

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for the Environment and Energy

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2017

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 Rule (No. 2) 2017* (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 in plantation forestry projects. The Amendment Rule applies a permanence period discount of 25 per cent to short-rotation plantation forestry projects that nominate a 25-year permanence period. The Amendment Rule also restricts eligibility of new plantation forestry projects where the Australian Government Agriculture Minister has assessed that they would have an undesirable impact on agricultural production in the region where the project would be located.

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 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 Emissions Reduction Fund 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 and the Kyoto Protocol.

The Emissions Reduction Fund 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.

Background: Plantation Forestry

Plantation forests established for the harvest of forest products deliver greenhouse gas abatement by sequestering carbon as they grow.

The *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017* (the Plantation Forestry Determination) provides a mechanism to increase carbon sequestration through establishing new plantation forests, and increasing sequestration in existing plantation estates through transition from short-rotation plantation forests to long-rotation plantation forests. Eligible activities are:

- establishment of a new plantation forest on land that has had no plantation forest for seven years; or
- conversion of a short-rotation plantation to a long-rotation plantation, where the conversion might occur either part-way through the short-rotation plantation cycle, or following harvest of a short-rotation plantation; or
- maintenance of a pre-existing plantation forest that meets the eligibility requirements of the Plantation Forestry Determination but was established under another determination.

The amendments to the Principal Rule help ensure that the Plantation Forestry Determination meets the offsets integrity standards specified in section 133 of the Act and that it avoids adverse impacts from the carrying out of plantation forestry projects.

Section 23 of the Act provides that, if a project is a sequestration offsets project, an application to the Regulator under section 22 must include a request that the project be subject to either a 100-year or 25-year permanence period. Then, if the Regulator declares that the project is an eligible offsets project, the Regulator will declare that the project is subject to a 100-year or 25-year permanence period.

If the project proponent elects a 25-year permanence period, a permanence period discount number applies in accordance with section 16 of the Act. The purpose of the permanence period discount number is to withhold crediting for projects with a 25-year permanence period, based on the risk that carbon will no longer be stored in these projects after the end of their permanence period. The Emissions Reduction Fund White Paper explains the purpose of the discount as follows:

This discount reflects the potential cost to Government of replacing carbon stores if 25-year projects are discontinued. In practice, however, many carbon sequestration projects are likely to be retained as they will continue to deliver co-benefits for natural resource management and agricultural productivity.

Paragraph 16(2)(a) of the Act provides that the permanence period discount number is 20 per cent of the net abatement number unless another percentage is specified in the legislative rules.

Paragraph 133(1)(g) of the Act requires methodology determinations to provide for conservative estimates, projections or assumptions. The Plantation Forestry Determination includes an assumption that projects replant after harvest for at least 100 years after declaration, regardless of whether they have a 100-year or 25-year permanence period. Where short-rotation plantation forestry projects with a 25-year permanence period are discontinued after the conclusion of the permanence period, the Plantation Forestry Determination would not comply with this requirement of the Act because of the associated loss of stored carbon and the financial cost to the Government of replacing these carbon stores if the standard 20 per cent discount applied. It is understood that in some circumstances proponents may choose not to expend the money necessary to replant short-rotation plantations outside of their permanence period. Therefore, to ensure the Plantation Forestry Determination's assumptions are conservative and consistent with the Act, the Amendment Rule applies a permanence period discount of 25 per cent for short-rotation plantation forestry projects that elect a 25-year permanence period. The Emissions Reduction Assurance Committee considered that this level of increased discounting would allow for the assumptions in the method to be considered conservative and meet the offsets integrity standards.

In making a methodology determination the Minister for the Environment and Energy 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.

New plantations are commonly established on land previously used for agriculture. The Amendment Rule restricts eligibility of new plantation projects where the Australian Government Agriculture Minister or their delegate (hereafter referred to as the Agriculture Minister) has assessed that they would have an undesirable impact on agricultural production in the region. This requirement complements the eligibility requirements of the Plantation Forestry Determination. The requirement applies only to projects involving establishment of a new plantation forest (that is, a project that converts non-forest land to forest). That project 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 the Environment and Energy has considered whether there is a material risk that new plantation forests will have a material adverse impact on land access for agricultural production and considers this additional excluded offsets project definition will help mitigate these risks.

The *Carbon Credits (Carbon Farming Initiative) (Measurement Based Methods for New Farm Forestry Plantations) Methodology Determination 2014* (Farm Forestry Determination) provides for tree planting activities including establishment of plantation forests. The Amendment Rule also applies to projects to establish plantation forests under the Farm Forestry Determination in the same way as projects under the Plantation Forestry Determination. There are currently no projects registered on the Farm Forestry Determination.

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 Regulations provide detailed explanations of the way in which the Act is administered by the Regulator.

The Minister for the Environment and Energy is empowered to make legislative rules under section 308 of the Act. The Amendment Rule supports operation of the Plantation Forestry and Farm Forestry Determinations, through two additions to the Principal Rule.

The Amendment Rule inserts in the Principal Rule section 9A, which applies a permanence period discount of 25 per cent for short-rotation plantation forestry projects with a 25-year permanence period.

The Amendment Rule also inserts in the Principal Rule section 20B, which provides that a project involving establishment of a new plantation forest is an excluded offsets project under specified circumstances. An excluded offsets project cannot be declared an eligible offsets project.

The Amendment Rule inserts paragraph 23(3)(n), to require any application to the Regulator to vary a plantation forestry 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 20B 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 and Water Resources' website). New subsection 13(3) requires the same information for an application to establish a new plantation forest.

Detailed description of the Amendment Rule

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

Public consultation

Public consultation was undertaken from 2 December 2016 to 30 December 2016, in conjunction with consultation on the draft Plantation Forestry Determination. Stakeholders were invited to make written submissions on an appropriate permanence period discount number for plantation forestry projects and on an exposure draft of section 20B.

Regulatory impact

The Office of Best Practice Regulation has agreed that these amendments have a minor regulatory impact, and a Regulatory Impact Statement is not required.

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.

Details of the sections in the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2017*

1. Name

Section 1 provides that the name of the draft Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2017*.

2. Commencement

Section 2 provides that the draft Amendment Rule would commence on the day after it is registered.

3. Authority

Section 3 provides that the draft Amendment Rule would be made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*. In particular, section 308 of the Act includes the power for the Minister to make legislative rules.

4. Schedules

Section 4 provides that the draft Amendment Rule would, when made, amend the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) in the manner set out in the schedules.

Schedule 1—Amendments

1. Section 9A (Permanence period discount number—short-rotation plantation projects)

This item inserts a new section 9A, which provides a permanence period discount number for short-rotation plantation forestry projects carried out under the Determinations, where those projects have a 25-year permanence period.

Subparagraph (c)(ii) of the definition of ***permanence period discount number*** in section 16 of the Act provides that the legislative rules may specify a percentage for a particular kind of project. The project must have a 25-year permanence period and be of the kind specified in the legislative rules. Further, the specified amount must be included in the legislative rules at the start of the crediting period in which the reporting period is included. The new subsection 9A(2) provides that the value for the definition of permanence period discount number in section 16 of the Act is 25 per cent.

For the purpose of determining the permanence period discount number for short-rotation plantation forestry projects, section 9A defines the rotation length of short-rotation plantation forestry projects to be less than 20 years. That is, section 9A only applies to plantation forestry projects that include a rotation length of less than 20 years in any part of the project over the 100 years after the declaration of the project. Plantation forestry projects with all rotation lengths of 20 years or more and a 25-year permanence period will have a permanence period discount number of 20 per cent in accordance with paragraph 16(2)(b) of the Act.

Section 9A does not prevent a change in rotation length (subject to meeting any relevant requirements of the Determinations) following commencement of a plantation forestry project. For example, if a plantation forestry project is a 25-year permanence period project

and all or part of the project commences with a rotation length of less than 20 years, the permanence period discount number will be 25 per cent. If the rotation length is subsequently changed to 20 years or more for all rotations (without any rotation actually being less than 20 years), the permanence period discount number for subsequent reporting periods will be 20 per cent (as under subparagraph (c)(iii) of the definition of permanence period discount number the project will no longer be of the kind specified in the legislative rule and paragraph (b) of the definition would then apply). Conversely, if a project started with all rotation lengths longer than 20 years, but rotation lengths changed so that a rotation length was less than 20 years, that project would then have the 25 per cent discount applied for all future certificates of entitlement (as under subparagraph (c)(iii) of the definition of permanence period discount number the project will now be of a kind prescribed in the legislative rules and that rule existed at the start of the crediting period for the project as required by paragraph (c)(ii)).

The description in the new subsection 9A(1) of the type of project the section applies to is consistent with definitions of project type in the Determinations. The rotation length for section 9A is not related to the definitions of short rotation and long rotation in the Plantation Forestry Determination. Those definitions are specific to project activities involving conversion of an existing short-rotation plantation forest to a long-rotation plantation forest.

As the existence of any rotations less than 20 years over the 100 year period after declaration for the project results in a higher permanence period discount for the whole of the project, proponents are advised to establish separate projects for those areas to which section 9A applies and areas without short-rotation plantation forests. Additionally, proponents would be expected to avoid moving areas of land that are short-rotation plantation forests into a project with long-rotation plantation forests under section 23 of the Principal Rule, as from that point the higher permanence period discount would apply to the whole of the project.

Note that the 5 per cent risk of reversal buffer is not impacted by the legislative rules and applies in addition to the applicable permanence period discount number for all projects. This makes the total discounts:

- 5 per cent for all 100-year permanence period projects;
- 25 per cent for 25-year permanence period projects with all rotation lengths of 20 years or more;
- 30 per cent for 25-year permanence period projects with a rotation length of less than 20 years.

2. Subsection 13(3)

New subsection 13(3) applies when the proponent submits an application to declare a project for the establishment of a new plantation forest an eligible offsets project. These applications must include the notification required under section 20B and supporting information provided to the designated email account (an email address published on the Department of Agriculture and Water Resources' website). 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.

3. Section 20B (Excluded offsets project—certain new plantation forests)

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 new plantation forestry 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 a project involving establishment of a new plantation forest is an excluded offsets project under specified circumstances. These provisions are set out in section 20B.

The purpose of section 20B is to establish a process for adverse impacts on agricultural production to be assessed by the Agriculture Minister. It means that a project proponent for a new plantation forest 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 an undesirable impact on agricultural production in the region where the project would be located. 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 an undesirable impact on the region's agricultural production.

It is intended that the assessment of undesirable impacts would focus on whether the proposed project would have an 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, 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 an undesirable impact on agricultural production, an additional assessment within a further 45 days is undertaken. Accordingly, the maximum time limit for the process is 75 days after the notification is made.

The intent of the section is to allow for a streamlined process for projects that are unlikely to have an undesirable 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 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.

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 20B(1) applies to an application to the Regulator under section 22 of the Act for declaration of an eligible offsets project involving establishment of a new plantation forest.

If a proponent of a new plantation forestry project does not submit a new ERF plantation 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 20B(8)) would not count as a valid new ERF plantation notification, and this would result in the project being an excluded offsets project. Proponents in this situation will need to submit a valid new ERF plantation 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 20B(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 20B(1)(a).

In addition, the plantation notification must meet all the requirements of the subparagraphs of paragraph 20B(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 plantation 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 the new ERF plantation notification. Therefore, if any of the project area specified in the application for declaration is outside of the area mapped for the new ERF plantation 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 plantation 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 plantations 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 made into plantations. This would allow a project proponent to submit a notification for an area before they had acquired the land to undertake the project.

- iv. A new ERF plantation notification cannot be submitted if it had previously been submitted 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 plantation 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 plantation forestry project or expansion is assessed for undesirable impacts on agricultural production and can consider the impact of existing projects on the region.

Paragraph 20B(1)(b) sets out the two-stage process for the Agriculture Minister to respond to a new ERF plantation notification meeting the requirements of paragraph 20B(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 20B(1)(b)(i) is sent within 30 days, the project could be declared by the Regulator if all other relevant scheme requirements are met.

Subparagraph 20B(1)(b)(i) sets out the timeframe for the Agriculture Minister to consider whether a project would have an undesirable impact. If the Agriculture Minister determines that a project is likely to have an undesirable impact on agricultural production, 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

- (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 plantation notification being made if this process is to commence. The effect of this is that after the 30 days have expired, subparagraph 20B(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.

- 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'.

- 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.

Scenario (C) Agriculture Minister has not responded within 45 days – 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.

For example, a proponent wants to start a new plantation forestry project. First they prepare a new ERF plantation 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 and Water Resources' website. They send the new ERF plantation notification to an email address published on the Department of Agriculture and Water Resources' 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).

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 an 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.

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.

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 and Water Resources' website.

Subsection 20B(2) applies to an application to the Clean Energy Regulator under subsection 23(3) of the Principal Rule to vary declaration of an eligible offsets project involving establishment of a new plantation forest, 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 20B(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 20B(1).

Paragraph 20B(3)(a) specifies which new ERF plantation notification to use if a proponent made multiple notifications. The process outlined in subsection 20B(1) forms a single new ERF plantation notification, which is permitted to be updated within a given timeframe. If a proponent were to submit another new ERF plantation notification while they currently had a new ERF plantation notification under consideration by the Agriculture Minister, then the notification currently in progress would be terminated and a new process to consider the new ERF plantation notification just submitted would commence. This would reset the timeframe for considering the new ERF plantation notification just submitted. This would necessitate

the submission to the Regulator of a new application for declaration under section 22 of the Act as a revised notification could be made after an application has been submitted to the Regulator.

Paragraph 20B(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 20B(1)(a) or 20B(2)(a). The Department of Agriculture and Water Resources 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 20B(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 20B(1) or subsection 20B(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 and the project would not be an excluded offsets project.

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

Subsection 20B(6) requires the Agriculture Minister to arrange for ERF plantation 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 plantation forestry project as an eligible offsets project.

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

Paragraph 20B(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 20B(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 20B(1)(b)(i) or 20B(2)(b)(i), then the Regulator can proceed once the 45 day timeframe for the Agriculture Minister to make a ruling has elapsed. Subparagraph 20B(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.

Paragraph 20B(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.

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

new ERF plantation notification and ***ERF plantation 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 an adverse impact on agricultural production in the region. Proponents can seek guidance on satisfying these requirements on the Department of Agriculture and Water Resources' website. Applicants need not acquire the land or legal right for their proposed project before making a new ERF plantation notification but would be expected to have the legal right to carry out the project before applying to the Regulator.

Note that the CFI Mapping Guidelines are defined in section 4 of the Principal Rule and can be found on the Department of the Environment and Energy's website: www.environment.gov.au. The Department of Agriculture and Water Resources' website can be found at www.agriculture.gov.au. The incorporation of documents as in force from time to time is provided for in section 304 of the Act.

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.

4. Paragraph 23(3)(n) (before the note)

Paragraph 23(3)(n) applies when the proponent submits an application to vary the project area for a plantation forestry project. The Amendment Rule inserts paragraph 23(3)(n), to require any application to the Regulator to vary a plantation forestry 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 20B and supporting information sent to the designated email account.

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 Rule (No. 2) 2017

The *Carbon Credits (Carbon Farming Initiative) Amendment Rule (No. 2) 2017* (the **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.

The Amendment Rule details additional administrative procedures under the Act, associated with methodology determinations to credit the storage of carbon in plantation forestry projects. The Amendment Rule applies a permanence period discount of 25 per cent to short-rotation plantation forestry projects that nominate a 25-year permanence period. The Amendment Rule also restricts eligibility of new plantation forestry projects where the Australian Government Agriculture Minister has assessed that they would have an undesirable impact on agricultural production. It does this by amending the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the **Principal Rule**).

Human rights implications

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

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

Conclusion

The 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*.