

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Climate Change and Energy

Carbon Credits (Carbon Farming Initiative) Amendment (Specified Tree Planting) Rule 2023

Carbon Credits (Carbon Farming Initiative) Act 2011

Legislative Authority

Section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) provides that the Minister may make legislative rules required or permitted by the Act to be prescribed by the legislative rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) is made under section 308 of the Act.

The power in section 308 to make legislative rules includes the power to vary or revoke such rules, in like manner and subject to like conditions (relying on subsection 33(3) of the *Acts Interpretation Act 1901* (AI Act)).

Section 56 of the Act empowers the Minister to make legislative rules specifying an offsets project as an ***excluded offsets project*** for the purposes of the Act. The *Carbon Credits (Carbon Farming Initiative) Amendment (Specified Tree Planting) Rule 2023* (the Amendment Rule) is made for the purposes of section 56 of the Act.

Purpose

The Amendment Rule amends the Principal Rule to insert a new condition under section 20AB in which specified tree planting is not considered an ‘excluded offsets project’, and, to repeal the whole of section 20AB on 1 June 2024.

This removes specified tree planting activities from the types of ‘excluded offsets projects’ for the purposes of the Act. An excluded offsets project is not eligible for crediting of greenhouse gas emissions reduction resulting from that activity.

Impact and effect

Schedule 1 of the Amendment Rule allows specified tree planting projects to be registered as a project eligible for the issuance of Australian Carbon Credit Units (ACCUs) if they would not begin the crediting period for their project until 1 June 2024. This new, interim, provision has the effect of enabling projects that would otherwise be subject to the other conditions of section 20AB of the Principal Rule to be able to commence as soon as the whole of section 20AB is repealed by Schedule 2 of the Amendment Rule.

The effect of the Amendment Rule is that specified tree planting projects no longer have to meet certain additional conditions to manage the potential impacts of those kinds of projects on water availability before they can be submitted for registration as a project eligible for the issuance of Australian Carbon Credit Units (ACCUs). The types of ACCU projects that are

subject to the changes are plantation forestry, farm forestry, and permanent planting that are not environmental planting projects.

Removal of these requirements will reduce regulatory burden and thereby facilitate uptake of projects that assist in achieving the objects of the Act, which relevantly include:

- removing greenhouse gases from the atmosphere, and avoiding emissions of greenhouse gases, to meet Australia's international obligations under the Climate Change Convention, the Kyoto Protocol, the Paris Agreement, and any other international agreement;
- creating incentives for people to carry on certain offsets projects;
- increasing carbon abatement in a manner that is consistent with the protection of Australia's natural environment, and improves resilience to the effects of climate change; and
- facilitating the achievement of Australia's greenhouse gas emissions reduction targets.

Australia's greenhouse gas emissions reduction targets, which reflect its nationally determined contribution under the Paris Agreement, have been legislated in the *Climate Change Act 2022* as a reduction of greenhouse gas emissions of 43% below 2005 levels by 2030, and net zero emissions by 2050.

Background

The Act enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved by either reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it. ACCUs may be issued for abatement that has been achieved as a result of an eligible offsets project. One ACCU is issued for each tonne of abatement from a project.

Offsets projects are not eligible to register to generate ACCUs if they are 'excluded offsets projects' (paragraph 27(4)(m) of the Act). The Minister can, under section 56 of the Act, make legislative rules specifying a kind of project as an excluded offsets project, subject to the statutory precondition in subsection 56(2).

In 2011, specified tree planting was originally specified, in regulation 3.37 of the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations), as a kind of excluded offsets project, except where certain conditions were met. The conditions covered situations where impacts on water availability would be unlikely to be material or could be managed appropriately. This was done to manage potential adverse impacts of these projects on water availability. Since the creation of the Emissions Reduction Fund, the Regulations were gradually transferred into the Principal Rule through amending instruments.

In April 2022, regulation 3.37 was incorporated into the Principal Rule by the *Carbon Credits (Carbon Farming Initiative) Amendment (Excluded Offsets Project) Rule 2022*, which inserted section 20AB into the Principal Rule. Section 20AB has been colloquially known as the 'water rule'.

The 'water rule' provided that specified tree planting – defined to mean the planting of trees in an area that, according to the Carbon Farming Initiative rainfall map, receives more than 600 millimetres long-term average annual rainfall – was an excluded offsets project, unless

the project met the conditions set out in subsections 20AB(2) to (6) or subsection (9) of the Principal Rule. To meet the conditions, these projects were required to:

- be a permanent planting that is also an environmental planting; or
- demonstrate that the planting contributes to the mitigation of dryland salinity in accordance with Salinity Guidelines; or
- be located in a region where the Department of Climate Change, Energy, the Environment and Water (the department) has determined that the commitments by the relevant state or territory government under the National Water Initiative (NWI) to manage water interception by plantations have been adequately implemented; or
- be in a region specified as one which receives more than 600 millimetres long-term average annual rainfall, and in which tree planting is unlikely to have a material adverse impact on water availability; or
- be conducted by a project proponent holding a suitable water access entitlement that met certain specified requirements; or
- be located in a region where a water access entitlement cannot be obtained, and where the Clean Energy Regulator was satisfied, after seeking the advice of the relevant state or territory agency that manages the water resource and other expert advice as necessary, that there is no material impact on water availability, or on the reliability of existing water access entitlements, in or near the project area, for the duration of the project.

In practice since the ‘water rule’ was introduced, these conditions have most commonly applied to the registration of new plantation forestry and, to a lesser extent, farm forestry ACCU projects.

Legislative criteria

Under subsection 56(2) of the Act, before making legislative rules specifying a particular kind of project as an excluded offsets project, the Minister must have regard to whether there is a material risk that that kind of project will have a material adverse impact on one or more of the following:

- a) the availability of water;
- b) the conservation of biodiversity;
- c) employment;
- d) the local community;
- e) land access for agricultural production.

Subsection 33(3) of the AI Act has the relevant effect that the Minister can vary or revoke rules made for the purposes of section 56 of the Act, provided that the variation or revocation complies with the same statutory preconditions as apply to making the rules. This means that the Minister, when deciding whether to amend the Principal Rule to repeal section 20AB, was required to have regard to the matters listed in subsection 56(2) of the Act.

The Minister’s consideration of these matters is set out below.

a) Availability of water

The *Intergovernmental Agreement on a National Water Initiative* (NWI) was agreed by all states and territories and the Commonwealth in 2004. The NWI identified large-scale plantation forestry as a land use change activity with potential to intercept significant

quantities of water (clause 55 of the NWI). Parties agreed that the states and territories are responsible for managing water interception by land use change activities, and for implementing specified measures to address it (clause 57 of the NWI). Section 20AB of the Principal Rule was drafted to recognise state and territory government responsibilities for water management, and their commitments under the NWI to manage water interception by plantations.

The total national area of plantations has been declining since 2014-15, with relatively small areas of new plantations being established and larger areas of existing plantations being converted to other land uses. The potential to generate ACCUs, which may improve financial viability of new plantations, is one of many considerations in decisions to establish plantations. Some plantations may not be established with the intent of earning ACCUs, and some may not meet ACCU scheme eligibility requirements. However, whether or not plantations earn ACCUs does not affect their impact on water availability. Consequently, management of water interception by plantations requires a holistic approach, irrespective of whether growers intend to generate ACCUs from their plantations.

The Amendment Rule recognises the role of state and territory governments in water management. Schedule 1 commences on the day after the Amendment Rule is registered, to allow specified tree planting projects to be declared eligible offsets projects, but not to start these projects, before the day that section 20AB is repealed by Schedule 2.

Schedule 2 commences on 1 June 2024, to allow states and territories time, where necessary, to implement any additional measures necessary to manage the impacts of plantation projects, consistent with their obligations under the NWI. In the interim, Schedule 1 provides that tree planting activities that would otherwise be excluded offsets projects cannot commence in practice until after section 20AB of the Principal Rule has been repealed.

Experience from application of section 20AB of the Principal Rule shows there are current circumstances in which plantation forestry ACCU projects can go ahead without having adverse impacts on water availability. For example, in accordance with subsection 20AB(5), the Australian Government has specified several regions in which tree planting is unlikely to have a material adverse impact on water availability. The government specified these regions after taking into account risk-based assessments, which found that, in most of the assessed regions, impacts are manageable, and plantings can be established without having adverse impacts on water availability. The assessments included:

- identifying where there is no evidence of plantations intercepting water that would otherwise be available for regulated consumption or environmental use.
- considering state and regional arrangements in place, the region's water allocations, risks to water resources, and monitoring and reporting.

Some plantation forestry projects have met the requirements of section 20AB by being located in a specified region. Several projects have met other conditions under section 20AB.

Other existing requirements for ACCU projects will continue to provide for management of any potential effects of plantation forestry and farm forestry projects on water availability. In particular, all projects must comply with environmental, water and planning regulations at all levels of government, and must have all necessary approvals before they can receive credits (section 28 of the Act).

b) Conservation of biodiversity

Section 20AA relevantly specifies the following kinds of project as excluded offsets projects:

- planting of a species in an area where it is a known weed species
- establishing vegetation on land where a native forest has been illegally cleared or a wetland has been illegally drained
- establishing vegetation on land where there has been legal clearing of native forest or draining of a wetland, within 7 years of application for registration of a project (or 5 years where land ownership has changed).

Specifying these kinds of projects as excluded offsets projects provides ongoing protection against projects having adverse impacts on biodiversity, by preventing projects that would use weed species and providing a disincentive to clear native vegetation for the purpose of conducting an ACCU project.

The ongoing requirements for ACCU projects to comply with regulations, and to have all necessary approvals before they can receive credits, also support protection of biodiversity.

c) Employment

New specified tree planting ACCU projects are expected to be mainly located in Regional Forestry Hubs. The Australian Government has supported establishment of 11 Regional Forestry Hubs since 2019, in regions where forest growing, processing and transport operations are well-established and where there is good potential for industry growth. Establishing projects in these areas could provide benefits for employment in forest industries.

d) Local community

Section 20AA of the Principal Rule specifies projects that involve establishing a forest under a specific forestry managed investment scheme as excluded offsets projects. This ongoing exclusion ensures the additive effect of forestry managed investment scheme taxation incentives and the ACCU scheme does not have adverse impacts on communities.

The expected establishment of plantation forestry projects mainly in Regional Forestry Hubs could also provide benefits for communities associated with forest industries in these regions.

e) Land access for agricultural production

Section 20B of the Principal Rule specifies projects that involve the establishment of a new plantation forest as an excluded offsets project in certain circumstances where the Agriculture Minister considers the project would have an undesirable impact on agricultural production in the region. This ongoing exclusion ensures that potential adverse impacts of plantation forestry projects on land access for agricultural production is considered before a new eligible offsets project can be declared under section 27 of the Act.

The exclusion on projects with forests established under a managed investment scheme also provides protection against adverse impacts on land access for agricultural production.

Conclusion

For the reasons set out above, the Minister considered that the kind of project covered by section 20AB is unlikely to have a material adverse impact on the availability of water, the conservation of biodiversity, employment, the local community, or land access for agricultural production – and therefore should not be specified as an excluded offsets project. The Minister therefore considered that it was appropriate to remove section 20AB from the Principal Rule, and to allow these projects to be declared eligible offsets projects, but not to commence, before it is removed.

Consultation

Public consultation on the proposed repeal of section 20AB of the Principal Rule was undertaken from 4 October 2022 to 15 November 2022. Twenty submissions were received in response to the consultation paper.

The Minister for Climate Change and Energy wrote to state and territory government water and agriculture ministers to invite their comments on the proposed amendment. The department discussed the proposal with relevant state and territory agencies.

Submissions were received both in support of and opposing the proposed amendments. The majority supported the proposed amendments. The commencement date 1 June 2024 for repeal of section 20AB was adopted in light of comments received in relation to the ongoing need to manage impacts plantations on water availability. The commencement date takes into account timing of renewal of the NWI, and implementation by state and territory governments, while maintaining the policy intent of the proposed amendments.

Regulatory Impact

The department consulted the Office of Impact Assessment on the need for a Regulation Impact Statement (RIS). The office advised that a RIS was not required (ref ID OBPR22-02661).

Details and Operation

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

Schedule 1 of the Amendment Rule commences on the day after it is registered. Schedule 2 of the Amendment Rule commences on 1 June 2024.

Other

The Amendment Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Rule is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

Details of the Carbon Credits (Carbon Farming Initiative) Amendment (Specified Tree Planting) Rule 2023

Section 1 – Name

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (Specified Tree Planting) Rule 2023* (the Amendment Rule).

Section 2 – Commencement

Section 2 provides for Schedule 1 of the Amendment Rule to commence the day after it is registered on the Federal Register of Legislation and for Schedule 2 to commence 1 June 2024.

Section 3 – Authority

Section 3 provides that the Amendment Rule is made under section 308 of the Act.

Section 4 – Schedules

Section 4 has the effect that the Amendment Rule amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) in the manner set out in the Schedules.

Schedule 1 – Amendments commencing on the day after registration

This Schedule sets out amendments to the Principal Rule made by the Amendment Rule.

Item 1 – Subsection 20AB(1)

This item omits the words “subsections (2) to (6)” from subsection 20AB(1) of the Principal Rule and substitutes them with “subsections (1A) to (6)”. This substitution allows a new subsection (1A) to be included within the listed circumstances in which specified tree planting projects are not considered to be excluded offsets projects under paragraph 27(4)(m) and subsection 56(1) the Act.

Item 2 – After subsection 20AB(1)

This item inserts a new subsection (1A) after subsection 20AB(1) of the Principal Rule. This subsection sets out that specified tree planting is not an excluded offsets project if an application for a declaration of the project under section 27 of the Act includes:

- a statement to the effect that the crediting period for the project should begin on or after 1 June 2024, which is defined as the *eligibility date*; and
- an undertaking that that date will not be varied to an earlier date than the eligibility date.

Under paragraph 27(3)(cb) of the Act, a declaration of an offsets project as an eligible offsets project must identify the crediting period or periods for the project. The *start time* of the crediting period is defined by subsection 69(4) of the Act and includes a statement to the effect that a crediting period for a project should begin at a specified time that is included in an application for the declaration of an eligible offsets project.

Subsection 20AB(1A) allows specified tree planting projects to be declared eligible offsets projects if they set, and do not bring forward, a start time that is on or after 1 June 2024. On

this date Schedule 2 of the Amendment Rule commences, repealing the whole of section 20AB of the Principal Rule.

Schedule 2 – Amendments commencing 1 June 2024

This Schedule sets out amendments to the Principal Rule made by the Amendment Rule.

Item 1 – Section 20AB

This item repeals section 20AB of the Principal Rule, which provides that ‘specified tree planting’ is an excluded offset project, unless it falls within the listed circumstances in which specified tree planting projects are not considered to be excluded offsets projects.

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 (Specified Tree Planting) Rule 2023

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

Overview of the Legislative Instrument

The purpose of the *Carbon Credits (Carbon Farming Initiative) Amendment (Specified Tree Planting) Rule 2023* (the Amendment Rule) is to amend the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) to repeal section 20AB. This has the effect of removing specified tree planting activities from the types of ‘excluded offsets projects’ that are not eligible for crediting of greenhouse gas emissions reduction resulting from that activity.

The Amendment Rule will mean that specified tree planting projects do not have to meet certain additional conditions to manage the potential impacts of those kinds of projects on water availability, before they can apply to register a project eligible for Australian Carbon Credit Units. Removal of this requirement will reduce regulatory burden and thereby facilitate uptake of projects that support progress against Australia’s greenhouse gas emissions reduction targets set by the *Climate Change Act 2022*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Chris Bowen MP

Minister for Climate Change and Energy