Presented and read a first time

Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017

No. 7, 2017

(Environment and Energy)

A Bill for an Act to amend the Carbon Credits (Carbon Farming Initiative) Act 2011, and for related purposes
## Contents

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Short title</td>
</tr>
<tr>
<td>2</td>
<td>Commencement</td>
</tr>
<tr>
<td>3</td>
<td>Schedules</td>
</tr>
</tbody>
</table>

### Schedule 1—Amendments

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Part 1</td>
<td>Consent requirements</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
<tr>
<td>Part 2</td>
<td>Eligible interests in exclusive possession native title land</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
<tr>
<td>Part 3</td>
<td>Amendments relating to sequestration projects</td>
</tr>
<tr>
<td></td>
<td>Division 1—Net total number</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
<tr>
<td></td>
<td>Division 2—Requirements to relinquish Australian carbon credit units</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
<tr>
<td></td>
<td>Division 3—Transition between methodology determinations</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
<tr>
<td>Part 4</td>
<td>Varying conditional declarations</td>
</tr>
<tr>
<td></td>
<td><em>Carbon Credits (Carbon Farming Initiative) Act 2011</em></td>
</tr>
</tbody>
</table>
A Bill for an Act to amend the Carbon Credits (Carbon Farming Initiative) Act 2011, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Carbon Credits (Carbon Farming Initiative) Amendment Act 2017.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.


### Commencement information

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. The whole of this Act</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

1. Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

2. (2) Any information in column 3 of the table is not part of this Act.

3. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Consent requirements

Carbon Credits (Carbon Farming Initiative) Act 2011

1 Paragraph 28A(1)(a)
Omit “an offsets project”, substitute “a sequestration offsets project”.

2 Transitional provision

(1) This item applies if:
   (a) a project has been declared under section 27 of the Carbon Credits (Carbon Farming Initiative) Act 2011; and
   (b) the project is not a sequestration offsets project; and
   (c) the declaration is subject to a condition imposed under section 28A of that Act.

(2) The condition has no effect and, as soon as practicable after the commencement of this Part:
   (a) the Regulator must remove the condition from the declaration; and
   (b) the Emissions Reduction Fund Register must be altered to show that the declaration is not subject to the condition.
Schedule 1  Amendments

Part 2  Eligible interests in exclusive possession native title land

---

Part 2—Eligible interests in exclusive possession native title land

Carbon Credits (Carbon Farming Initiative) Act 2011

3 Subsection 44(4)

Repeal the subsection, substitute:

(4) For the purposes of this Act, if the area of land:

(a) is Crown land; and

(b) is not exclusive possession native title land; and

(c) is not land rights land;

the Crown lands Minister of the State or Territory holds an eligible interest in the area of land.

4 After paragraphs 44(6)(a), 44(7)(a), 45(6)(a) and 45(7)(a)

Insert:

(aa) the area of land is not exclusive possession native title land; and
Part 3—Amendments relating to sequestration projects

Division 1—Net total number

Carbon Credits (Carbon Farming Initiative) Act 2011

5 At the end of subsection 29(3)

Add:

; (l) if the variation would remove an area from the project area of a sequestration offsets project:

(i) determination by the Regulator of the net total number of Australian carbon credit units issued in accordance with Part 2 in relation to the area to be removed; and

(ii) any conditions relating to those Australian carbon credit units that must be met before the declaration is varied.

6 Section 42 (formula)

Repeal the formula, substitute:

Total units issued − Units issued for emissions avoidance − Units relinquished

where:

total units issued means the total number of Australian carbon credit units issued in relation to the project in accordance with Part 2.

units issued for emissions avoidance means the total number of Australian carbon credit units issued in relation to the project in accordance with Part 2 that are, in accordance with the applicable methodology determination, attributable to the avoidance of emissions of one or more greenhouse gases.

units relinquished means the total number of Australian carbon credit units relinquished in order to:

(a) remove an area from the project area for the project (see section 29); or
(b) comply with a requirement under Division 2 of Part 7 in relation to the project, to the extent that the units were issued on the basis of the removal of one or more greenhouse gases from the atmosphere; or

(c) comply with a requirement under Division 3 of Part 7 in relation to the project; or

(d) apply a specified methodology determination to the project (see section 130).

Note: The net total number of Australian carbon credit units issued in relation to an eligible offsets project in accordance with Part 2 may be adjusted under section 57.

7 Paragraph 175(2)(c)
After “condition for”, insert “variation or”.

8 Paragraph 175(5)(b)
After “condition for”, insert “variation or”.

Division 2—Requirements to relinquish Australian carbon credit units

Carbon Credits (Carbon Farming Initiative) Act 2011

9 Paragraphs 90(1)(a) and 91(1)(a)
Omit “to remove carbon dioxide from the atmosphere”.

Division 3—Transition between methodology determinations

Carbon Credits (Carbon Farming Initiative) Act 2011

10 Section 5 (definition of 25-year permanence period project)
Repeal the definition, substitute:

25-year permanence period project means an eligible offsets project that is declared, in its section 27 declaration, to be a 25-year permanence period project.
11 Section 5 (definition of 100-year permanence period project)

Repeal the definition, substitute:

*100-year permanence period project* means an eligible offsets project that is declared, in its section 27 declaration, to be a 100-year permanence period project.

12 Paragraph 27(3)(e)

Omit “100-year permanence period project”, substitute “100-year permanence period project”.

13 Paragraph 27(3)(f)

Omit “25-year permanence period project”, substitute “25-year permanence period project”.

14 Section 31A (heading)

Repeal the heading, substitute:

31A No variation of declaration of sequestration offsets project as a 100-year or 25-year permanence period project

15 Subsection 31A(1)

Omit “an offsets project”, substitute “a sequestration offsets project”.

16 At the end of section 31A

Add:

(3) This section does not prevent the Regulator from:

(a) removing a declaration if the project is no longer a sequestration offsets project; and

(b) making a different declaration if the project becomes a sequestration offsets project again at a later date.

Note: See subsection 130(4A) for variations of a declaration under section 27 that might occur if the methodology determination for the offsets project changes.

17 Paragraphs 89(1)(d) and (e)

Repeal the paragraphs, substitute:
(d) if the declaration has never been varied so as to add one or more project areas:
   (i) the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the permanence period for the project; or
   (ii) the crediting period, or the last of the crediting periods, for the project has not ended; and

(e) if the declaration has been varied so as to add one or more project areas:
   (i) the period that has passed since the last occasion on which the declaration was so varied is shorter than the permanence period for the project; or
   (ii) the crediting period, or the last of the crediting periods, for the project has not ended.

18 Paragraphs 90(1)(f) and (g)

Repeal the paragraphs, substitute:

(f) if the relevant section 27 declaration has never been varied so as to add one or more project areas:
   (i) the period that has passed since the first occasion on which an Australian carbon credit unit was issued in relation to the project in accordance with Part 2 is shorter than the permanence period for the project; or
   (ii) the crediting period, or the last of the crediting periods, for the project has not ended; and

(g) if the relevant section 27 declaration has been varied so as to add one or more project areas:
   (i) the period that has passed since the last occasion on which the declaration was so varied is shorter than the permanence period for the project; or
   (ii) the crediting period, or the last of the crediting periods, for the project has not ended.

19 Paragraphs 91(1)(g) and (h)

Repeal the paragraphs, substitute:

(g) if the relevant section 27 declaration has never been varied so as to add one or more project areas:
(i) the period that has passed since the first occasion on
   which an Australian carbon credit unit was issued in
   relation to the project in accordance with Part 2 is
   shorter than the permanence period for the project; or
(ii) the crediting period, or the last of the crediting periods,
    for the project has not ended; and
(h) if the relevant section 27 declaration has been varied so as to
   add one or more project areas:
   (i) the period that has passed since the last occasion on
       which the declaration was so varied is shorter than the
       permanence period for the project; or
   (ii) the crediting period, or the last of the crediting periods,
        for the project has not ended.

20 Paragraphs 97(14)(c) and (d)

Repeal the paragraphs, substitute:

(c) if the relevant section 27 declaration has never been varied so
   as to add one or more project areas—when:
   (i) the period that has passed since the first occasion on
       which an Australian carbon credit unit was issued in
       relation to the project in accordance with Part 2 is at
       least as long as the permanence period for the project;
       and
   (ii) the crediting period, or the last of the crediting periods,
        for the project has ended;
(d) if the relevant section 27 declaration has been varied so as to
   add one or more project areas—when:
   (i) the period that has passed since the last occasion on
       which the declaration was so varied is at least as long as
       the permanence period for the project; and
   (ii) the crediting period, or the last of the crediting periods,
        for the project has ended.

21 After paragraph 128(2)(d)

Insert:

(da) if approval of the request would result in the project
    becoming a sequestration offsets project—include either:
    (i) a request that the project be treated as a 100-year
        permanence period project; or
Schedule 1  Amendments
Part 3  Amendments relating to sequestration projects

(ii) a request that the project be treated as a 25-year permanence period project; and

22 Subsection 130(3)

Repeal the subsection, substitute:

(3) The Regulator must not give an approval under subsection (2) unless the Regulator is satisfied:

(a) that the project:

(i) is covered by the methodology determination; and

(ii) meets the eligibility requirements (if any) specified in the methodology determination and the legislative rules; and

(b) if the approval would result in a sequestration offsets project becoming an emissions avoidance offsets project—that the applicant has voluntarily relinquished a number of Kyoto Australian carbon credit units equal to the net total number of Australian carbon credit units issued in accordance with Part 2 in relation to the sequestration offsets project; and

(c) if the approval would result in an emissions avoidance offsets project becoming a sequestration offsets project—that written consent to the approval has been given by each person who holds an eligible interest in the project area, or any of the project areas, for the project.

Consents

(3A) A consent mentioned in paragraph (3)(c) must be in a form approved, in writing, by the Regulator.

(3B) A consent mentioned in paragraph (3)(c) may be set out in a registered indigenous land use agreement.

(3C) Subsection (3A) does not apply to a consent mentioned in paragraph (3)(c) if the consent is set out in a registered indigenous land use agreement.

(3D) If:

(a) an approval under subsection (2) is in force; and

(b) a consent to the approval is set out in a registered indigenous land use agreement;
details of the agreement must not be removed from the Register of Indigenous Land Use Agreements under subparagraph 199C(1)(c)(ii) of the Native Title Act 1993 without the written consent of the Regulator.

23 After paragraph 130(4A)(a)

Insert:

(aa) if the approval resulted in a sequestration offsets project becoming an emissions avoidance offsets project—remove from the section 27 declaration:

(i) any declaration that the project is a 100-year permanence period project or a 25-year permanence period project; and

(ii) any condition to which the project was subject under section 28A (consent of relevant interest-holders); and

(ab) if the project has become a sequestration offsets project and the request under section 128 included a request that the project be treated as a 100-year permanence period project—vary the section 27 declaration to declare that the project is a 100-year permanence period project; and

(ac) if the project has become a sequestration offsets project and the request under section 128 included a request that the project be treated as a 25-year permanence period project—vary the section 27 declaration to declare that the project is a 25-year permanence period project; and

24 Paragraph 130(4A)(b)

Omit “annotated declaration”, substitute “declaration as annotated and varied”.

25 After paragraph 168(1)(i)

Insert:

(j) when the crediting period, or the last of the crediting periods, for the project will end; and

26 After paragraph 175(2)(d)

Insert:

(da) if the Australian carbon credit unit or units are being voluntarily relinquished in order to satisfy a condition for the
Schedule 1  Amendments
Part 3  Amendments relating to sequestration projects

1 approval under subsection 130(2) of the application of a
2 specified methodology determination to a project—set out a
3 statement to that effect; and

27 After paragraph 175(5)(c)

Insert:
; or (ca) an Australian carbon credit unit is voluntarily relinquished in
order to satisfy a condition for the approval under
subsection 130(2) of the application of a specified
methodology determination to a project;
Part 4—Varying conditional declarations

Carbon Credits (Carbon Farming Initiative) Act 2011

28 Section 31 (heading)

Repeal the heading, substitute:

31 Voluntary variation of conditional declaration of eligible offsets project

29 Paragraph 31(3)(b)

Repeal the paragraph, substitute:

(b) the Regulator is satisfied that:

(i) in the case of a condition mentioned in subsection 28(2)—all regulatory approvals have been obtained for the project; and

(ii) in the case of a condition mentioned in subsection 28A(2)—the written consent of each relevant interest-holder to the existence of the declaration has been obtained.

Note: The regulations or legislative rules may make different provision depending on when the approvals or consents were obtained, see subsection 33(3A) of the Acts Interpretation Act 1901.