support the requirements of section 27 of the Act.

The Amendment Rule provides an additional requirement applicable to regeneration projects. In accordance with subsection 56(1) of the Act (which provides for the legislative rules to specify a kind of project as an excluded offsets project), the Amendment Rule provides that regeneration projects are an excluded offsets project under specified circumstances. These provisions are set out in new section 20C. It is modelled on existing section 20B.

The purpose of section 20C is to establish a process for adverse impacts on agricultural production or local communities to be assessed by the Agriculture Minister. It means that a project proponent for a regeneration project will need to provide both a notification to the Agriculture Minister, and a separate application to the Regulator to determine whether they are eligible to be declared an eligible offsets project. The process with the Agriculture Minister allows detailed consideration to be given to whether there would be a material adverse impact on agricultural production in the region where the project would be located and other impacts on local communities. For example, if a substantial part of a highly productive agricultural region was converted to forest, agricultural production would be lost and it could result in a material adverse impact on the region's agricultural production.

It is intended that the assessment of material adverse impacts would focus on whether the proposed project would have a material adverse or harmful impact on the region's agricultural production, including but not limited to agricultural businesses and facilities and agriculture-related businesses and facilities (e.g. agricultural product processors). It is intended that the Agriculture Minister may consider available information on previous agricultural production within the project area/s and how the region's production may be affected as a consequence of a reduction in agricultural production associated with the proposed project, including any projected decrease in the use of regional agricultural processing facilities.

The assessment process involves up to two stages: a primary assessment within 30 calendar days of the notification being provided and then, where the Agriculture Minister has considered that it is likely that a proposed project would result in material adverse impact on agricultural production, an additional assessment is undertaken within a further 45 days. Accordingly, the maximum time limit for the process is 75 days after the notification is made. To provide certainty to project proponents, there is no power for the Agriculture Minister to extend these timeframes.

The intent of the section is to allow for a streamlined process for projects that are unlikely to have a material adverse impact on the region's agricultural production, whereby the assessment process would be finalised within the first 30 days. In cases where the Agriculture Minister has formed a preliminary view that the project would have a material adverse impact and intends to exclude a project, a secondary process enables proponents to have an opportunity to provide additional information for the Agriculture Minister to consider before a final decision is made.

If the Agriculture Minister does not send a written statement outlining an intent to exclude the project on the basis of an adverse impact finding within those first 30 days, the project is not an excluded offsets project under section 20B and could then be declared an eligible offsets project by the Regulator if all other relevant scheme requirements are met (including requirements under the *Carbon Credits (Carbon Farming Initiative) Regulations 2011*). Where the second stage of the process is started by a written statement to the proponent, the proponent has 20 days to email a written response. A final decision is due no later than 45 days after the first statement is made. The Agriculture Minister also has the ability to inform the project proponent and Regulator before these times have expired that no written statement will be sent, allowing the Regulator to progress the application without waiting for the time periods to expire.

This process applies when there is a new application for declaration of an eligible offsets project (a section 22 application under the Act) and when a project area is added to a project (an application under section 23 of the Principal Rule to either add a new project area or enlarge an existing project area). Subsection (1) deals with new applications and subsection (2) deals with applications to vary the project area.

Subsection 20C(1) applies to an application to the Regulator under section 22 of the Act for declaration of an eligible offsets project which is a notifiable regeneration project.

If a proponent of a notifiable regeneration project does not submit a new ERF regeneration notification, the project will be an excluded offsets project. Proponents should be aware that a purported notification that does not meet the requirements of the definition of a notification in subsection 20C(8)) would not count as a valid new ERF regeneration notification, and this would result in the project being an excluded offsets project (see also paragraph 20C(3)(b) explained below). Proponents in this situation will need to submit a valid new ERF

regeneration notification and would need to resubmit their application to the Regulator for declaration if this was made before the resubmitted notification. This is made clear by paragraph 20C(3)(b) which provides that an incomplete notification is taken never to have been made and therefore cannot satisfy the requirement for the project proponent to have 'made' a notification in paragraph 20C(1)(a).

In addition, the notification must meet all the requirements of the subparagraphs of paragraph 20C(1)(a). If one or more of the requirements are not met, then the project will be an excluded offsets project. The requirements are as follows.

- i. Proponents can make a new ERF regeneration notification up to 18 months before the project application to the Regulator and as late as the same day as the project application to the Regulator. A notification outside this period would result in the project being an excluded offsets project, but project proponents can resubmit a notification if their 18 months has expired. It is up to the project proponent whether they want to provide a notification to the Agriculture Minister before applying to the Regulator to declare the project, or make parallel applications and notifications on the same day to the Regulator and Agriculture Minister respectively.
- ii. All of the project area in the project application to the Regulator must be within the project area set out in the new ERF regeneration notification. Therefore, if any of the project area specified in the application for declaration is outside of the area mapped for the new ERF regeneration notification, the project is an excluded offsets project. Both maps are required to be geospatial maps (e.g. shapefiles).
- iii. The size of the project area is no larger than the project area size nominated in the new ERF regeneration notification. If the total hectares of the project area in the application exceed the number specified as the maximum size in the notification, then the project is an excluded offsets project. The process is designed so that the project proponent can come forward with either an exact proposal for a specific project area or a broader area of land on which they will establish projects up to a particular size limit. For example, a project proponent could map 20,000 hectares in Queensland as potentially being part of a project, but specify that no more than 2,000 hectares of this area would be part of the project area. This would allow a project proponent to submit a notification for an area before they had determined which part of the land to undertake the project.
- iv. A new ERF regeneration notification cannot be used twice if it had previously been relied upon for an approved project. This means that if a project was approved by the Regulator, another project cannot be declared based upon the same notification. For example, if an ERF regeneration notification was for up to 1,000 hectares anywhere within the Australian Capital Territory and then a project was declared for a total project area of 800 hectares, that notification would not be relied upon to declare a second project of 150 hectares within the Australian Capital Territory. A new notification would be required. This requirement ensures each proposed new regeneration project or expansion is assessed for material adverse impacts on agricultural production and can consider the impact of existing projects on the region.

Paragraph 20C(1)(b) sets out the two-stage process for the Agriculture Minister to respond to a new ERF regeneration notification meeting the requirements of paragraph 20C(1)(a). If the



Agriculture Minister does not send a written statement to the project proponent and the Regulator by the deadlines in the paragraph, the project is not an excluded offsets project. For example, unless a written statement under subparagraph 20C(1)(b)(i) is sent within 30 days, the project would be declared eligible by the Regulator if all other relevant scheme requirements are met.

Subparagraph 20C(1)(b)(i) sets out the timeframe for the Agriculture Minister to consider whether a project would have a material adverse impact. If the Agriculture Minister determines that a project is likely to have a material adverse impact on agricultural production or local communities, a written statement must be provided within 30 days to the proponent and Regulator, which:

(A) states an intention to make an adverse impact finding (intent to exclude the project) in relation to the notification and sets out the basis for that potential finding; and

(B) invites the project proponent to respond in writing to the designated email account within 20 days.

The Agriculture Minister must notify the proponent and Regulator in writing within 30 days of a new ERF regeneration notification being made if this process is to commence. The effect of this is that after the 30 days have expired, subparagraph 20C(1)(b)(i) can never be satisfied and the project is not an excluded offsets project, and could be declared by the Regulator if all other relevant scheme requirements are met.

Subparagraph 20B(1)(b)(ii) sets out the scenarios that could occur following the Agriculture Minister's written statement outlining an intent to exclude the project.

- i. Scenario (A) proponent's response is not received within 20 days – within 30 days of the initial written statement, the Agriculture Minister provides another written statement to the proponent outlining that the project is excluded on the basis that the proponent did not respond in writing within the 20-day timeframe. For this purpose, an acknowledgement of receipt of the written statement which did not address the issues raised would not be considered a 'response'.
- ii. Scenario (B) proponent's response is received within 20 days – within 45 days of the initial written statement, the Agriculture Minister provides another written statement to the proponent outlining that on the basis of all the information provided by the proponent, an adverse impact finding has been made. As a result the project is an excluded offsets project. An adverse impact finding is also possible in situations where no response is received.
- iii. Also, if the Agriculture Minister has not responded according to scenarios (A) or (B) within 45 days then the project is not an excluded offsets project and could be declared by the Regulator if all other scheme requirements are met.

An example of this process is as follows.

- i. A proponent wants to start a regeneration project. First they prepare a new ERF regeneration notification which includes a geospatial map of the potential project area, the maximum additional project area size, in hectares, and an outline of any potential impacts of carrying out the project in the project area on agricultural production in the region, and contains information required by any guidelines relating to this section published on Department of Agriculture, Water and the Environment's website. They send the new ERF regeneration notification to an email address published on the Department of Agriculture, Water and the

Environment's website. The notification nominates an email address for the receipt of all correspondence relating to the notification (such as the written statements provided in the Amendment Rule).

- ii. Thirty days later, the Agriculture Minister writes to the proponent to notify them of the Minister's intention to make a finding that the project would have a material adverse impact on agricultural production in the region. The Agriculture Minister invites the proponent to submit a written response within 20 days to the designated email account.
- iii. Within twenty days, the proponent submits a written response providing further information on the proposed project and its potential impact on agricultural production in the region.
- iv. The proponent will need to wait for up to a further 25 days (45 days since the initial written statement was sent) for any written advice on whether the Agriculture Minister has found the project would have an adverse impact on agricultural production in the region. If the proponent does not receive a written statement from the Agriculture Minister or delegate, then the project is not an excluded offsets project, and could be declared by the Regulator if all other scheme requirements are met.

The flow of these processes and further information is outlined in the guidelines published on the Department of Agriculture, Water and the Environment's website.

Subsection 20C(2) applies to an application to the Regulator under subsection 23(3) of the Principal Rule to vary declaration of an eligible offsets project involving a regeneration project, where the variation involves adding an area of land to the project area. This includes adding a new project area to the project or enlarging an existing project area.

The purpose of subsection 20C(2) is to ensure any addition of land to a project area is considered in the same way as an initial project application. The provisions mirror subsection 20C(1).

Paragraph 20C(3)(a) specifies which notification to use if a proponent made multiple notifications. The process outlined in subsection 20C(1) forms a single new ERF regeneration notification, which is permitted to be updated within a given timeframe. If a proponent were to submit a second 'new ERF regeneration notification' while they currently had a notification under consideration by the Agriculture Minister, then the notification currently in progress would be terminated and a new process to consider the second notification would commence. This would reset the timeframe for considering the second notification. This would necessitate the submission to the Regulator of a new application for declaration under section 22 of the Act as a second notification could only be made before an application has been submitted to the Regulator.

Paragraph 20C(3)(b) clarifies that a purported notification which is incomplete (i.e. does not contain all of the relevant information and documents) does not qualify as a notification and thus cannot satisfy the requirement to have 'made' a notification under paragraphs 20C(1)(a) or 20C(2)(a). The Department of Agriculture, Water and the Environment intends to inform proponents and the Regulator if a notification is incomplete soon after it is submitted. Project proponents would then need to submit a valid notification which contains all of the relevant material to ensure that the project is not an excluded offsets project. If the notification is complete, assessment of the notification begins on the day that it was received.

Subsection 20C(4) allows the Agriculture Minister to overturn a past decision that resulted in a project being an excluded offsets project, for instance if new information comes to light or circumstances change in the region being assessed. The Minister can only overturn decisions to be in favour of the proponent; if the Minister had never made a statement resulting in a project being an excluded offsets project according to either subsection 20C(1) or subsection 20C(2) within the required timeframe, then that decision cannot be reversed. If a statement is effectively revoked under this subsection, it would allow the proponent to apply to the Regulator to declare their project eligible and the project would not be an excluded offsets project.

Subsection 20C(5) allows for an ERF regeneration notification to be made by a single proponent for each project, irrespective of the number of proponents involved in the project.

Subsection 20C(6) requires the Agriculture Minister to arrange for ERF regeneration notifications, and the date the notifications were made, to be sent to the Regulator. This ensures the Regulator is aware of a notification when considering an application for declaration of a regeneration project as an eligible offsets project.

Subsection 20C(7) ensures that the Regulator does not make a decision on declaring a regeneration forestry project an eligible offsets project before the conclusion of the Agriculture Minister's consideration.

Paragraph 20C(7)(a) outlines the conditions under which the Regulator can proceed with a decision if the Agriculture Minister had initially ruled that the project would have an adverse impact. Subparagraph 20C(7)(a)(i) means that if the Agriculture Minister did not make a subsequent ruling following the proponent's response to a written statement from the Minister under subparagraph 20C(1)(b)(i) or 20C(2)(b)(i), then the Regulator can proceed once the 45 day timeframe for the Agriculture Minister to make a ruling has elapsed. Subparagraph 20C(7)(a)(ii) means that if the Agriculture Minister ruled a second time that the project would have an adverse impact, then the project is an excluded offsets project and the Regulator cannot declare the project as an eligible offsets project. The project proponent may then wish to withdraw their application for declaration under section 25 of the Act, noting that this does not prevent a fresh application at a later point. If the application is not withdrawn, the Regulator would then be expected to finalise the application to declare the project by providing written notice under subsection 27(18) of the Act. Subparagraph 20C(7)(a)(iii) allows the Agriculture Minister to inform the project proponent and the Regulator that a written statement will not be sent, allowing the Regulator to progress the project declaration as quickly as practicable.

Paragraph 20C(7)(b) means that if the Agriculture Minister did not send the first written statement such that the project is likely to be an excluded offsets project, then the Regulator can proceed once the initial 30 day timeframe for the Agriculture Minister to make a statement has elapsed or once the Agriculture Minister has notified the project proponent and Regulator that no written statement will be sent.

Subsection 20C(8) outlines the definitions of terms used in the Amendment Rule. Key definitions in the Amendment Rule include those set out below.

***New ERF regeneration notification*** and ***ERF regeneration expansion notification*** are defined to mean the information which a proponent is required to present for the Agriculture Minister to assess whether the project would have a material adverse impact on agricultural production or local communities in the region. Paragraph (f) of the definition has been included to clarify that project proponents can include additional supporting information where they feel it appropriate. This could include information about the co-existence of the

project with agricultural activities or benefits for local communities. Proponents can seek guidance on satisfying these requirements on the Department of Agriculture, Water and the Environment's website. Applicants need not acquire the land or legal right for their proposed project before making a new ERF regeneration notification but would be expected to have the legal right to carry out the project before applying to the Regulator.

The **CFI Mapping Guidelines** are defined in section 4 of the Principal Rule and incorporated by reference in the Principal Rule. The Guidelines help project proponents prepare geospatial maps for use in the scheme. They can be found on the Department of the Industry, Science, Energy and Resources website: [www.industry.gov.au](http://www.industry.gov.au). The Department of Agriculture, Water and the Environment's website can be found at: [www.awe.gov.au](http://www.awe.gov.au). The incorporation of documents as in force from time to time is provided for in section 304 of the Act. All are freely available.

The definition of the **Agriculture Minister** makes clear that this can be a delegate for any or all of the references to the Agriculture Minister in the section.

The definition of **farm** is an important threshold for the application of the notification requirements. It is intended to pick up the ordinary business understanding of the geographic scope of an agricultural business, which may involve a number of different land tenures or could be on a single tract of land, such as a pastoral lease. The land needs to have been used in the 5 years before the application for agriculture, i.e. commercial farming activities such as grazing livestock. It is also necessary that a fee simple title or lease exists for the land, Crown land without such title is not included. Where multiple titles are involved, the key question is whether the agricultural activities contributed to one business enterprise, such as for taxation purposes. The ownership of the land parcels could be by a single person, or different persons or legal entities may hold the relevant titles. It is irrelevant if the land parcels are known by different names if they are collectively part of the same business.

The **notifiable regeneration project** definition ensures that only significant projects or expansions are captured by the new requirements. Project areas below 15 hectares are excluded as well as those making up less than one third of the area of a farm (as defined). Paragraph (d) of the definition clarifies that exclusive possession native title land, land rights land or conservation land are not included. The project area need not be completely these land types if they are substantially that land type. Exclusive possession native title land and land rights land is defined in the Act and conservation land is defined consistently with the HIR methodology determination. There are only limited project types that are possible under the HIR methodology determination for conservation land and these project types do not involve agriculture.

The Regulator's decisions to declare an eligible offsets project or refuse to vary a project area are reviewable decisions under Part 24 of the Act. It is not intended that separate review process would operate for the Agriculture Minister's consideration of notifications. Subsection 20C(4) provides an ability for the Agriculture Minister to revisit an adverse impact finding if that is appropriate after reconsidering the issues involved.

#### 5. After subsection 23(4)

Subsection 23(4A) applies when the proponent submits an application to vary the project area for a regeneration project in situations where the total project area will exceed 15 hectares. It requires any application to the Regulator to vary a regeneration project already declared as an eligible offsets project, where the variation involves adding an area of land to the project, to include the notification required under section 20C or geospatial map of relevant farms which will establish that it is not a notifiable regeneration project. This situation is covered by

subsection 20C(2) and is relevant to the Regulator's decision on variation through paragraph 23(1)(a) of the Principal Rule.

#### 6. At the end of subsection 70(3A)

This item inserts a new paragraph (d) to subsection 70(3A) concerning offset report requirements for regeneration projects. The reports must contain a statement that during the reporting period the project proponent and other relevant land holders for the project area (such as the leaseholder) have taken reasonable steps to comply with requirements relating to the management of weeds and pests in the project area imposed by or under applicable State, Territory or local government laws. Relevant legislation includes the *Biosecurity Act 2015* of New South Wales; the *Catchment and Land Protection Act 1994* of Victoria; the *Biosecurity Act 2014* of Queensland; the *Biosecurity and Agriculture Management Act 2007* of Western Australia; the *Agriculture and Related Resources Protection Act 1976* of Western Australia; the *Natural Resources Management Act 2004* of South Australia; the *Weed Management Act 1999* of Tasmania; the *Pest Plants and Animals Act 2005* of the Australian Capital Territory; and the *Weeds Management Act 2001* of the Northern Territory. The purpose of this paragraph is not to incorporate these instruments into the Principal Rule, but require a written statement from proponents that relevant legislation already applicable to projects is being complied with in offsets reports under the Act.

Project proponents should be aware that if false or misleading information is provided in these documents, section 88 of the Act may apply to seek the relinquishment of Australian carbon credit units issued directly or indirectly as a result of that false or misleading information. Compliance with relevant requirements remains the responsibility of relevant Commonwealth, State or Territory regulators.

Non-compliance with relevant weed and pest control legislation is already a factor for the Regulator to consider in applying the fit and proper person test (see section 61 of the Principal Rule), a necessary precondition of crediting. If an audit identified problems with compliance with the new offset reporting requirements, existing provisions could also result in the withholding of credits for the relevant reporting period (see subsection 9(2) of the Principal Rule). If offsets reports do not contain the required statements, the Regulator could ask for a compliant offsets report to be submitted.

#### 7. Subsection 70(6) (definition of *regeneration project*)

This item repeals the definition which is now in subsection 4(1).

#### 8. Subsection 79A(5) (definition of *regeneration project*)

This item repeals the definition which is now in subsection 4(1).

#### 9. After section 122

This item inserts sections 123 and 124 to provide transitional provisions for the Amendment Rule.

Subsection 123(1) ensures that the new requirements for notifications only apply to applications for declaration or expanding a project area after the commencement of the Amendment Rule. This ensures there is no retrospective application or effect of the new requirements and existing applications being considered by the Regulator are not affected.

Subsection 123(2) is a beneficial enabling provision such that if anyone wanted to submit notifications for future applications before the commencement of the rule they were able to

do so to the existing email address for plantation projects. There is no requirement for projects to take up this option, it was put forward in consultation as an option for those who wanted to get certainty as quickly as possible for their potential projects. If a notification was made and an application was then made before the commencement of the rule, subsection (1) would still mean that section 20C was irrelevant to the declaration of the project.

Subsection 123(3) acknowledges that should proponents take up the option in subsection 123(2), some additional time is likely to be required for the initial consideration of the notification. This extends the standard 30 day time limit to 45 days.

New section 124 ensures that the requirement in paragraph 70(3A)(d) only applies to offsets reports for reporting periods that end after the commencement of the section. Proponents have 6 months to submit offsets reports after the end of a reporting period and this section avoids retrospective impact of the new requirements. In particular, the timing of each reporting period is a matter for the project proponent and this ensures that relevant documentation and processes can be put in place to ensure the accuracy of the required statements. Furthermore, the new statement relates to existing legal requirements on projects and is not of itself imposing new requirements on proponents.

## **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 (Regeneration Projects) Rule 2022***

The *Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) 2022* (Amendment Rule) 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 *Carbon Credits (Carbon Farming Initiative) Act 2011* (the 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 in soil, biomass or organic matter. Participation in the scheme is voluntary.

The *Carbon Credits (Carbon Farming Initiative) Amendment (Regeneration Projects) Rule 2022* (the Amendment Rule) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule). The Amendment Rule applies a new eligibility requirement to regeneration projects who apply after the commencement of the rule. It provides a process to ensure there are no material adverse impacts on agricultural production or local communities. Existing projects or applicants are not impacted. Exclusive possession native title land and land rights land and conservation land are not covered by these requirements. Additional reporting requirements for management of weeds and pests by regeneration projects are also included.

#### **Human rights implications**

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

#### **Conclusion**

The Amendment Rule is compatible with human rights because it does not limit any human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**The Hon Angus Taylor MP**  
**Minister for Industry, Energy and Emissions Reduction**



Australian Government  
Department of Industry, Science,  
Energy and Resources

# **Options to Manage the Impacts of the Emissions Reduction Fund on Regional Communities**

## **Regulation Impact Statement**

**Department of Industry, Science, Energy and Resources**



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# Introduction

The Emissions Reduction Fund (ERF) is a voluntary scheme that provides incentives for organisations and individuals to adopt new practices and technologies to reduce their greenhouse gas emissions. It is enacted through the *Carbon Credits (Carbon Farming Initiative) Act 2011*, the Carbon Credits (Carbon Farming Initiative) Regulations 2011 and the Carbon Credits (Carbon Farming Initiative) Rule 2015.

Participants in the ERF earn Australian carbon credit units (ACCUs) for emissions reductions. ACCUs can be sold to generate income, either to the government through a carbon abatement contract, or on the private market. The Government has committed more than \$2.2 billion to purchase ACCUs from ERF projects in regional and rural Australia, with additional funding available under the \$2 billion Climate Solutions Fund.

Activities eligible to earn ACCUs under the ERF include regenerating native vegetation by changing land management to allow trees to regrow, on land where tree growth has previously been suppressed, for example by clearing or grazing. These projects account for 54% of total contracted abatement under the ERF.

These types of projects, when well managed, have important local and regional benefits including for agricultural productivity, farm profitability, biodiversity and land resilience. However, communities have raised concerns that in areas where projects cover significant areas of land there are potential adverse impacts on local agricultural production, with negative flow-on effects for local communities. These impacts include reduced employment and business opportunities resulting from a change in land-use. Less active land management in project areas is also identified as leading to reduced control of weeds and pests with communities expressing concerns about the potential impacts on neighbouring properties. The Government is considering ways to mitigate these risks and ensure the benefits of the ERF can continue to be realised, having the continued support of local communities.

This Regulation Impact Statement assesses measures to mitigate the risk of material adverse impacts from ERF native forest regeneration projects while continuing to allow farmers to access the benefits of participation in the ERF. The RIS has been prepared in accordance with the Australian Government Guide to Regulation 2014 and more recent guidance notes issued by the Office of Best Practice Regulation (OBPR).

The RIS addresses the required seven questions:

- What is the policy problem you are trying to solve? (Section 1)
- Why is government action needed? (Section 2)
- What policy options are you considering? (Section 3)
- What is the likely net benefit of each option? (Section 3)
- Who did you consult and how did you incorporate their feedback? (Section 4)
- What is the best option from those you have considered? (Section 5)
- How will you implement and evaluate your chosen option? (Section 6)

# 1. What is the policy problem you are trying to solve?

Under the ERF, there are two approved methods for eligible projects to earn ACCUs by regenerating native forests. These are the Human-Induced Regeneration (HIR) and Native Forest from Managed Regrowth (NFMR) methods. Collectively projects under these methods are referred to as native forest regeneration projects. These projects have been widely adopted in south west Queensland, western New South Wales and mid-west Western Australia, and adopted to a lesser extent in South Australia. There were 357 of these projects registered as at November 2021.

Native forest regeneration projects help reduce Australia’s greenhouse gas emissions, and support improved agricultural productivity, biodiversity and land resilience. Farmers report using the additional income to increase their financial resilience and invest in improving their enterprise. During the Department’s public consultation process (see Section 4), submissions indicated projects are helping farmers implement better land management practices and boosting economic opportunities in regional Australia.

Concerns have nevertheless been raised in some communities, particularly in south west Queensland, that high concentrations of native forest regeneration projects reduce agricultural production with flow on socio-economic effects to regional communities (Table 1). The areas with the highest concentrations of these projects are western New South Wales and south west Queensland.

**Table 1:** Risks or potential issues identified by stakeholders from the high concentration of ERF native forest regeneration projects

Source	Risks or potential issues identified by stakeholders
Baumber, A., Waters, C., Cross, R., Metternicht, G. and Simpson, M. 2020. Carbon farming for resilient rangelands: people, paddocks and policy. <i>The Rangeland Journal</i> , 42: 293-307.	<ul style="list-style-type: none"> <li>• Increases in invasive native scrub or woody weeds</li> <li>• Decreased property values</li> <li>• Fire and pest occurrence caused by landholders shifting from pastoralism to carbon farming and moving off site (absenteeism)</li> </ul>
Butler, D.W., Halford, J.J. and Evans, M.C. 2014. <i>Carbon farming and natural resource management in eastern Australia</i> . Queensland Department of Science, Information Technology, Innovation and the Arts: Brisbane, Qld. Australia.	<ul style="list-style-type: none"> <li>• Socio-economic change</li> <li>• Hydrological changes in highly regulated catchments or where in-stream salinity is already an issue</li> <li>• Increased native vegetation clearing for plantation establishment, although noting effective mechanisms to manage this risk</li> </ul>
Cross, R., Metternicht, G., Baumber, A., Waters, C. and Kam, H. 2019.	<ul style="list-style-type: none"> <li>• Increases in invasive native scrub or woody weeds</li> <li>• Pest management</li> <li>• Increased absenteeism and perception of rural decline</li> <li>• Social divisions</li> </ul>
Southern Queensland Landscapes: Submission to Climate Change Authority Review of the ERF 2020	<ul style="list-style-type: none"> <li>• Properties retired from traditional agriculture, resulting in less people supporting local communities, school numbers and school teachers numbers dropping, business and industry declining, volunteering and associated activities disappearing</li> <li>• Increase in pest management issues</li> <li>• Dangers of not managing landscape with fire</li> </ul>
Emissions Reduction Assurance Committee, 2019. <i>Review of the Human-Induced Regeneration and Native Forest from Management Regrowth methods: Final Report</i> , March 2019	<ul style="list-style-type: none"> <li>• Reduced biodiversity and increased pest species</li> <li>• Reduced property values</li> <li>• Not maintaining property infrastructure such as fencing, increasing the risk of pests, weeds and fire for neighbouring properties</li> <li>• Income from regeneration projects not being kept in the community,</li> </ul>

Source	Risks or potential issues identified by stakeholders
	and an increase in absentee landholders reducing demand for local goods and services such as electricity, mail, groceries and stock transport, with flow-on impacts for remaining residents

Studies have documented the perceived risks of: increased invasive native scrub or woody weeds (Butler et al. 2014; Jassim 2018; Cross et al. 2019); reduced land use flexibility (Kragt et al. 2017); decreased land value (Baumber et al. 2011); and increased risk of fire and pest occurrence (Torabi et al. 2016) caused by landholders moving off site (absenteeism); as well as potential for social divisions (Cowie et al. 2019; Cross et al. 2019). There is little quantitative information available on these perceived harms. However, the impacts are of a type that could become more evident over time at which point it may be too late to manage them.

The Climate Change Authority is required to review the ERF every three years. In previous reviews, the Authority has said it has not had sufficient information to properly understand community concerns raised about potential social and environmental impacts from land based ERF projects.

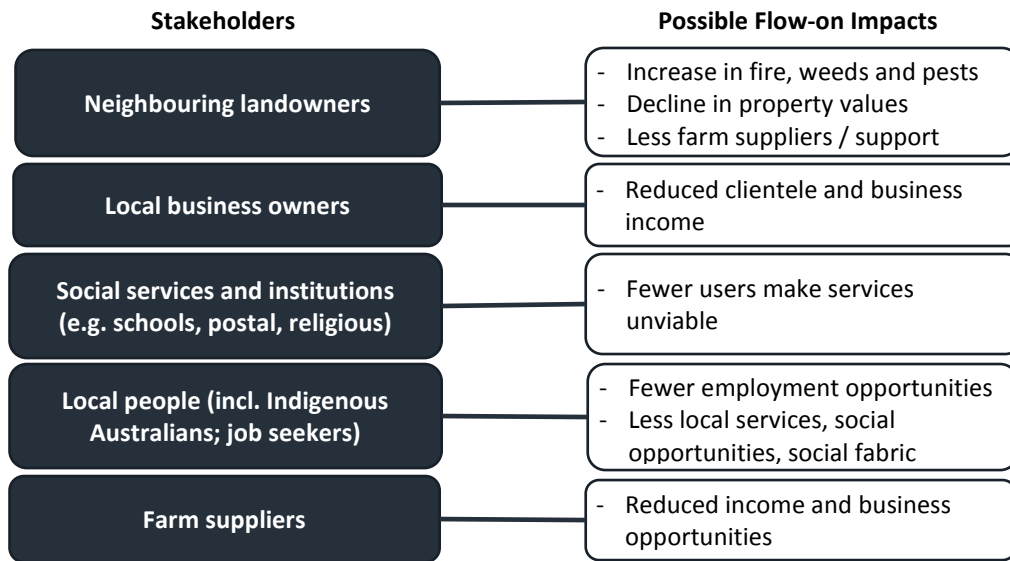
The Emissions Reduction Assurance Committee periodically reviews methods. While responsibility for considering environmental and socio-economic impacts sits with the Minister rather than the Committee, during the Emissions Reduction Assurance Committee’s review of these native forest regeneration methods in 2019 some submissions raised concerns (p. 52) *‘that ‘absentee’ proponents may divert carbon farming revenue away from the region. These stakeholders said income from regeneration projects is not being kept in the community, and that an increase in absentee landholders is reducing demand for local goods and services such as electricity, mail, groceries and stock transport, with flow-on impacts for remaining residents.’*

Concerns were also raised that projects covering large proportions of properties have less active management, including in relation to weeds and pests. While projects are required to comply with state, territory and local land management requirements, some local councils have said that they do not have the capacity to enforce these requirements where there are large numbers of projects. Although the Committee (p.9) *‘saw no evidence of adverse impacts arising from existing projects [it] recognised these projects involve long-term changes in land management, the full consequences of which may take some time to become apparent.’*

Comments provided during public consultation indicated poor design and management of some projects has led to reduced agricultural production, with associated negative effects on employment and local economic activity. Other submissions indicated there is no evidence of projects having adverse impacts. However, comments also supported the need to ensure emissions reductions and agricultural production are balanced appropriately.

With a lack of clear and quantifiable evidence, the concerns raised by local communities through various avenues, the high concentration of projects in some areas and the potential for the impacts to become more evident over time warrants a risk management approach to addressing these issues. The proposed rule amendment therefore aims to ***manage the risk*** that high concentrations of ERF native forest regeneration projects, and individual projects conducted over a substantial proportion of a property, ***could*** reduce agricultural production and associated active land management.

The rule amendment would also contribute to ***mitigating the potential negative impacts*** on local communities from this reduction in agricultural production and associated active land management such as lower economic activity, population loss, and increased pest and weed problems in these areas (Figure 1).



**Figure 1:** Possible negative flow-on impacts on stakeholders within local communities

Native forest regeneration project activities cover around 20 and 15 per cent respectively of land in the Bourke (New South Wales) and Paroo (Queensland) Local Government Areas (LGAs). In other LGAs, projects cover less than eight per cent of land, although this is expected to change over time. Since 2019, there have been fewer projects registered in Queensland and New South Wales, with more being registered in mid-western Western Australia, and a smaller number in South Australia.

In these LGAs with high concentrations of native forest regeneration projects, the risks of adverse consequences from a reduction in agricultural production is likely to be higher than elsewhere in Australia due to the underlying socio-economic context of these communities. Risk factors include relatively high unemployment (especially among Indigenous populations), low labour force participation, and a declining number of agriculture, forestry and fisheries businesses, as well as a declining number of jobs in those industries. While the causes of these issues are multi-faceted and long standing, it is important government policy does not exacerbate the risks through incentives provided for changes to land management.

In the 15 LGAs with the highest proportion of registered native forest regeneration projects there has been a greater reduction in recent years in the number of agriculture, forestry and fisheries businesses, compared to Australia overall. Between 2011 and 2016, the change in the proportion of people employed in agriculture, forestry and fisheries, labour force participation, and the total number of people employed, all declined at a much greater rate than the average for the rest of Australia (Table 2).

**Table 2:** Comparison of some key social statistics in local government areas with high concentrations of native forest regeneration projects compared to Australia as a whole. *Source: ABS Data by Region ([www.dbr.abs.gov.au/index.html](http://www.dbr.abs.gov.au/index.html))*

Social statistics	15 LGAs with largest areas of native forest regeneration projects	Bourke LGA	Paroo LGA	Australia Overall
Population change (2016-2020)	-6%	-7%	-10%	+6%
Change in number of Agriculture, Forestry and Fisheries businesses (2016-2020)	-5%	-14%	-13%	-3%
Av. Change in proportion of people employed in Agriculture, Forestry and Fisheries (2011-2016)	-9%	-24%	-1%	0%
Av. Change in Labour Force Participation rate (2011-2016)	-7%	-10%	-8%	-2%
Change in total number of people employed (2011-2016)	-12%	-17%	-8%	+6%

The Bourke and Paroo LGAs both experienced substantial declines in some key social wellbeing measures in the last decade (Table 2), making them particularly susceptible to the impacts of a decline in agricultural production. These LGAs occur within very remote regions of NSW and Queensland, respectively. These very remote regions have significant Indigenous populations with accompanying higher levels of social disadvantage including generally lower rates of employment and labour force participation than remote regions and in Australia overall. In 2019 the proportion of the Indigenous labour force employed was 72.4% in very remote regions of NSW and 77.9% in very remote regions of Queensland. This compares to 78.1% in remote areas of NSW and 76.9% in remote areas of Queensland. The labour force participation rate for Indigenous people in very remote areas of NSW and Queensland was 40.3% and 52.9%, respectively. This compares to 52.1% (NSW) and 54.8% (Queensland) in remote areas and 57.1% for the Indigenous population of Australia overall.

While the changes in these socio-economic indicators cannot be attributed to the occurrence of native forest regeneration projects in these areas, the underlying social conditions heighten the risks of adverse outcomes if a material change in agricultural production from these areas were to occur.

The risk of a decline in agricultural production is expected to be higher in LGAs with a higher concentration of projects as measured by the proportion of the LGA covered by a project Carbon Estimation Area (CEA) (Table 3), and with individual projects covering a higher proportion of a property (Table 4). These proportions (and therefore the risk profile) change as new projects are registered and depend on the nature of the individual project activities and the cumulative land management decisions of individual farmers and farm managers. Agricultural production can and does continue in project areas, particularly as vegetation grows and the land can sustain forest cover along with grazing, even if the regions in which these projects are occurring are relatively unproductive for agriculture when compared to other regions in Australia with more reliable rainfall and better soils.

**Table 3:** Number of Local Government Areas (LGAs) reporting native forest regeneration projects by the percentage of LGA covered by CEAs.

Percentage of LGA covered by CEAs	0%	<5%	5-10%	10-15%	>15%
Number of LGAs	28	19	5	1	1
Number of reporting projects in those LGAs	0	87	39	41	60
Number of registered projects in those LGAs	65	122	56	48	67

**Table 4:** Number of LGAs reporting native forest regeneration projects by weighted average of CEA to project area

Weighted average of CEA to project area	0-33%	33-67%	>67%
Number of LGAs	15	10	1

If agricultural production were to significantly decline as a result of ERF native forest regeneration projects, this could result in reduced economic activity and/or worse land management outcomes from lack of control of noxious weeds and pests. These impacts would exacerbate problems of social wellbeing caused by other factors.

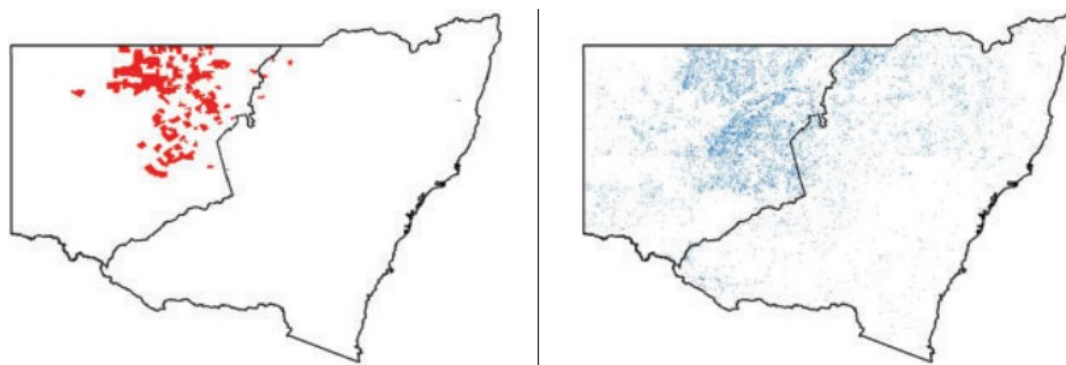
The risk has the potential to affect businesses supplying local goods and services within the community such as electricity, mail, groceries and stock transport, as well as those providing farm business supplies and other agricultural services. Local people including Indigenous Australians may have more difficulty finding and keeping employment within these areas, leading to population loss as people seek employment elsewhere.

There are existing state and local laws to manage some of these impacts, for example, to control weeds and pests. There is not clear evidence of existing legislation to manage these issues not being enforced. Although as mentioned above some local councils have reported difficulty monitoring compliance with state and local weed and pest regulations in areas where there are large numbers of projects.

The *Carbon Credits (Carbon Farming Initiative) Act 2011* requires the Minister consider the potential adverse environmental, economic and social impacts of eligible project activities when making an ERF method, and that requirement was undertaken when the methods were made. However, these measures focus on the type of project activity more generally and have not specifically targeted the scale of the activities within a geographically concentrated area. The type of project itself is not a problem *per se*. The potential for adverse impact is affected rather by the cumulative decisions of many different land owners and managers operating independently. To address this risk Carbon Service Providers have developed a voluntary code of practice to ensure consultation with local NRM bodies.

The challenge now is to ensure measures in place remain fit-for-purpose and can respond to potential increase in demand for these type of native forest regeneration projects as the price of ACCUs increases. This is largely an issue of scale, and as noted by ERAC, may not be evident for some time. An example of the potential for expansion of these types of ERF projects and the concentration in rangeland areas is provided for New South Wales in Figure 2, which illustrates the current Carbon Estimation Areas of 12,979 km<sup>2</sup> and a potential expansion area of 33,385 km<sup>2</sup> with the potential to attain the required forest cover. The Government's view is that it is better to ensure levers are in place to proactively manage the risk of adverse outcomes should significant expansion occur and address any issues as they arise.

Based on the average number of new projects registered in the last three years a business-as-usual scenario would involve around 32 new projects registered nationally each year, which would amount to almost 1,000 projects if sustained over a 30 year period. These projects have permanence obligations to maintain the carbon stored in the identified areas for either 25 or 100 years. Therefore the land management changes these projects introduce have long-term implications for the farm itself and potentially also for agricultural output and the communities in which they occur.



**Figure 2:** Current extent (red) and theoretical potential (blue) of Human Induced Regeneration projects in New South Wales. Note this shows theoretical project areas, not economically viable project areas. For current extent, the actual forest regeneration area is smaller than these project areas indicate, as project activities are undertaken on only a subset of the project area (Baumber *et al.*, 2020).



## 2. Why is Government action needed?

The ERF is a voluntary Government initiative. It is appropriate for the Government to adjust the settings of the scheme to reduce the risk of incentivising activities which could have material adverse impacts on agricultural production or local communities. The ERF currently has a range of provisions which govern eligibility for the scheme and these can be used to ensure that the incentives offered by the ERF are appropriate in the communities in which they operate. Additional regulatory checks would ensure approved projects do not occur at the expense of agricultural production or local communities.

Government action is warranted to ensure the identified risks to community social and economic outcomes and ecosystem health from native forest regeneration projects do not eventuate. Section 56 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* allows certain types of ERF projects to be excluded if (among other things) there is a risk that the project will have a material adverse impact on the local community or land access for agricultural production. In addition, when deciding whether to make a method the Minister must have regard to whether any adverse environmental, economic or social impacts are likely to arise from the carrying out of the kind of project to which the method applies. These provisions reflect Parliament's intent that the Government would manage the scheme to avoid these impacts.

Government interventions have been made to manage risks to social, economic or environmental outcomes in other projects under the ERF. For example, the proposed Rule amendment is similar to an existing provision for proposed new and expanded plantation forestry projects. Under that provision, the Agriculture Minister can exclude a proposed new or expanded plantation forestry project from proceeding where they find the project would have an adverse impact on agricultural production in the region. The requirement for projects to report on how they are complying with state and local weed and pest regulations is similar to reporting requirements for other types of ERF projects. For example, the *Carbon Credits (Carbon Farming Initiative) Rule 2015* requires savanna fire management projects report on when bushfire permits might be required in accordance with State and Territory bushfire legislation, and burning must be undertaken consistent with any permits.

An alternative to government action would be to wait and see if the risk eventuates, including as assessed in ad-hoc or periodic studies and evaluation of the impacts by third parties. This approach would rely on existing industry initiatives such as the Voluntary Code of Conduct agreed by some Carbon Service Providers to ensure consultation has occurred with local stakeholders.

Waiting to see if the impact eventuates could lock in adverse impacts, leading to retrospective rule changes to existing projects. This would be very damaging to policy and market credibility, and could affect achievement of Australia's emissions reduction targets. As prices for Australian Carbon Credit Units (ACCUs) increase (rising to \$45 per ACCU in December 2021 in the private market), there is likely to be increased take up of these types of projects. Some jurisdictions are also facilitating wider uptake of projects, to help rehabilitate land as well as reduce emissions. For example, Western Australia has recently changed its approach to consenting to ERF projects on pastoral leases and as a result the number of projects registered in Western Australia is growing. These trends suggest proactive risk management by government is warranted.

If no action is taken, large-scale native forest regeneration projects will continue to be approved without consideration of the potential risks for agricultural production or local communities. If trends from the past three years continue, approximately 32 new native forest regeneration projects can be expected to be registered in the next year. These projects will be subject to permanence obligations to remain in place for 25 or 100 years – with long term impacts for the region.

The **policy objective of government action** is to ensure that native forest regeneration projects do not have unintended negative impacts on agricultural production and regional communities, while allowing the benefits of these projects to continue to flow to regional areas. Constraints to achieving this goal include the difficulty of attributing changes in social, economic and environmental outcomes to individual projects or groups of projects and disaggregating the effects from broader social and economic drivers in regional and remote areas.

Indicators of success in achieving the policy objective include:

- Changes in agricultural production in LGAs with a significant number of native forest regeneration projects are equal to or better than in LGAs without native forest regeneration projects, or otherwise consistent with or better than historical trends
- Changes in key indicators of social wellbeing (e.g. as reflected in Tables 2 and 3) in LGAs with a significant number of native forest regeneration projects are equal to or better than in LGAs without native forest regeneration projects, or otherwise consistent with or better than historical trends
- Weed and pest problems are no worse in areas with native forest regeneration projects than in areas without these projects, or otherwise no worse than historical conditions

### **3. What policy options are you considering and what is the likely net impact of each option?**

To avoid adverse impacts from native forest regeneration projects, while allowing farmers to continue to access the benefits of participation in the ERF, four options are being considered: (option 1) status quo, (option 2) exclusion of projects with material adverse impacts, (option 3) exclusion of projects with material adverse impacts in regions with high concentrations of projects and (option 4) exclusion of all projects that make up over one third of a farm or farms. All options – except for the status quo – include additional reporting requirements to facilitate project compliance with pest and weed management laws.

Other than the status quo, the options considered involve amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Rule) to provide the Agriculture Minister with the authority to exclude proposed new or expanded native forest regeneration projects which they determine will have material adverse impacts on agricultural production or the local community. The approach is modelled on existing provisions in the Rule which apply to plantation forestry projects. This may result in some projects not going ahead and may reduce carbon sequestration under the ERF, however there is a need to provide a balanced approach to considering and avoiding material adverse impacts from native forest regeneration projects, as Australia's carbon market expands.

This section outlines the four options, evaluates their benefits and costs and where relevant provides a regulatory burden estimate to determine the net benefit of each option.

#### **3.1 Option 1 – Status Quo**

The Government could decide to not implement additional requirements for native forest regeneration projects and wait for the longer term impacts of projects to be evaluated. Project proponents would be able to continue to register projects under the native forest regeneration methods where they meet existing ERF requirements, regardless of the size of the project area. Based on recent trends, the number of new projects would be expected

to be around 32 projects per year (see CER ERF Project Register<sup>1</sup>). Around 70%, or 22 of these projects would be expected to cover more than one-third of a farm area and be more than 15 ha in size.

Non-compliance with relevant weed and pest control legislation is already a factor for the Regulator to consider in applying the fit and proper person test (see section 61 of the Rule), a necessary precondition of crediting. Under the status quo option there would be no extra reporting requirements on management of weeds and pests to assist local councils to manage ERF projects' compliance with state, territory and local government requirements. Many submissions during consultation on the proposed Rule amendment commented that these and other existing provisions in the ERF regulatory framework were sufficient.

Concerns raised by stakeholders (including during consultation on the proposed Rule amendment) indicate the status quo approach could result in adverse impacts on agricultural production and regional communities, particularly in regions with high concentrations of these projects, with the risk growing as project activity increases. Maintaining the status quo undervalues concerns around potential adverse impacts which may increase as the carbon price increases, and carbon farming becomes more profitable. Approved projects are subject to a permanence obligation to remain in place for 25 or 100 years – locking in long term impacts for the regions. Some comments during public consultation indicated that the status quo can incentivise the highest yielding carbon abatement program to be registered, which is often not conducive to primary production, employment, community or the protection of the asset values. Many submissions recognised there were both well managed and poorly managed projects.

The 'status quo' approach would not be subject to any other specific or legislative review processes.

The general operation of the ERF would be reviewed through five-yearly reviews of emissions reduction policies and their impacts, to be conducted under the Government's Long-Term Emissions Reduction Plan (see section 6 for additional information). If problems emerged with native forest regeneration projects, the methods could be reviewed and varied or revoked according to the requirements of the Act.

Many submissions received during public consultation identified the benefits of native forest regeneration projects in support of the status quo arrangements. The benefits identified included improved land management practices and a significant boost to economic opportunities in regional areas with farming activities that would not otherwise be viable being supported with revenue from the sale of ACCUs, especially in times of drought.

## 3.2 Option 2 – Exclude projects with adverse impacts

The *Carbon Credits (Carbon Farming Initiative) Rule 2015* would be amended to give the Agriculture Minister authority to exclude native forest regeneration projects where the Minister determines they would have a material adverse impact on agricultural production or local communities in the region. This approach is consistent with Australia's Long-Term Emissions Reduction Plan<sup>2</sup>, including that activities to reduce emissions do not require displacement of productive agricultural land. Modelling for the Plan indicated this sort of approach would still allow substantial carbon sequestration, without reducing farm output<sup>3</sup>.

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<sup>1</sup> <http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register>

<sup>2</sup> <https://www.industry.gov.au/data-and-publications/australias-long-term-emissions-reduction-plan>

<sup>3</sup> <https://www.industry.gov.au/sites/default/files/November%202021/document/australias-long-term-emissions-reduction-plan-modelling.pdf> (p.79)

The Rule amendments would be similar to an existing provision for plantation forestry projects which has been operating effectively since 2017. To appropriately target the concerns about impacts of projects conducted at a large scale, the Rule would only apply to proposed new native forest regeneration projects, or expansions of existing projects of this type, that are greater than 15 hectares and which make up more than one third of a farm or farms on which the project would operate.

Relevant project proponents would need to notify the Agriculture Minister of their proposed projects. The notification would include information to support the Minister's consideration. The information required may include: boundaries and number of hectares to be covered by project activities; type of project activities; recent agricultural land use (e.g. types and areas of crops and livestock); and recent agricultural production (e.g. crop yields and livestock numbers). Some of the information, for example location and mapping details, is already required from ERF participants for other purposes.

The proposal would specify time periods for submitting and assessing information. These would be designed to allow timely decisions and integrate with Clean Energy Regulator assessment of project eligibility. Guidelines would be made available to assist preparation of information for submission. The Department of Agriculture, Water and the Environment would assess the applications to assist the Minister. This assessment would draw on data and advice from the Australian Bureau of Agricultural and Resource Economics (ABARES) to evaluate the likely impacts of a project within the context of a particular region. The assessment would also consider any information put forward by project proponents on the expected impacts of the project on agricultural production or the local community. If the Agriculture Minister did not subsequently determine the project would have adverse impacts, the project could be submitted to the Clean Energy Regulator for approval. Where the Agriculture Minister makes an adverse impact finding, the Clean Energy Regulator would be notified, and would be unable to approve registration or expansion of the project.

To ensure natural justice, the proposal would include provision for the project proponent to respond to an adverse impact finding or submit further information before the Minister made a final decision that there would be an adverse impact. This two-stage approach for projects with potential adverse findings also means findings of no adverse impacts could be resolved in a timely way. This approach is consistent with the existing authority to exclude plantation forestry projects.

The Rule would also be amended to require additional reporting on weed and pest control to ensure native forest regeneration projects are in compliance with state, territory and local government requirements for all projects. The additional reporting would be implemented by an amendment to offsets reporting requirements in section 70 of the Rule. Meeting the reporting requirements is necessary for both existing and new projects to continue to receive credits.

Offsets reports are audited as part of the ERF's standard auditing processes. If an audit identified problems with compliance with the new offset reporting requirements, existing provisions could also result in the withholding of credits for the relevant reporting period (see subsection 9(2) of the Rule). Accordingly, only changes to section 70 are considered necessary to implement the new policy.

The authority to exclude projects with potential adverse impacts and additional reporting on weed and pest control would be reviewed through five-yearly reviews of emissions reduction policies and their impacts, to be conducted under the Government's Long-Term Emissions Reduction Plan (see section 6 for additional information).

### 3.2.1 Benefits

This option provides the government with a mechanism to manage the risk of native forest regeneration projects having a negative impact on agricultural production or local communities. It provides a balanced approach to ensure adverse impacts on agricultural production or local communities are considered and avoided where material, while providing certainty to project proponents in a fairly short timeframe. Based on existing data, using project area as a proxy for farm size, it is anticipated that most proposed native forest regeneration projects would be considered by the Agriculture Minister. This would allow for the risk of material adverse impacts to be managed proactively across Australia.

This option shows the government is responsive to concerns that ERF projects may be negatively impacting agricultural production or local communities. The authority to exclude projects that would have material adverse impacts, and additional reporting on pest and weed management, would help improve community support for regeneration projects, associated ACCUs, and the ERF. This may have long term benefits for the integrity the scheme and investor confidence in the Australian carbon market.

It is challenging to disaggregate the impacts of native forest regeneration projects from broader macro-economic trends affecting regional communities. However, the authority to exclude projects that would have a material adverse impact may help to maintain agricultural production in some regions. This would help support and maintain regional populations and employment opportunities, including opportunities for Indigenous people.

The approach allows for continued adoption of native forest regeneration projects where the Agriculture Minister does not find they would have material adverse impacts. Applying the measure only to projects larger than 15 hectares would avoid capturing projects on small properties, which are unlikely to lead to material adverse impacts. Project proponents intending to conduct a project on less than one third of their farm could proceed with applying to the Clean Energy Regulator for project approval. This approach would not place regulatory burden on existing projects that do not expand their project area, or on smaller projects with project areas under 15 ha or less than one third of a farm or farms. Applications for projects covering more than one third of a farm could also proceed to be registered if the Agriculture Minister does not make an adverse impact finding.

The requirement for additional reporting on weed and pest control for all projects would support local council and state government compliance efforts to manage pests and weeds, with only a small increase in administrative burden to project proponents.

Regular reviews of the implementation of the ERF as part of the 5-yearly review and refine cycles of Australia's Long Term Emissions Reduction Plan will help to improve integrity of the scheme and build community confidence. The review cycles would provide regular feedback on government implementation, including this risk mitigation measure. The scope of these reviews includes impacts on households and regions of Commonwealth, State and Territory emissions reduction policies.

### 3.2.2 Costs

Under Option 2, project proponents of new or expanded native forest regeneration projects would incur costs. The notification and assessment process would increase administrative burden (with many consultation submissions believing this burden would be excessive), including time delay costs and uncertainty for these project proponents (although the structure of the proposed Rule amendment for this option means that project certainty would be provided in a fairly short timeframe). Additional reporting requirements for pest and weed control would also incur small administrative costs for all projects. Although as noted above, a number of

consultation submissions pointed to the existing ERF regulatory arrangements as being sufficient to manage these issues.

As reflected in consultation submissions, project proponents, including farmers may be deterred from proposing large scale projects due to the increased administrative burden and uncertainty of project approval. Some potential project proponents may not see registering smaller projects as worthwhile as these are likely to be less financially viable due to economies of scale. Some consultation submissions also identified smaller projects as being more likely to be disadvantaged by the one-third of a farm threshold. To the extent the changes reduce participation in the ERF this represents potential opportunity cost, with landholders missing out on the potential to increase and diversify their sources of income. The potential loss of farm income and investment in rural areas was reflected in a number of submissions during consultation on the proposed Rule amendment.

Carbon service providers and the environmental consulting industry may be impacted by these changes and experience a reduction in business if fewer carbon sequestration projects are pursued due the regulatory changes.

Reduced project applications may represent a loss of abatement from carbon sequestration, which may have broader impacts on the Australian carbon market (reducing supply and increasing prices at the margin) and impede progress toward national and state emissions reduction targets. Concerns were raised in submissions that the proposal would erode confidence and create uncertainty in the carbon market. In addition, a potential restriction for some carbon sequestration projects may also impact the delivery of state programs designed to complement the ERF, such as the Queensland's Land Restoration Fund.

The assessment processes would also increase the workload of the Department of Agriculture, Water and the Environment and ABARES. This would need to be managed within existing staff capacity.

### 3.2.3 Regulatory burden estimate

At present, 70% of HIR and NFMR projects that have submitted offset reports have CEAs that are more than one third of the project area (i.e. farm boundary). This indicates around 70% of proposed new projects would likely be covered by amendments to the Rule (noting that the Government is consulting on this). The regulatory burden has been estimated based on this data, as set out in the following assumptions:

- There are 32 proposed new projects each year (based on the average number of new projects registered in the last three years).
- Of these proposed new projects, 22 (or 70%) would be subject to the notification requirement. In addition, two proposed project expansions each year would be subject to the requirements (based on 15 of the total 357 projects registered since 2013 having added new areas after they were registered). Submission of information requires 30 hours per project.
- Of the 22 new proposed projects subject to the notification requirement, six submit additional information for further assessment in response to advice the Minister intends to determine there would be adverse impacts. This requires 16 hours per project.
- Of the two proposed project expansions, one submits additional information for further assessment in response to advice the Minister intends to determine there would be adverse impacts. This requires eight hours per project.
- If 20 out of the 22 proposed new projects are found to have no material adverse impacts and receive approval (assume 2 proposed new projects are excluded) then 30 projects would be required to undertake

additional reporting on pest and weed management (20 projects plus 10 new projects not subject to the additional notification requirements). This requires two hours per project.

- Additionally, all existing projects (357 at present) would also need to undertake additional reporting on pest and weed management, requiring two hours per project.
- The hourly cost is \$73.05.

Requirement	No. of projects	No. of hours	Cost per hour	Total cost
Submission of information for new proposed projects and proposed expansions (one-off)	24	30	\$73.05	\$52,596
New proposed projects submit additional information (one-off)	6	16	\$73.05	\$7,012
Proposed project expansion submits additional information (one-off)	1	8	\$73.05	\$584
New projects that would require to undertake additional reporting on pest and weed management (annual)	30	2	\$73.05	\$4,383
Existing projects that would require to undertake additional reporting on pest and weed management (annual)	357	2	\$73.05	\$52,157
Total additional regulatory burden				\$116,733

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	\$116,733	\$0	\$116,733

### 3.3 Option 3 – Exclude projects with adverse impacts in certain Local Government Areas

The authority to exclude projects found to have material adverse impacts (as described in Option 2) could be limited, so it only applies to areas that have high concentrations of native forest regeneration projects. A more geographically targeted approach was proposed by some stakeholders during consultation and reflects a risk-based approach which assumes areas with existing high concentration of projects are at increased risk of material adverse impacts from new and expanded projects. This approach could be implemented by reference to Local Government Areas (LGAs) with project coverage of more than a specified percentage of the total area of the LGA. For example, the authority could be applied to LGAs with project coverage of more than five per cent. Based on current registrations of these projects, this would apply to 7 LGAs in New South Wales, Queensland and Western Australia.

Under this option, the notification and assessment process for project proponents in these regions would be the same as in Option 2. Proposed new projects and project expansions that are over 15 ha and more than a third of a farm would be required to notify the Agriculture Minister and seek approval to register under the ERF scheme.

This option would also include amendments to the Rule to require reporting on weed and pest control as outlined in Option 2.

Monitoring the implementation of the exclusion and reporting on weed and pest control would occur through the five-early review and refine cycle of the Long-Term Emissions Reduction Plan, also as outlined in Option 2.



### 3.3.1 Benefits

As in option 2, this option provides the government with a mechanism to manage the risk of native forest regeneration projects having material adverse impacts on agricultural production or local communities, while taking a risk-based approach to impact fewer project proponents. This responds to concerns that native forest regeneration projects are negatively impacting regional areas in Queensland and NSW, and would help improve community acceptance of the ERF. Improved community perceptions would have long term benefits for support for the ERF scheme and investor confidence in the Australian carbon market.

Even though the impacts of native forest regeneration projects cannot easily be disaggregated from broader macro-economic trends which are impacting regional communities, the authority to exclude projects with material adverse impacts may help to maintain agricultural production in high-risk regions, to support and maintain regional populations and employment opportunities, including opportunities for Indigenous people.

This option would reduce the number of project proponents impacted by an increase in regulatory burden – compared to Option 2 and would address some concerns raised during public consultation that areas that had to-date seen less project activity would be disadvantaged. Only project proponents in identified LGAs would be impacted by the regulatory changes. This approach would likely reduce carbon sequestration activities under the ERF only in high-risk regions and would be expected to have less impacts on the price and supply of ACCUs in comparison to Option 2 (which many consultation submissions identified will have adverse impacts on market confidence).

The requirement for additional reporting on pests and weeds would support local council compliance efforts, with only a small increase in administrative burden to project proponents. Although as noted for Option 2, a number of submissions believed the existing ERF regulatory arrangements were sufficient to manage this issue.

Regular reviews of implementation would improve integrity of the scheme and build community confidence. The review cycles would provide regular feedback on government implementation.

### 3.3.2 Costs

Option 3 is a less proactive approach to managing the risks of ERF projects having material adverse impacts in a region. In this respect, Option 3 may not be considered to fully address community concerns, including as reflected in some public consultation submissions. It may have less capacity to mitigate a decline in socio-economic conditions as indicated by population decline and unemployment. It may also come too late for affected LGAs as these risks would only be addressed once the threshold is reached.

This approach would create regulatory uncertainty for project proponents and many of the concerns about administrative burden for project proponents raised during public consultation would remain. Affected LGAs would change over time, making it more difficult for proponents to plan their activities. As it typically takes several months to develop a project proposal prior to registration, proponents may not know whether the rule will apply to them while they are undertaking this work. This uncertainty may reduce participation under the ERF and increase opportunity costs. A smaller group of project proponents would still incur increased administrative costs and risk losing the opportunity to increase and diversify their income through participating in the ERF scheme.

Reduced carbon sequestration under this option would be expected to have flow-on effects, reducing supply and increasing prices (at the margin) in the Australian carbon market, albeit to a lesser extent than as identified for the proposed Rule amendment in consultation submissions. The uncertainty created by this regulatory approach



may reduce investor confidence and impede progress toward national and state emissions reduction targets. It would also reduce business opportunities for carbon service providers and consultants.

A region-specific approach may cause social division, as some landholders may be unable to participate in the scheme to earn an income (if their proposed project was determined as having an adverse impact) whereas their neighbours in other LGAs can do so. Within affected LGAs it may create resentment towards early adopters of carbon farming with existing projects, or a ‘first come first served’ mentality in which project proponents may rush to register new projects and expansions.

It would create a more uncertain environment for the operation of state and territory emission reduction schemes which rely on the ERF scheme. These schemes would need to remain up-to-date with any regulatory changes which may affect new LGAs.

Option 3 would increase the Department of Agriculture, Water and the Environment and ABARES workload, but less so compared to Option 2. The Department of Industry, Science, Energy and Resources (the Department), in consultation with the Clean Energy Regulatory, would have to monitor the number and scale of projects across LGAs.

### 3.3.3 Regulatory burden estimate

Regulatory costs have been estimated based on the assumptions in option two:

- There are 32 proposed new projects each year (based on the average number of new projects registered in the last three years). Eight of those proposed new projects are in relevant LGAs.
- Of those eight proposed new projects, six (or 70%) would be subject to the requirements. In addition, one proposed project expansion each year would be subject to the notification requirement (based on 15 of the total 357 projects registered since 2013 having added new areas after they were registered). Submission of information requires 30 hours per project.
- Of the six proposed new projects subject to the requirements, two submit additional information for further assessment in response to advice the Minister intends to determine there would be adverse impacts. This requires 16 hours per project.
- The proposed project expansion also submits additional information for further assessment in response to advice the Minister intends to determine there would be adverse impacts. This requires eight hours per project.
- If five out of the six proposed new projects are found to have no material adverse impacts and receive approval (assuming one of the proposed new project is excluded) then seven projects would be required to undertake additional reporting on pest and weed management within the risk areas (five new projects found to have no material adverse impacts plus two new projects not subject to the additional notification requirement), along with 24 new projects in areas outside the identified risk areas. This requires two hours per project.
- Additionally, all existing projects (357 at present) would also need to undertake additional reporting on pest and weed management, requiring two hours per project.
- The hourly cost is \$73.05.

Requirement	No. of projects	No. of hours	Cost per hour	Total cost
Submission of information for new proposed projects and proposed expansions (one-off)	7	30	\$73.05	\$15,341

New proposed projects submit additional information (one-off)	2	16	\$73.05	\$2,338
Proposed project expansion submits additional information (one-off)	1	8	\$73.05	\$584
New projects that would require to undertake additional reporting on pest and weed management (annual)	31	2	\$73.05	\$1,899
Existing projects that would require to undertake additional reporting on pest and weed management (annual)	357	2	\$73.05	\$52,158
Total additional regulatory burden				\$72,320

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	\$72,320	\$0	\$72,320

## 3.4 Option 4 – Exclude all projects making up more than a third of a farm

Amend the Rule to exclude all new native forest regeneration projects that make up more than a third of the farm, without making a decision on a case by case basis. The approach would provide regulatory certainty and is associated with less administrative burden than Options 2 and 3.

This approach would in effect presume all projects above a certain proportion of a property would have adverse impacts, irrespective of the land management practices to be adopted. The approach would also substantially reduce landholders' flexibility in designing projects to suit their overall property planning.

When drafting a variation to the HIR method in 2016, the Department consulted on an option to limit the proportion of a farm area that could be covered by a project. The approach was not adopted, for reasons including concerns about feasibility. It could be important to revisit this decision given the ongoing concerns about the adverse impacts of native forest regeneration projects.

This option would also include amendments to the Rule to require reporting on weed and pest control as outlined in Option 2.

Monitoring the implementation of the exclusion and reporting on weed and pest control would occur through the five-yearly review and refine cycle of the Long-Term Emissions Reduction Plan, also as outlined in Options 2 and 3.

### 3.4.1 Benefits

This option would impose lower additional regulatory costs than Options 2 and 3 as the notification assessment process would not be necessary. This option would provide project proponents with more certainty to plan projects, compared with Options 2 and 3 which are subject to an assessment and approval process. In addition under Option 3 there could be changes over time to the areas in which new projects would be subject to the potential exclusion.

The approach almost eliminates the risk of ERF projects becoming a dominant land use. It addresses concerns and clearly limits any potential adverse impacts on agricultural production or local communities.

A regulatory change to exclude all large scale native forest regeneration project would provide clarity to Australian carbon market investors and to State and Territory in the context of their emission reduction programs. This may better support market stability compared to Options 2 and 3.

Under this option, there would be no increases to workload for the Department of Agriculture, Water and the Environment and ABARES.

Regular reviews of implementation would improve integrity of the scheme and build community confidence. The review cycles would provide regular feedback on government implementation.

### 3.4.2 Costs

This approach could be perceived as a significant over-reach of government regulation. It does not recognise that these projects can be appropriately managed and include significant benefits, including carbon sequestration, erosion control, improved water quality and biodiversity benefits, as emphasised by stakeholders during the public consultation. It has potential to substantially reduce carbon sequestration under the ERF (native forest regeneration projects have supplied around 30% of ACCUs issued to-date), with impacts on Australia's Long Term Emissions Reduction Plan. It could also be seen as an arbitrary restriction on abatement activity, affecting market confidence in ACCU's more generally.

This option would reduce options available to landholders wishing to undertake vegetation projects and would not allow some farmers to access the full benefits of the ERF, even where their projects would not have significant adverse impacts. Smaller scale projects may be considered economically unviable for project proponents. This would reduce opportunities for farmers to increase and diversify their income. Early adopters of carbon farming with existing larger scale projects could experience significant social exclusion due to perceived inequities from other landholders – who under this option would never be able to earn the same level of income. This concern was reflected in submissions during consultation on the proposed Rule amendment

A complete exclusion of larger scale projects would significantly impact the amount of carbon abatement achieved under the ERF and the supply of ACCUs to the Australian carbon market. This has potential to drive up the price of carbon, and may reduce market confidence and impede progress toward national and state emissions reduction targets. It would also reduce business for carbon service providers and consultants.

The increase in regulatory burden under this option is lower than for Options 2 and 3.

### 3.5.3 Regulatory burden estimate

Regulatory costs have been estimated based on the assumptions in option two:

- There are 32 proposed new projects each year (based on the average number of new projects registered in the last three years).
- At present, 70% of projects that have submitted offset reports have CEAs that are more than one third of the project area (i.e. farm boundary).
- Under this scenario there would be only 10 project applications per year, or 30% of the current total. None would need to undertake a notification assessment process.
- Only ten additional projects per year would be required to undertake additional reporting on pest and weed management.

- Additionally, all existing projects (357 at present) would also need to undertake additional reporting on pest and weed management, requiring two hours per project.
- The hourly cost is \$73.05.

Requirement	No. of projects	No. of hours	Cost per hour	Total cost
New projects that would require to undertake additional reporting on pest and weed management (annual)	10	2	\$73.05	\$1,461
Existing projects that would require to undertake additional reporting on pest and weed management (annual)	357	2	\$73.05	\$52,158
Total additional regulatory burden				\$54,219

Average annual regulatory costs				
Change in costs (\$ million)	Individuals	Business	Community organisations	Total change in cost
Total, by sector	\$0	\$54,219	\$0	\$54,219

### 3.5 Net impact of each option

Although Option 1 would not have a regulatory impact, it does not address concerns that ERF projects may be adversely impacting agricultural production or local communities. Not addressing this risk could have significant and long term impacts for agricultural production, local communities and the reputation of the ERF scheme.

Options 2 and 3 would result in regulatory costs for a proportion of the businesses wishing to undertake native forest regeneration projects. Options 2 and 3 may also result in a subset of those businesses not being able to proceed with a project. Option 2 has the potential to impact a larger number of project proponents but it also allows for a wider and balanced consideration of potential adverse impacts of native forest regeneration projects at a larger scale than Option 3.

Option 4 would have the lowest regulatory impact of all policy change options, but would likely result in a large proportion of potential projects not being able to proceed, even where they would have no adverse impacts. This significantly reduces landholders' ability to earn additional and diversified income under the ERF.

Implementing Option 2 for the proposed rule amendment would minimise the risk of native forest regeneration projects having adverse impacts on agricultural production or local communities. This would ensure landholders undertaking these projects continue to benefit from the ERF, but within a more productive and vibrant local community. Through implementing the Rule amendment, the ERF would therefore provide an additional income stream for landholders rather than a replacement stream. Those participants would derive additional benefits through opportunities to improve farm productivity. The total value of existing native forest regeneration projects contracted by the Government is around \$1.5 billion.

Further economic and social benefits would flow to businesses, individuals and community organisations, particularly in the regions where native forest regeneration projects are conducted. Environmental benefits of well-managed vegetation projects include improved biodiversity. The best available national datasets on agricultural production by region are from the Australian Agricultural Census conducted by the Australian Bureau of Statistics. The best available data on social statistics by region are the Australian Bureau of Statistics 'Data by region' products. There is no national reporting on the prevalence of weeds and pests by region. Disparate information on these issues is occasionally available in reports from Natural Resource Management bodies, scientific surveys, Landcare and community organisations.

Given the scale at which this data is available, the difficulty identifying causality of impacts with land management changes and isolating the effect of exogenous variables, it is not feasible to generate a net benefit figure for each of the options. Therefore a decision on the preferred option is guided by a qualitative evaluation of costs and benefits considering the policy objective the Government is seeking to achieve (see Section 2). The table below summarises the costs and benefits of each policy option being considered:

Options	Cost	Benefit
<b>Option 1 – Status quo</b>	N/A	N/A
<b>Option 2 - Exclude projects with adverse impacts</b>	<ul style="list-style-type: none"> <li>• Higher additional administrative costs for project proponents.</li> <li>• Higher increased workloads for the Department of Agriculture, Water and the Environment and ABARES.</li> <li>• Higher risk of reduced opportunities to increase and diversify landholders' income.</li> <li>• Higher risk of reduced business for carbon service providers.</li> <li>• Higher risk of reduce carbon sequestration and higher market impacts.</li> <li>• Higher risk of impacts to state and territory emissions reduction programs.</li> <li>• High risk of inequality between existing and new project proponents.</li> </ul> <p><b>Regulatory burden estimate \$116,733</b></p>	<ul style="list-style-type: none"> <li>• Lower risk of material adverse impacts of native forest regeneration projects not being actively managed.</li> <li>• No impact on small-scale ERF project proponents.</li> <li>• Higher improvement in community acceptance of the ERF.</li> <li>• Higher improvement in investor confidence in the carbon market.</li> <li>• Would support local/state pest and weed management.</li> <li>• Review process for adaptive management.</li> <li>• Equal treatment of all LGAs</li> <li>• Certainty provided for project planning in relatively short timeframe.</li> </ul>
<b>Option 3 - Exclude projects with adverse impacts in certain LGAs</b>	<ul style="list-style-type: none"> <li>• Medium risk of material adverse impacts of native forest regeneration projects not being actively managed.</li> <li>• Medium additional administrative costs for project proponents.</li> <li>• Medium increased workloads for the Department of Agriculture, Water and the Environment and ABARES.</li> <li>• Medium risk of reduced opportunities to increase and diversify landholders' income.</li> <li>• Medium risk of reduced business for carbon service providers.</li> <li>• Medium risk of reduce carbon sequestration and market impacts.</li> <li>• Medium risk of impacts to state and territory emission reduction programs.</li> <li>• Medium risk of inequality between existing and new project proponents.</li> <li>• High risk of uncertainty for project planning</li> <li>• High risk of inequality between LGA.</li> </ul> <p><b>Regulatory burden estimate \$72,320</b></p>	<ul style="list-style-type: none"> <li>• No impact on small-scale ERF project proponents.</li> <li>• Medium improvement in community acceptance of the ERF.</li> <li>• Medium improvement in investor confidence in the carbon market.</li> <li>• Would supports local/state pest and weed management.</li> <li>• Review process for adaptive management.</li> </ul>
<b>Option 4 - Exclude all projects making up more than a third of a farm</b>	<ul style="list-style-type: none"> <li>• Highest risk of reduced opportunities to increase and diversify landholders' income.</li> <li>• Highest impact on business for carbon service providers.</li> <li>• Highest impact on carbon sequestration or the market.</li> <li>• Highest Impact on state and territory emission reduction programs.</li> <li>• Lower improvement of community acceptance of the ERF.</li> <li>• May decrease investor confidence in the carbon market.</li> <li>• Potential over-reach of government regulation in response to the potential risks.</li> </ul> <p><b>Regulatory burden estimate: \$54,219</b></p>	<ul style="list-style-type: none"> <li>• Lower risk of material adverse impacts of native forest regeneration projects not being actively managed.</li> <li>• Lower additional administrative costs for project proponents.</li> <li>• No impact on workloads for the Department of Agriculture, Water and the Environment and ABARES.</li> <li>• No impact on small-scale ERF project proponents.</li> <li>• Would supports local/state pest and weed management.</li> <li>• Review process for adaptive management.</li> </ul>

## 4. Who did you consult and how did you incorporate their feedback?

The Department released the consultation paper "*Proposed amendments to the Carbon Credits (Carbon Farming Initiative) Rule 2015 relating to Emissions Reduction Fund native vegetation regeneration projects*" for a 5 week consultation period from 10 December 2021 to 14 January 2022. The paper provided draft Rule amendments for implementing Option 2, for stakeholder consideration and feedback.

The consultation provided a good opportunity to validate existing evidence and gather more evidence to support the finalisation and implementation of the rule amendment. The consultation paper invited views from stakeholders to respond to the following questions:

1. Are the rule amendments appropriately drafted?
2. What types of information would be useful to support the Agriculture Minister's assessment of whether native forest regeneration projects would have adverse impacts on agriculture and the local community?
3. How many projects would be affected by the rule amendment?
4. Are there any alternatives to manage unintended adverse impacts of ERF projects on agricultural production and regional communities?
5. How could the implementation of the new requirements best be monitored to inform their consideration in the Government's five-yearly reviews?

24 submissions were received on the consultation paper. Of the 16 submissions received, 12 were from carbon market participants or project developers, ten were from peak bodies representing industry, one was from a state or territory government agency and one was from an environmental consultancy. All submissions and evidence provided have been carefully considered in finalising the rule amendment. Most submissions did not support the proposed rule amendment.

The submissions that supported the rule agreed that there are potential adverse impacts in regional communities from these projects. They provided suggestions to ensure a transparent and objective assessment process. Identified impacts from poorly designed, implemented and managed projects included "*clear loss of encumbered land value, loss of primary production and subsequent loss of labour requirements and local employment opportunities*".

Those submissions that did not support the proposal were primarily concerned with a potential damaging impact on registration of new projects and supply of carbon credits, the effect on the carbon market, intervention in farmers' and Indigenous people's rights, and limitations on their access to alternative sources of farm income. They emphasised the benefits from native vegetation regeneration projects. Concerns were also expressed in relation to uncertainty over the assessment process including the length of time for a decision to be made, and the evidentiary basis for a decision. Stakeholders not supporting the proposal wanted to see more evidence of the problem before proceeding with a policy solution and were concerned about the proposed start date of the amendment leading to market uncertainty in the lead-up to the April 2022 ERF auction.

To address concerns and suggestions put forward in stakeholder submissions, changes are proposed to the draft Rule amendment that was released for public consultation. These changes would improve clarity around the operation of the Rule and provide greater certainty to project proponents on how the Rule will be administered. This has benefits for land owners, local communities and the carbon market.

## 5. What is the best option from those you have considered?

Option 2 is the preferred option because it provides greater regulatory certainty, allows farmers to continue to access the benefits of the ERF and proactively manages the risk of material adverse impacts on agricultural production or local communities. It balances regulatory burden with administrative simplicity and capacity to achieve the stated policy objective. Many stakeholders identified the positive impacts from ERF regeneration projects in their submissions during the consultation period, which highlights the importance of assessing the likely impacts of individual projects rather than implementing a blanket restriction on all new projects of a particular size. The evaluation of costs and benefits provided in section 3 suggests Option 2 provides the best balance between sufficiently addressing the policy objective and minimising regulatory burden.

In addition, Option 2 would not impact small-scale ERF project proponents and would contribute towards improving community acceptance of the ERF and investor confidence in the carbon market. This option would also ensure equal treatment of all LGAs and support local and state pest and weed management.

## 6. How will you implement and evaluate your chosen option?

The process for implementing the Rule amendment would be determined once the Rule amendment is made and implementation commences. This would include defining the scope of the assessment of notifications to be conducted by the Department of Agriculture, Water and the Environment supported by ABARES.

At a high level, the rule amendment implementation process would include:

1. Project proponents would notify the Agriculture Minister of the proposal. The notification would need to include:
  - a. Boundaries and number of hectares to be covered by project activities;
  - b. Type of project activities;
  - c. Recent agricultural land use (e.g. types and areas of crops and livestock); and
  - d. Recent agricultural production (e.g. crop yields and livestock numbers).
2. The Department of Agriculture, Water and the Environment would assess the applications to inform decisions by the Minister. This assessment would draw on data and advice from ABARES, and may include consideration of the following factors and potential for them to have undesirable impacts on the region's agricultural production or the local community:



- a. The size of the proposed project area relative to the agricultural region and the proportion of arable or pastoral land in the region to be impacted;
  - b. The types of commodities/industries to be impacted and their relative significance within the region. The relative significance may be determined by considering, among other factors, the size/value of commodities impacted by the proposed project as a proportion of the region's production;
  - c. Impacts on agricultural processors or agribusinesses in the region;
  - d. Impacts on infrastructure for the agricultural industry — for example, the capacity and feasibility of existing infrastructure to support the proposed project and the rest of the region's agricultural industry;
  - e. Industry trends in the relevant region — for example, whether there are growing or declining agricultural industries, or niche market products that will be impacted by the project;
  - f. Effects on local community — for example, whether economic activity of the local community will be impacted by the project;
  - g. Recent land use changes of a type that may occur in other similar projects;
  - h. Whether the proponent has considered bushfire, soil, weed and pest management risks for the projects and the potential impacts on neighbouring properties;
  - i. Other information on the region's agricultural sector and potential impacts.
3. If the Agriculture Minister did not subsequently determine the project would have adverse impacts, the project could be submitted to the Clean Energy Regulator for approval.
  4. Where the Agriculture Minister intends to make an adverse impact finding, the project proponent would be advised of that intention and given an opportunity to submit further information before the Minister made a final decision.
  5. Where the Agriculture Minister makes a final adverse impact finding, the Clean Energy Regulator would be notified, and would be unable to approve registration or expansion of the project.

The notification process would apply only to newly proposed projects or project expansions under the HIR and NFMR methods that are bigger than 15 hectares and that make up more than a third of a farm.

The additional reporting on weed and pest control compliance would apply to any project under the HIR and NFMR methods.

It is expected implementing this rule amendment would be relatively simple as a similar rule has been successfully implemented for plantation forestry projects, and proposed reporting requirements are similar to other reporting requirements in the ERF. However, some implementation challenges may emerge:

**Increased administrative costs and delays caused by notification process**

Likelihood: low | Consequence: medium | Residual risk rating: low

*Mitigation actions*

- The project proponent will have 18 months up to the date of submitting a project registration application or project expansion application to the Clean Energy Regulator (including on the day of application) to make a notification.

- The project proponent would be informed within 30 days whether the Agriculture Minister intends to make an adverse impact finding and invite the proponent to respond within a specified period.
- The Department of Agriculture, Water and the Environment’s website will provide clear guidance on the information required to be submitted together with the notification. The guidelines for plantation forestry notifications provide an example of the type of guidelines that may be published for the proposed Rule amendment: [www.awe.gov.au/agriculture-land/farm-food-drought/climatechange/mitigation/cfi/plantation-forestry-notifications](http://www.awe.gov.au/agriculture-land/farm-food-drought/climatechange/mitigation/cfi/plantation-forestry-notifications)

**Increased administrative costs and delays caused by additional reporting on weed and pest control compliance**

Likelihood: low | Consequence: medium | Residual risk rating: low

*Mitigation actions*

- It is expected that additional reporting on projects’ compliance with state, territory, and local government rules for managing pests and weeds would not add administrative costs for project proponents as it will entail reporting on activities that project proponents are already required to undertake under current arrangements.
- The requirement for projects to report on how they are complying with state and local weed and pest regulations is similar to reporting requirements under other ERF methods.

**Technical complexities around determining the impact of proposed projects on agricultural production or local communities, which may lead to potential adverse impacts being over or under estimated.**

Likelihood: medium | Consequence: high | Residual risk rating: medium

*Mitigation actions*

- ABARES would assist the Department of Agriculture, Water and the Environment with the project impact analysis to inform a decision by the Minister. ABARES and Department of Agriculture, Water and the Environment’s teams have the right skills and experience to perform this function and have been successful at supporting the implementation of a similar rule for new plantation forestry projects.

The Government will monitor the implementation of the changes to the Rule, including their impacts on ERF project registrations and regional communities.

The issues the Rule amendment seeks to address have proven challenging to evaluate in the past through existing mechanisms. The Government’s Long-Term Emissions Reduction Plan includes five-yearly reviews of: a) domestic emissions reduction policies, emissions trends and progress in reducing emissions, to inform Australia’s Nationally Determined Contributions under the United Nations Framework Convention on Climate Change; and b) impacts on households and regions of Commonwealth, State and Territory emissions reduction policies. These reviews will more directly address the relevant types of impacts that the policy measure seeks to address. The Government proposes these five-yearly reviews consider the Rule change. More broadly, reviewing the implementation of the ERF as part of these reviews would improve integrity of the scheme and build community confidence. The review cycles would provide regular feedback on government implementation. The first review is due in 2023.

The Department is also supporting the commissioning by the South West Queensland Regional Organisation of Councils of a study on impacts from ERF projects in South West Queensland, which is expected to be completed by mid-2022. This study will provide more information about economic, social and environmental impacts of native forest regeneration projects. The study could also provide insights on areas to focus monitoring and adaptive management efforts around the implementation of the rule. It could help inform any consideration of

these impacts by the Climate Change Authority in its future reviews of the ERF, as well as informing reviews under the Long-Term Emissions Reduction Plan.

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### Data sources

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