

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 (Plantation Forestry) 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 (Plantation Forestry) Rule 2022* (the Amendment Rule) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule). The Amendment Rule expands the application of the permanence period discount of 25 per cent in section 9A of the Principal Rule to continuing plantation forestry projects.

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. Further information on the Emissions Reduction Fund is available at: www.industry.gov.au/funding-and-incentives/emissions-reduction-fund or www.cleanenergyregulator.gov.au/ERF.

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.

The Act is supported by subordinate legislation, including methodology determinations, the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (Principal Rule) and the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Regulations). The Principal Rule and the Regulations provide detailed explanations of the way in which the Act is administered by the Clean Energy Regulator (the Regulator).

Background: Plantation Forestry

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

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 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 resources 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 rules. The Principal Rule provides that the permanence period discount number is 25 per cent for the establishment of a plantation for the harvest of forest products established by planting or seeding where any rotations are less than 20 years. The Amendment Rule expands the application of the 25 per cent permanence period discount number to projects to establish or continue plantations for the harvest of forest products by planting, seeding or coppicing. These projects included in Schedule 3 to the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022* are new and subject to similar permanence risks to short-rotation projects already covered by section 9A of the Principal Rule.

The total discount for projects covered by section 9A of the Principal Rule is therefore 30 per cent, with the addition of the 5 per cent ‘risk of reversal buffer number’ from section 16 of the Act to the 25 per cent ‘permanence period discount number’ prescribed under section 9A. The 100-year permanence period projects are unaffected by section 9A and their total discount remains at 5 per cent.

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 Industry, Energy and Emissions Reduction is empowered to make legislative rules under section 308 of the Act.

The Amendment Rule expands the application of section 9A to continuing plantation forestry projects, in addition to short rotation forestry projects, which have a permanence period discount of 25 per cent with a 25-year permanence period. These types of projects are considered to be at an elevated risk of not replanting at the end of the 25-year permanence period and could consequently be over-credited, as maximum abatement is determined based on the long-term (100-year) average carbon stock. The higher discount helps meet the offsets integrity standard requirement for estimates, assumptions or projections used in a methodology determination to be conservative. These arrangements were considered by the Emissions Reduction Assurance Committee in their advice on the making of the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022*.

The Amendment Rule also inserts section 122 in the Principal Rule, which provides that paragraph 23(1)(f) does not apply to section 23(3) applications submitted before 28 February

2022 for projects where the applicable methodology determination is the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017*. This is a transitional arrangement for pending applications that would otherwise be approved but for the revocation of the 2017 method on

28 February 2022.

Detailed description of the Amendment Rule

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

Public consultation

Public consultation on the permanence period discount number for plantation forestry projects was undertaken in December 2016 and stakeholders were invited to make written submissions on an appropriate permanence period discount number.

The Regulator and the Department of Industry, Science, Energy and Resources consulted on the new plantation method leading up to the release of the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022*. This included information on the new permanence period discount number which applies to continuing plantation forestry projects. The need for the new section 122 was identified as a required transitional measure.

Regulatory impact

The Office of Best Practice Regulation has confirmed that a Regulatory Impact Statement is not required, because the proposal is unlikely to have more than a minor regulatory impact.

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 (Plantation Forestry) Rule 2022

1. Name

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

2. Commencement

Section 2 provides that the Amendment Rule commences on 31 January 2022.

3. Authority

Section 3 clarifies that the Amendment Rule is made under the *Carbon Credits (Carbon Farming Initiative) Act 2011*. 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 *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) in the manner set out in the Schedule.

Schedule 1—Amendments

1. Section 9A (heading)

This item updates the heading to section 9A to reflect amendments made to expand the application of the section to include continuing plantation forestry projects, in addition to short rotation plantation forestry projects.

2. Before subsection 9A(1)

This item inserts a heading to clarify that the existing subsection 9A(1) applies to short rotation plantation forestry projects.

3. After subsection 9A(1)

This item inserts a new subsection 9A(1A) and corresponding heading. The new subsection 9A(1A) applies to continuing plantation forestry projects for the harvest of forest products established or continued by planting, seeding or coppicing. The project area must include land that was managed as a plantation for harvesting forest products in the previous 7 years before an application for the area to be part of the project area was made, and the project activity must not only relate to conversion of plantations from short rotations to rotations that are 20 years or longer. The effect of these requirements is that any projects using Schedule 3 of the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022* to credit abatement from the project will have the higher discount if the projects select a 25-year permanence period. This applies even if other parts of the project are credited under other schedules as only one discount applies to the whole project.

Accordingly, project proponents are expected to keep project areas covered by section 9A and those subject to the standard discounts in separate projects.

The note to the subsection clarifies that subsection 9A(1A) only applies to projects with a crediting period beginning after 31 January 2022. This is due to how section 16 of the Act applies relevant legislative rules on the discounts.

4. After section 121

This item inserts a new section 122 into the Principal Rule.

Section 23 empowers the Clean Energy Regulator to vary a declaration in relation to an offsets project so far as the declaration identifies the project area or areas. Under paragraph 23(1)(f), the Regulator, on receiving an application under subsection 23(3), may vary a declaration under section 27 of the Act in relation to an area-based offsets project if satisfied, amongst other matters, that the proposed variation would not result in an area of land that is not part of the existing project area being included in the project area or becoming a new project area for the project. This applies if the applicable methodology determination for the project is the original methodology determination for the project because of section 125, 126 or 127 of the Act. The general intent of this requirement is to ensure new areas to the scheme are using the latest methodology determination and the calculations in those determinations.

The new section 122 provides that paragraph 23(1)(f) does not apply to applications submitted before 28 February 2022 that relate to a project for which the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017* (2017 Determination) is the applicable methodology determination because of sections 125, 126 or 127 of the Act.

This allows the Regulator to vary a declaration where the applicable methodology determination for the project is not the original methodology determination in respect of applications submitted before 28 February 2022. This would allow the Regulator to approve applications made before 28 February 2022 in respect of the 2017 Determination where the latest determination is actually the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022*. There are not expected to be any integrity risks from allowing this limited period of transition for such area variations.

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 (Plantation Forestry) Rule 2022

The *Carbon Credits (Carbon Farming Initiative) Amendment (Plantation Forestry) 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.

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

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 a project proponent elects a 25-year permanence period, a permanence 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 Amendment Rule expands the application of section 9A to continuing plantation forestry projects, in addition to short rotation forestry projects, which receive a permanence period discount of 25 per cent with a 25-year permanence period. These types of projects are considered to be at an elevated risk of not replanting at the end of the 25-year permanence period and could consequently be over-credited, as maximum abatement is determined based on the long-term (100-year) average carbon stock. The higher discount helps meet the offsets integrity standard requirement for estimates, assumptions or projections used in a methodology determination to be conservative.

The Amendment Rule also inserts section 122 in the Principal Rule, which provides that paragraph 23(1)(f) does not apply to section 23(3) applications submitted before 28 February 2022 for projects where the applicable methodology determination is the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2017* (2017 Determination). This allows the Regulator to approve applications made before 28 February 2022 in respect of the 2017 Determination where the latest determination is actually the *Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022*. There are not expected to be any integrity risks from allowing this limited period of transition for such area variations.

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