THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CARBON FARMING INITIATIVE AMENDMENT BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for the Environment the Hon Greg Hunt MP)
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Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

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<tr>
<th>Abbreviation</th>
<th>Definition</th>
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<tr>
<td>Additionality</td>
<td>A requirement that a project or activity produce emissions reductions that are most likely to be additional to what would have occurred in the absence of the Emissions Reduction Fund.</td>
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<tr>
<td>Australian Carbon Credit Units (ACCUs)</td>
<td>Emissions unit issued under the Carbon Farming Initiative that will be issued for emissions reductions under the Emissions Reduction Fund.</td>
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<tr>
<td>Australian National Registry of Emissions Units</td>
<td>A secure electronic system which tracks the location and ownership of emissions units and which was established through the Australian National Registry of Emissions Units Act 2011.</td>
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<tr>
<td>Baseline</td>
<td>A reference level of emissions from which changes in emissions can be measured.</td>
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<tr>
<td>Bill</td>
<td>Carbon Farming Initiative Amendment Bill 2014</td>
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<tr>
<td>Carbon</td>
<td>Used to refer to the emissions of the six major greenhouse gases covered by the Kyoto Protocol.</td>
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<tr>
<td>Carbon Farming Initiative</td>
<td>A voluntary carbon offsets scheme that enables farmers and landholders to earn credits for reducing greenhouse gas emissions. The scheme was established through the Carbon Credits (Carbon Farming Initiative) Act 2011 and is administered by the Clean Energy Regulator.</td>
</tr>
<tr>
<td>Clean Energy Regulator (the Regulator)</td>
<td>The body responsible for administering the Renewable Energy Target, the National Greenhouse and Energy Reporting Scheme, the Carbon Farming Initiative and the Emissions Reduction Fund.</td>
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<tr>
<td>Carbon abatement contract</td>
<td>A contract between the Government and a</td>
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<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>project proponent</td>
<td>capturing the Government’s promise to pay for emissions reductions and the proponent’s promise to deliver them.</td>
</tr>
<tr>
<td>Crediting period</td>
<td>The period of time over which activities are eligible to create Australian Carbon Credit Units, noting that emissions reduction may be reported and credits issued after the crediting period.</td>
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<tr>
<td>Domestic Offsets Integrity Committee</td>
<td>An independent expert committee which assesses proposals for methodologies under the Carbon Farming Initiative and advises on their approval.</td>
</tr>
<tr>
<td>Eligible carbon abatement</td>
<td>Kyoto Australian carbon credit units for abatement which counts towards Australia’s climate change targets</td>
</tr>
<tr>
<td>Eligible carbon credit units</td>
<td>Eligible carbon credit units are units which are Kyoto Australian carbon credit units or prescribed eligible carbon units.</td>
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<tr>
<td>Emissions Reduction Assurance Committee</td>
<td>An independent, expert committee which assesses whether methodologies meet the requirements of the Emissions Reduction Fund and provides advice to Government.</td>
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<tr>
<td>Fit and proper person test</td>
<td>The test (requirements) that project proponents must satisfy as part of the project registration process.</td>
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<tr>
<td>Kyoto Australian Carbon Credit Unit (Kyoto ACCU)</td>
<td>An ACCU issued in accordance with s 11(2) of the amended Carbon Credits (Carbon Farming Initiative) Act 2011, and identified as a Kyoto ACCU in the Registry, or, an ACCU issued as a Kyoto ACCU, in accordance with the CFI Act, before the commencement of the amended CFI Act.</td>
</tr>
<tr>
<td>Legislative rules</td>
<td>Rules which will be made over time, by the Minister and the Clean Energy Regulator, to provide guidance regarding certain matters specified in the Bill.</td>
</tr>
<tr>
<td>Methodologies</td>
<td>Emissions Reduction Fund methodologies set out the rules and instructions for undertaking Emissions Reduction Fund projects, estimating emissions reductions and reporting to the Clean Energy Regulator.</td>
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<tr>
<td>National Greenhouse and Energy Reporting Scheme</td>
<td>A reporting scheme for corporate greenhouse gas emissions and energy production and consumption established under the National Greenhouse and Energy Reporting Act 2007.</td>
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<tr>
<td>Permanence</td>
<td>Arrangements under the Carbon Farming Initiative.</td>
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</table>
Initiative to ensure that credits issued for sequestration projects represent lasting removals of carbon from the atmosphere, which are equivalent to emissions reductions.

| Purchasing process | A carbon abatement purchasing process means any of the following processes:  
|(a) a reverse auction;  
(b) a tender process;  
(c) any other process;  
for the purchase by the Commonwealth of eligible carbon credit units. |

| Reverse auction | A type of auction in which the roles of buyer and seller are reversed. The auctioneer buys the good or service from sellers who compete to provide the good or service to the buyer, with sellers having the incentive to offer lower bids (as opposed to buyers offering higher bids in regular auctions). |

| Sequestration | The removal of atmospheric carbon dioxide, either through biological processes (for example, photosynthesis in plants and trees), or geological processes (for example, storage of carbon dioxide in underground reservoirs). |

| ERF transitional application | An application for a project which is made before 1 July 2015 under the Carbon Farming Initiative eligibility rules, using a methodology which is in operation prior to the commencement of the Emissions Reduction Fund. |
General outline and statements

Purpose and Objective

The Carbon Farming Initiative Amendment Bill 2014 (the Bill) amends the Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI Act), the National Greenhouse and Energy Reporting Act 2007 (NGER Act), the Australian National Registry of Emissions Units Act 2011 (ANREU Act) and the Clean Energy Regulator Act 2011 (CER Act) to provide for the establishment of the Emissions Reduction Fund, a key election commitment of the Australian Government.

The primary objective of the Emissions Reduction Fund is to help Australia meet its international obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol, to reduce emissions of greenhouse gases and meet its emissions reduction target of five per cent below 2000 levels by 2020.

Background

The Emissions Reduction Fund is a key Government election commitment and will commence following the repeal of the carbon tax. This initiative will allow businesses, state and local governments, community organisations and individuals to undertake approved emissions reduction projects and to seek funding from the Government for those projects through a reverse auction or other purchasing process.

The Emissions Reduction Fund will make a real difference to the environment and will boost businesses’ productivity by supporting projects such as:

- Upgrading commercial buildings
- Improving the energy efficiency of homes and industrial facilities
- Reducing electricity generator emissions
- Capturing landfill gas
- Reducing waste coal mine gas
- Reforesting and revegetating marginal lands
- Improving Australia’s agricultural soils
- Upgrading vehicles and improving transport logistics, and
- Managing fires in savannah grasslands.

These activities will reduce Australia’s greenhouse gas emissions while delivering valuable co-benefits. For example, households and businesses will save money by improving their energy efficiency. Revegetation will improve water quality and reduce erosion and salinity. Replenishing the carbon content of soils will improve the health and productivity of Australian farms.

**Elements of the Emissions Reduction Fund**

The Emissions Reduction Fund has three elements: crediting emissions reductions, purchasing emissions reductions, and safeguarding emissions reductions.

The Clean Energy Regulator will issue Australian carbon credit units for emissions reductions that are estimated and audited using approved methodologies. These credits can then be purchased through the Emissions Reduction Fund or used under voluntary carbon offsetting programmes.

Emissions reduction methodologies will set out the rules for estimating emissions reductions from different activities. These methodologies will ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

Methodologies for crediting emissions reductions will be developed for activities, such as energy efficiency and land sector projects, as well as for large industrial facilities. To enable a wide range of businesses to participate in the Emissions Reduction Fund, a menu of emissions reduction methodologies will be available. This will enable businesses to choose the methodology that best suits their project.

The Regulator will purchase emissions reductions at the lowest available cost, generally through reverse auctions.

The Regulator will enter into contracts with successful bidders, which will guarantee payment for the future delivery of emissions reductions. Emissions reductions will be purchased at the bid price. Businesses will be able to use contracts to finalise project finance as necessary before
projects are implemented. The contracts will be standardised, provide commercial terms and conditions, and provide for payment to be made on delivery of emissions reductions.

Arrangements will be made to transition Carbon Farming Initiative projects and methodologies into the Emissions Reduction Fund.

The Government will purchase emissions reductions from existing Carbon Farming Initiative projects that are competitive at auction. This will provide a simple way for participants in the Carbon Farming Initiative to secure a return from eligible projects following the repeal of the carbon tax.

The crediting and purchasing elements of the Emissions Reduction Fund will commence following the repeal of the carbon tax.

A further element – the Emissions Reduction Fund’s safeguard mechanism – will be introduced to ensure that emissions reductions paid for by the Emissions Reduction Fund are not displaced by a significant rise in emissions elsewhere in the economy.

The safeguard mechanism will commence on 1 July 2015 and the design will be finalised through further consultation with stakeholders. The detailed design of the Emissions Reduction Fund’s safeguard mechanism will be implemented through a separate legislative package.

### Building on and streamlining the Carbon Farming Initiative

The key elements of the Carbon Farming Initiative, established through the CFI Act, will be retained and incorporated into the Emissions Reduction Fund.

The Bill will streamline many of these elements so that estimation methodologies can be made more quickly, and to make it easier for businesses to register.

Under the CFI Act, the Regulator is responsible for registering projects and issuing Australian carbon credit units for verified emissions reductions. Credits are personal property with legal title registered in the Australian National Registry of Emissions Units.

The requirements for registering emissions reduction projects will be similar to those under the Carbon Farming Initiative. The Bill amends the current approach to ensure that emissions reductions are additional to business as usual and removes a number of unnecessary requirements.
The Carbon Farming Initiative provided incentives for land-based and certain waste sector projects only. The Bill amends the CFI Act to expand its coverage and enable the Regulator to issue credits for emissions reduction projects from across the economy.

The CFI Act sets out the requirements for making methodologies. The Bill simplifies the process for assessing and making methodologies. This is to provide greater flexibility to develop methodologies for emissions reduction activities across the economy while retaining the same high standards as under the Carbon Farming Initiative.

The existing independent expert committee known as the Domestic Offsets Integrity Committee is being renamed (as the Emissions Reduction Assurance Committee) and will continue to assess and provide advice to the Minister for the Environment on the suitability of methodologies.

The Bill provides for the purchase of emissions reductions by the Clean Energy Regulator. The Regulator will be able to conduct auctions and enter into contracts for emissions reductions on behalf of the Commonwealth.

Information about emissions reduction projects will be published in the Emissions Reduction Fund Register, which is the new name given by the Bill to the Register of Offsets Projects under the Carbon Farming Initiative.

Outline of the Bill

This Bill amends the CFI Act and also makes minor amendments to the ANREU Act, NGER Act, and the CER Act.

The Bill is set out in three parts. **Part 1** provides for the Regulator to purchase emissions reductions, **Part 2** expands and streamlines the Carbon Farming Initiative to enable crediting of emissions reductions across the economy, and **Part 3** sets out amendments to ensure that provisions which provide the Minister with power to make legislative rules are fully operative.

The first two Parts have two divisions: the first division sets out the amendments to the relevant Acts while the second division provides transitional arrangements. These transitional arrangements will not become part of the amended CFI Act but remain as stand-alone provisions.
Part 1, Division 1 authorises the Regulator to conduct auctions (or other purchasing processes) and enter into contracts to purchase emissions reductions on behalf of the Commonwealth.

Part 1, Division 2 provides transitional arrangements relating to the Register of Offsets Projects, which will be renamed the Emissions Reduction Fund Register and will include information about contracts to purchase emissions reductions.

Part 2, Division 1 sets out the amendments to the CFI Act to extend and streamline its crediting provisions to industrial sectors. This division also contains minor amendments to related Acts.

The order of amendments in the Bill is in line with the order of sections in the original Acts.

Part 2, Division 2 provides transitional arrangements for existing Carbon Farming Initiative projects and methodologies, applications for new projects that are being prepared, or have been submitted and not yet processed under existing legislation. It also deals with transitional issues arising from other changes to the existing legislation.

Consultation with business and the community

The Government has consulted widely with businesses and the community on the design and implementation of the Emissions Reduction Fund.

Consultation began with the release of the Emissions Reduction Fund Terms of Reference on 16 October 2013. Business, community organisations and government bodies made over 290 submissions in response.

The Government drew on these submissions to develop a Green Paper outlining policy options for the design of the Emissions Reduction Fund. The Green Paper was released on 20 December 2013 and the Government received over 340 submissions in response.

The Government held face-to-face consultations on the options set out in the Green Paper. A public information session was held in Canberra on 3 February 2014 to discuss the Emissions Reduction Fund Green Paper, with about 100 industry and community representatives in attendance. Four information sessions were conducted over the phone on 4 and 5 February 2014. A large number of meetings were also held with business, government and community group representatives.
The Government established and took advice from an Expert Reference Group on the design of the Emissions Reduction Fund. The group comprised experts from business, the non-government sector and leading consultants.

The Government considered the information and advice it received from business and the community in settling the final design of the Emissions Reduction Fund. This policy is set out in the Emissions Reduction Fund White Paper, which was released on 24 April 2014.

**Date of effect:**

The Bill will take effect on a single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.

**Financial impact**

The total estimated impact of the Emissions Reduction Fund on the underlying cash balance is $2.55 billion. The Regulator is authorised to commit this amount under contract from the commencement of the Fund. Funds will be expended over time as emissions reductions are certified and paid for over the life of the contract. This is reflected in the profile of expenditure published in the 2014-15 Budget.

The cost of administering the Fund will be met from within the existing resources of the Department of the Environment and the Clean Energy Regulator.

**Summary of regulation impact statement**

**Regulation impact on business**

Statement of compatibility with human rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

*Carbon Farming Initiative Amendment Bill 2014*

The Bill 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 Carbon Farming Initiative Amendment Bill 2014**

The *Carbon Farming Initiative Amendment Bill 2014* (the Bill) amends the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act), and makes minor amendments to a number of related Acts, to provide for the establishment of the Emissions Reduction Fund, a key election commitment of the Australian Government.

The primary objective of the Emissions Reduction Fund is to help Australia meet its international obligations, under the United Nations Convention on Climate Change and the Kyoto Protocol, to reduce emissions of greenhouse gases and meet its emissions reduction target of five per cent below 2000 levels by 2020, by supporting projects that will deliver reductions in emissions.

The focus of the Bill is to amend the CFI Act to implement the crediting and purchasing components of the Emissions Reduction Fund.

Under the crediting component of the Emissions Reduction Fund, the Government will issue Australian carbon credit units (ACCUs) in respect of ‘eligible offsets projects’. Each ACCU represents one tonne of carbon emissions abatement and is a form of personal property that may be traded (section 150, CFI Act). The Regulator will assess an application for project approval against a range of statutory criteria designed to ensure that projects deliver genuine emissions reductions and can be used to meet Australia’s international obligations. Once carbon abatement from an approved project has been verified, the Regulator will issue ACCUs in respect of the abatement.

The crediting element of the Emissions Reduction Fund set out in Part 2 of the Bill builds on the existing scheme set out in the CFI Act, which already provides for the issuing of ACCUs in respect of a limited range of emissions reduction projects. In broad terms, the Bill provides
amendments to expand the scope of the CFI Act to enable a broader range of emissions reduction projects to be approved and to make some changes to the project eligibility criteria and processes for approving projects and crediting ACCUs.

Under the purchasing component of the Emissions Reduction Fund, the Commonwealth will conduct carbon abatement purchasing processes to purchase low cost carbon reductions, in the form of ACCUs or other 'prescribed eligible carbon units'. Part 1 of the Bill amends the CFI Act to permit the Clean Energy Regulator to conduct purchasing processes, typically reverse auctions, to identify low cost emissions reductions and to enter into contracts for the purchase of those emissions reductions.

The existing CFI Act operates in the context of a range of other Acts, including:

- the Clean Energy Regulator Act 2011 (CER Act) (which establishes a Clean Energy Regulator to, amongst other things, administer the CFI Act)
- the Australian National Registry of Emissions Units Act 2011 (ANREU Act) (which creates a registry for, amongst other things, ACCUs)
- the National Greenhouse Energy and Reporting Act 2007 (NGER Act) (which imposes certain reporting obligations on certain bodies and makes provision for the audit of compliance – some of the auditing provisions also apply to the CFI Act).

The Bill makes a number of amendments to these Acts to reflect changes made to the CFI Act and to address other minor issues.

Human rights implications

Right to privacy and reputation

The Bill engages the right to privacy and reputation under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits arbitrary attacks on a person's reputation. In order for an interference not to be ‘arbitrary’, it must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.
The Bill interacts with the right to privacy and reputation in a number of ways.

**Disclosure of information about Emissions Reduction Fund procurement processes and contracts**

Item 6 of the Bill proposes inserting new provisions that permit the Regulator to disclose certain information about carbon abatement purchasing processes and that require the Regulator to publish annual reports about the purchase of eligible carbon credit units.

In broad terms, the Regulator will be permitted or required to disclose certain aggregated information, summary information and statistics relating to carbon abatement purchasing processes and the purchase by the Commonwealth of eligible carbon credit units. Given the nature of the information that is permitted or required to be published, and the fact that most participants in the Emissions Reduction Fund are likely to be corporate entities, it is unlikely that the exercise of these powers will result in the disclosure of personal information.

In addition, the Bill will rename the existing ‘Register of Offsets Projects’ as the ‘Emissions Reduction Fund Register’ and require the Regulator to include details about carbon abatement contracts on the Register (Schedule 1, items 9 to 13). The name of the contactor, the duration of the contract, the number of units to be sold to the Commonwealth and the number of units actually sold to the Commonwealth must be included on the Register.

To the extent that an individual’s right to privacy is affected by these publication provisions, the impact is not arbitrary. It is reasonable, necessary and proportionate to the achievement of the legitimate objectives of ensuring Government accountability for the Emissions Reduction Fund, facilitating participation in the Emissions Reduction Fund (the publication of information about past processes will assist potential participants in assessing whether to bid in future processes and at what price) and providing the public with information relevant to Australia’s progress towards meeting international obligations under the Kyoto Protocol and the United Nations Framework Convention on Climate Change.

**Amendment to secrecy provisions in the CER Act**

The Bill includes amendments to the secrecy provision in the CER Act (Schedule 1, items 370 to 376).

Under section 43 of the CER Act, an official of the Regulator commits an offence if they disclose or use information obtained in their capacity as an
The Bill proposes amendments to the exceptions to the secrecy provision in section 43, which will permit protected information to be disclosed in a slightly wider range of circumstances (Schedule 1, items 370 to 376). The amendments:

- permit protected information to be disclosed to the Secretary or an official of the Department of the Environment for the purpose of monitoring the operation, or evaluating the effectiveness, of a climate change law (amendments to section 46 of the CER Act)

- permit protected information to be disclosed to any Commonwealth department or to a prescribed agency or authority of the Commonwealth, but only where the Chair of the Regulator is satisfied that particular protected information will assist the department, agency or authority to perform its functions (amendments to section 49 of the CER Act)

- amend sections 49 and 50 of the CER Act to allow a particular class of information to be disclosed to certain mainly government agencies and bodies (section 49) and certain financial bodies (section 50) in addition to particular information.

It is possible that personal information could be disclosed under these provisions. However, the potential impact on an individual’s right to privacy is not arbitrary. It is reasonable, necessary and proportionate to the achievement of proper objectives.

The first amendment is required to ensure that the Department responsible for administering climate change laws can be given information relevant to evaluating, and advising the Minister about, the operation of those laws. Officers of the Department will be bound by the Privacy Act 1988 in subsequent dealings with the information.

The second amendment is required to accommodate appropriate information sharing between the Regulator and Commonwealth departments, agencies and authorities. At present, unless another exception to the secrecy provision applies, information can only be shared with another department, agency or authority when that body’s name appears in the list in section 49 of the CER Act. However, the list is now
out of date, and any prescriptive list will continue to become outdated, with name changes and the creation of new, and merger of, departments, agencies and authorities. The provisions will only permit the sharing of information where the Chair of the Regulator is satisfied the information will enable or assist the body to perform its functions, section 49 includes mechanisms to protect any information disclosed from secondary disclosure (subsections 49(2) to 49(7)) and the new bodies to whom information may disclosed would generally be bound by the Privacy Act 1988 in subsequent dealings with that information.

The third amendment will allow the Chair of the Regulator to authorise the release of a particular class of information to specified government bodies and financial bodies. This avoids the need for the Chair of the Regulator to authorise the release of particular information on a case by case basis, which is administratively cumbersome. The amendment does not authorise the release of an additional range of information. As mentioned in the preceding paragraph, the circumstances in which information can be disclosed under section 49 are limited and any information that is disclosed will generally be protected from misuse or disclosure by operation of either restrictions on secondary disclosure imposed under section 49 or privacy laws. The same restrictions and protections apply to information disclosed under section 50.

The Bill also makes a small technical amendment to section 46 of the CER Act. Under the existing provisions of section 46, certain limited information can be disclosed to an officer of the Department of the Environment who is authorised by the Secretary to receive that information. The amendment is to remove doubt that the authorisation may be made to a position or position number, and not just a person by name. The amendment does not expand or reduce the range of information that may be disclosed pursuant to the provision and will not impact on privacy rights. The Bill makes also makes some amendments to section 47 of the CER Act, which is an exception to the secrecy provision. This is a consequential amendment to reflect the fact that applications will no longer be made to approve methodology determinations. These changes have no impact on privacy as section 47 does not authorise the release of personal information and this restriction will be maintained by the Bill (Schedule 1, item 375, section 47(3)).

Amendment to secrecy provision in the NGER Act

Under the NGER Act, certain persons are required to report information about greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production. This allows the government to obtain necessary information to inform policy development and meet international reporting obligations.
Section 23 provides that specified people (including Departmental officers) may not disclose, to another person, greenhouse and energy information or audit information (other than information protected under the CER Act) obtained in their official capacity, unless they do so for specified purposes.

The Bill amends section 23 to permit such information to be disclosed for the purposes of preparing advice to the Minister on matters relating to greenhouse gas emissions, energy production or energy consumption.

The current list of purposes for which information can be disclosed does not allow information to be disclosed for the purpose of advising the Minister unless this is for the purpose of another law of the Commonwealth or for the performance of duties in relation to another law of the Commonwealth.

It is possible that personal information could be disclosed under these provisions, just as personal information can already be disclosed under the existing provisions of section 23 directly by the Regulator to the Minister. The amendment streamlines that disclosure by allowing specified people, such as Departmental officers, to disclose that information directly to the Minister, for example in the course of ordinary briefing of its Minister.

The potential impact on an individual’s right to privacy is not arbitrary. It is reasonable, necessary and proportionate to the achievement of proper objectives, namely to ensure that the Minister responsible for administering environmental laws and environmental policy development can be given important factual information necessary to perform these tasks, and be given that information directly by the Minister’s Department rather than having to request it from the Regulator.

**Transitional preservation of the effect of secrecy provisions**

Part 27 of the CFI Act contains an additional secrecy provision that prevents an ‘entrusted public official’ disclosing or using information obtained in his or her capacity as an entrusted public official, unless an exception applies. Currently, an ‘entrusted public official’ includes a member of the Domestic Offsets Integrity Committee (DOIC), which is an expert committee that advises the Minister on methodology determinations.

The Bill changes the name of the ‘Domestic Offsets Integrity Committee’ to the ‘Emissions Reduction Assurance Committee’, including in the provisions relating to the operation of the secrecy provision. The Bill includes a transitional provision to make it clear that information collected the DOIC continues to be protected information notwithstanding the name change (Schedule 1, item 383). This amendment is to preserve the status
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quo and will have no material impact (either positive or negative) on privacy.

**Fit and proper person requirements**

The current CFI Act requires a project proponent to be approved as a ‘recognised offsets entity’ before applying for approval of a project (section 27(4)(f)). To be approved as a recognised offsets entity a person must meet a fit and proper person test (section 64).

The Bill proposes removing the requirement that a person must be approved as a recognised offsets entity and replaces this with a provision requiring a project proponent to meet a fit and proper person test for a project to be approved (Schedule 1, items 104 and 151). If a project proponent ceases to be a fit and proper person, this will be a ground for cancelling a project approval (Schedule 1, items 124 to 126) and for refusing to issue ACCUs in respect of the project (Schedule 1, item 81).

The primary legislation provides for the details of the fit and proper person test to be set out in legislative rules, which will be subject to Parliamentary disallowance (Schedule 1, item 151). It is intended that the detail of this test will be based on the existing fit and proper person test in the CFI Act and will require the Regulator to have regard to whether a person has been convicted of a certain specified offences directed mainly at dishonesty, has breached a climate change law or is insolvent or is under administration.

These provisions have some potential to impact on the right to protection from arbitrary interference with reputation in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Any impact would be minimal and largely confined to staff in the Regulator, noting that there is no requirement for information about applications for project approvals, or the reason that a project approval is cancelled, to be published and that secrecy provisions in the Clean Energy Regulator Act 2011 (and the Privacy Act 1988) will operate to limit the internal use of the information within the Regulator, as well as the disclosure of the information.

To the extent that an individual’s right to reputation is affected by the application of the fit and proper person test, the impact is not arbitrary. It is reasonable, necessary and proportionate to ensuring the integrity of the Emissions Reduction Fund. The intention is to exclude persons from participating in the scheme where circumstances indicate that there is an appreciable risk that they could have an interest in acting dishonestly to obtain the benefits of the scheme and there are significant protections against dissemination and misuse of the information built into the statutory scheme.
Right to a fair trial and process

The Bill potentially engages a right to a fair trial and process under Article 14 of the ICCPR, which includes the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

Review rights

Under the Emissions Reduction Fund, the Regulator will make administrative decisions that may adversely affect the interests of persons. Such decisions include a decision that a person is not a fit and proper person, a decision not to approve an application for a project approval, a decision to cancel or vary a project approval and a decision not to issue ACCUs.

Under the existing provisions of the CFI Act, such decisions are subject to merits review (section 240) and judicial review on administrative law grounds. This ensures a right to a fair trial and process in respect of administrative decisions under the CFI Act.

The Bill proposes some amendments to the classes of decisions that are subject to merits review (Schedule 1, item 269) and also confers some additional merits review rights where appropriate. However, the amendments will not limit rights of merits review.

Merits review rights relating to decisions to recognise or cancel the recognition of a person as a recognised offsets entity have been removed because the Bill proposes removing the concept of a recognised offsets entity. As already mentioned, this requirement is replaced by a requirement to consider whether a project proponent is a fit and proper person. There are also provisions that permit a project approval to be revoked and that provide for ACCUs not to be issued if a project proponent ceases to be a fit and proper person. Decisions to refuse to approve a project, to cancel a project approval and not to issue ACCUs are all subject to merits review under the existing provisions in section 240 of the CFI Act.

Merits review rights relating to decisions to determine or not to determine subsequent crediting periods under section 74 have been removed because section 74 is to be repealed.

Merits review rights in relation to decisions to refuse to make a declaration under section 95 of the CFI Act in relation to a non-CFI offsets project have been removed because section 95 is being repealed. There is no need for any transitional provision because applications under
s 95 could only be made until 8 December 2013 and there are no applications that have not been finally determined.

Merits review rights in relation to decisions under section 130 of the CFI Act to refuse to approve a methodology determination have been removed. This is because of a fundamental change to the process for making methodology determinations proposed under the Bill. Currently, methodology determinations are made following an application from an individual person to approve the determination. Under the scheme proposed by the Bill, the provisions requiring an application for a methodology determination to be made will be removed. Methodology determinations will be developed by the Department in consultation with business, through technical working groups. That is, the broader public will still have the opportunity to bring forward methodology proposals. Methodologies will be made as legislative instruments by the Minister, having regard to the advice from the Emissions Reduction Assurance Committee, the offsets integrity standards, and other matters specified in the Act as amended. Legislative instruments of this kind are generally not subject to merits review because they do not affect the interests of any individuals in a sufficiently specific way.

The Bill does not make provision for merits review of the outcome of Emissions Reduction Fund purchasing processes. This is to provide certainty to sellers as if a purchasing decision were overturned, contracts which had been entered into with other sellers would be affected. Furthermore, these processes are very similar to other government procurement processes, which are generally not suitable for merits review, as they allocate a finite resource between competing sellers. However, participants in the process will be able to seek legal redress in other ways, for example, by pursuing contractual remedies and by seeking judicial review of decisions on administrative law grounds (to the extent that such review is available for contracting and tendering decisions).

**Civil penalties**

Civil penalty provisions may engage the criminal process rights under Article 14 of the ICCPR. The existing provisions of the CFI Act contain a number of civil penalty provisions that are designed to ensure the integrity of the scheme (Part 21).

The Bill makes some minor amendments to the existing civil penalty provisions in the CFI Act that reduce their scope. It repeals section 83 of the CFI Act, which contains a civil penalty provision in relation to a requirement to notify the Regulator. It also marginally reduces the scope of the civil penalty provision in section 76 of the CFI Act for failing to
provide an offsets report (by virtue of the removal of the requirement for an offsets report to include an audit report).

Given that the Bill reduces the scope of existing civil penalties, it does not have the effect of limiting criminal process rights under Article 14 of the ICCPR.

Conclusion

The Bill is compatible with human rights because the only potential limitations on human rights that the Bill imposes impose relate to the right to privacy and the limits are reasonable, necessary and proportionate in achieving the Bills’ legitimate policy objectives.

Greg Hunt

Minister for the Environment
Chapter 1
Registering projects

Outline of chapter

1.1 This chapter explains the requirements for participation in the Emissions Reduction Fund. It describes amendments made to project registration requirements, which proponents and projects must meet to receive credits and to participate in an auction. It also describes the Emissions Reduction Fund Register, which will include information about projects and Emissions Reduction Fund participants.

Context of amendments

1.2 The Emissions Reduction Fund will build on the existing arrangements under the CFI Act for crediting emissions reductions.

1.3 As in the Carbon Farming Initiative, the Regulator will issue Australian Carbon Credit Units to registered projects for each tonne of carbon dioxide equivalent reduced or stored in the land. These units will be issued once emissions reductions have been estimated and reported using approved methodologies and, where necessary, independently audited.

1.4 Project registration will also be one of the preconditions for participation in an Emissions Reduction Fund auction or other purchasing process.

1.5 The Bill expands the current land-based scope of the CFI Act to enable any type of emissions reduction project to be an eligible offsets project. This is to enable the Emissions Reduction Fund to unlock emissions reduction opportunities across the economy.

1.6 A key requirement under both the Emissions Reduction Fund and the Carbon Farming Initiative is that credits are issued for emissions reductions that are ‘additional’ – that is, they are not likely to have occurred under normal business conditions, in the absence of the Emissions Reduction Fund.
1.7 The current law provides for additionality in a number of ways. The Bill removes the common practice test, and introduces a requirement that projects must be new and unlikely to occur as a result of another government programme. The existing criterion that projects must be additional to regulatory requirements is maintained. The Bill also makes additionality a key criterion for methodologies made under the Emissions Reduction Fund. The concept of common practice will remain relevant in this context. For example, a methodology might require certain common practice activities to be excluded from projects.

1.8 The Bill removes a number of barriers to project aggregation under the existing law. This will make it easier for businesses to find innovative ways to reduce costs and increase participation by small companies, landholders and households in emissions reduction projects.

1.9 The Bill removes unnecessary requirements for project registration to make participation in the Emissions Reduction Fund easier than under the Carbon Farming Initiative.

1.10 The Bill changes the name of the Register of Offsets Projects to the Emissions Reduction Fund Register.

### Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>Types of projects</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coverage is expanded to include any type of emissions reduction project.</td>
<td>Coverage is limited to land-based projects and certain types of waste projects.</td>
</tr>
<tr>
<td>The distinction between Kyoto and non-Kyoto projects is removed.</td>
<td>Kyoto and non-Kyoto projects are separately identified.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project aggregation</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>The requirement that a proponent must hold a relevant carbon sequestration right will be removed.</td>
<td>A proponent of a sequestration project must hold a relevant carbon sequestration right.</td>
</tr>
<tr>
<td>A project report can apply to part of a project.</td>
<td>A project report must cover the whole project.</td>
</tr>
<tr>
<td>Project proponents will not be required to provide the same information to the Regulator more than once.</td>
<td>The current CFI regulations provide that information relating to applications for recognition of offsets entities need not be provided to the Regulator more than once.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project additionality requirements</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projects must be new, not required by</td>
<td>Projects must involve activities on the</td>
</tr>
</tbody>
</table>
Chapter 1: Registering projects

- Regulations and not funded by another Government programme.

- Businesses that notify the Regulator can begin implementing their projects after 1 July 2014 and still meet the definition of a new project.

- New projects will be registered for one crediting period only.

- Emissions reduction projects will have a crediting period of 7 years and sequestration projects will have a crediting period of 25 years, unless another crediting period is specified in the applicable methodology.

### Streamlining project registration

| Project area information will not be necessary for an emissions reduction projects unless the project is an area-based emissions reduction project. | All project applications and declarations must include information about the project area. |
| Indications that a project is consistent with a natural resource management plan will no longer be a requirement for project approval. Potential adverse impacts will be considered when methodologies are approved. | It is a condition of project registration that the proponent indicates whether or not the project is consistent with the relevant regional natural resource management plan. |
| Demonstrating that a project does not involve harvesting or clearing of native forest will no longer be a requirement for project approval. Potential adverse impacts will be considered when methodologies are approved. | A project cannot be registered if it involves harvesting or clearing of a native forest or the use of materials obtained as a result of clearing or harvesting a native forest. |
| A fit and proper person test will be applied as part of project registration, and will replace the concept of a ‘recognised offsets entity’. | A proponent must become a ‘recognised offsets entity’ before they can have a project registered. |

### Emissions Reduction Fund Register

- The Register of Offsets Projects will be renamed the Emissions Reduction Fund Register.

- The Register of Offsets Projects lists information about each registered project under the Carbon Farming Initiative.
Detailed explanation of new law

Types of projects

Expanded coverage

1.11 The Carbon Farming Initiative only enables crediting of land-based projects and certain types of waste projects that were not covered by the carbon tax.

1.12 The Bill will expand the types of projects currently covered by the Carbon Farming Initiative to include any type of project to avoid emissions. This will enable the Emissions Reduction Fund to provide incentives for activities across the economy. [Schedule 1, item 143]

1.13 In this context, “avoid” means to reduce or eliminate, as defined in section 5 of the CFI Act.

Kyoto and non-Kyoto projects

1.14 The current law distinguishes between Kyoto and non-Kyoto projects and credits. Projects that count towards Australia’s climate change targets are known as Kyoto offsets projects and generate Kyoto Australian carbon credit units. Non-Kyoto offsets projects are projects that do not count towards Australia’s climate change targets and generate non-Kyoto Australian carbon credit units.

1.15 In the first commitment period of the Kyoto Protocol, non-Kyoto activities included increasing soil carbon, reducing harvesting in native forests and revegetation. The Carbon Farming Initiative made provision for non-Kyoto activities because these activities make up a significant proportion of land-based emissions reduction opportunities.

1.16 Following agreement to change the international accounting framework, Australia elected to count almost all land-based activities towards its 2020 emissions reduction target from the end of the first commitment period of the Kyoto Protocol.

1.17 Currently, the only activities that are not counted towards Australia’s climate change target are management of wetland areas such as seagrass meadows, marshes and swamps, and feral animal management. Projects to restore mangroves, and to reforest and revegetate coastal areas and areas subject to flooding would not be classed as wetlands and would be counted towards Australia’s emissions reduction target.
1.18 The Bill removes the requirement that project declarations must distinguish between Kyoto project and non-Kyoto projects because this distinction has limited ongoing relevance. Instead, the Regulator will issue a declaration that a project is an eligible offsets project. [Schedule 1, item 99] Minor amendments ensure that references to this distinction are removed. [Schedule 1, items 42, 43, 50A, 51, 51A, 56, 111, 122, 123, 146, 172, 240, 241, 243 and 247]

1.19 The Bill also repeals provisions in the current law that provide for projects that involve reducing emissions from feral animals to be eligible non-Kyoto projects. [Schedule 1, items 33, 50, 143 and 144]

1.20 Consistent with these changes, new Emissions Reduction Fund methodologies cannot be made unless they cover emissions reductions that count towards Australia’s climate change targets (see Chapter 2).

1.21 While wetland restoration and feral animal eradication will not be supported through the Emissions Reduction Fund, these activities may be supported through other state or commonwealth programmes.

1.22 The distinction between Kyoto and non-Kyoto Australian carbon credit units will be retained to ensure there are no impacts on transitional project applications and other legislation which cross-references Kyoto and non-Kyoto Australian carbon credit units. The Bill makes amendments to make it clear that the Regulator will continue to issue Kyoto Australian Carbon Credit Units for abatement which counts towards Australia’s climate change targets (eligible carbon abatement) and non-Kyoto Australian Carbon Credit Units for any other abatement. [Schedule 1, items 50A, 51A, 77 and 78]

1.23 However, the Bill makes amendments to remove the distinction for the purposes of administering specific aspects of the Emissions Reduction Fund, in relation to relinquishment and entries in the Register. [Schedule 1, items 171 to 176, 196, 197, 247, 248, 249, 256 to 259, 261, 262, 263 and 264]

**Aggregated projects**

1.24 Under the current law, a project is defined to include ‘a set of activities’. This means that project proponents will be able to put forward aggregated projects that consist of many abatement activities or sub-projects with a single methodology. For example, a single aggregated project could comprise energy efficiency activities in ten commercial buildings. Energy efficiency improvements in each building would contribute to the project as a whole but would not need to be designated as separate projects.
1.25 In some cases, the proponent will not be able to report on all of the component parts of an aggregated project. For example, the energy efficiency activities in the example above might start or peak at different times for different buildings, and this might require reporting at different times. To accommodate these situations, the Bill will allow proponents to report on, and receive credits for, part of a project. Proponents will need to report on the remaining parts of the project within the maximum reporting period (5 years) set out in the Bill. [Schedule 1, item 77A]

1.26 To assist proponents to participate, the Bill also provides that a carbon maintenance obligation can apply to the entirety and part of a project. [Schedule 1, items 187, 188, 189, 190, 191, 191A, 192, 250, 251, 252 and 254]

1.27 Proponents will also be able to bundle several distinct projects, which may be declared under different methodologies, to be considered together during processes such as registration of projects, reporting on projects, and issuing of Australian Carbon Credit Units for abatement achieved by projects. Specific legislative provisions are not required to permit the bundling of projects. However, to reduce administrative costs for proponents, information which is common to all of the projects would only need to be provided once to the Regulator. [Schedule 1, items 235 and 358]

1.28 Participants in the purchasing processes will be able to bundle projects into a single bid and, if successful, into a single contract.

**Carbon sequestration rights**

1.29 Under the current law, a project proponent is the person that is responsible for carrying out the project, has the legal right to carry out the project and, for sequestration offsets projects, has the relevant carbon sequestration rights.

1.30 The requirement to hold the relevant carbon sequestration rights creates a barrier to aggregation of sequestration activities. This is because some landholders may be unwilling to transfer these property rights to the project proponent. Landholders may be more willing to grant the project proponent a legal right to undertake a project on their land.

1.31 To make it easier to undertake an aggregated sequestration project, the Bill will remove the requirement for the proponent of a sequestration project to hold the relevant carbon sequestration rights. [Schedule 1, items 130A to 130F, 131, 131AA, 131A, 237 and 238] For all types of projects, the proponent will be the person that is responsible for carrying out the project and has the legal right to do so. [Schedule 1, items 40A and 60A]
1.32 This change is to provide additional flexibility. Proponents of aggregated projects will still have the option to obtain a carbon sequestration right from the landholder and could use these rights to establish that they have the legal right to undertake the project.

1.33 These changes do not affect provisions relating to native title or indigenous held land. Native title holders and indigenous land owners can continue to undertake projects and provide consent to sequestration projects as they do currently. [Schedule 1, item 391]

1.34 The current law requires that anyone with an eligible interest in a sequestration project must give their consent to the project and this will remain a requirement under the Emissions Reduction Fund.

1.35 To provide further flexibility, sequestration projects can be registered on a conditional basis before having obtained the consent of all eligible interest holders. [Schedule 1, items 83A, 115, 119A and 119B] This will enable proponents to obtain the necessary consents after going to auction and securing a contract for the project.

Streamlining project registration

1.36 The existing law sets out a number of requirements that projects must meet in order to be eligible to be registered. For example, the project must occur in Australia and be consistent with a relevant methodology. These provisions will continue to apply under the Emissions Reduction Fund.

Recognised offsets entities

1.37 The current law requires that a project proponent must become a recognised offsets entity before applying to have their project declared eligible. The Bill removes the concept of a recognised offsets entity from the commencement of the Emissions Reduction Fund. [Schedule 1, items 63, 165 and 166] References to recognised offset entities have been replaced with references to fit and proper persons. [Schedule 1, items 81, 84, 104, 124 to 129, 151, 163, 164, 164A, 165, 166, 179 to 181, 183 to 185 and 255]

1.38 This purpose of this amendment is not to reduce or change the identity and probity checks that have to be met to undertake a project. The basic identity and probity checks required to become a recognised offsets entity will be retained and constitute the fit and proper test that project proponents must satisfy as part of the project registration process. [Schedule 1, items 48 and 151]
Satisfying the fit and proper person test will also enable project proponents to open an account in the Australian National Registry of Emissions Units, which applies the same fit and proper person criteria.

**Area-based emissions reduction projects**

The current law requires that all project declarations specify the project area. This is because, for land-based projects, information about the project area is often of relevance to other land users and neighbouring land managers.

The Bill removes the requirement for emissions avoidance projects to provide information about the project area unless the project is an area-based emissions avoidance project. [Schedule 1, items 27 and 100] References to area-based offsets projects have been added where relevant. [Schedule 1, items 26, 60, 66, 109, 110, 116, 132, 136, 140, 141, 142, 145, 194, 195, 245, 251 and 255]

Removing this requirement will make it easier to register emissions reduction projects for which project-area information is not relevant.

The Bill provides for an area-based emissions avoidance offset project to be defined in legislative rules. [Schedule 1, item 145] An example of such a project is a savanna fire management project.

**Natural resource management plans**

Under the current law, a project application must be accompanied by a statement from the proponent indicating whether or not the project is consistent with the relevant regional natural resource management plan. The project can still be approved if it is inconsistent with the relevant plan. Information about a project’s consistency with a relevant plan is included in the Register of Offsets Projects for the benefit of potential buyers, particularly in the voluntary carbon market, who may have a preference for credits from projects that are consistent with regional plans.

The Government recognises the important role that regional plans can play in guiding landholders to develop projects that deliver optimal benefits for the natural resource management. However, the Government does not consider it necessary to mandate consideration of natural resource management plans and the Bill removes this requirement. [Schedule 1, items 96, 161 and 246] Related definitions and notification requirements are also removed. [Schedule 1, items 64, 65, 117, 161, 246 and 267]
1.46 This will make it easier to undertake land-based projects and is likely to have minimal impact on the quality of these projects.

**Protection of native forests**

1.47 The Bill repeals the requirement that a project must not involve the harvesting or clearing of a native forest, or the use of materials obtained as a result of clearing a native forest. [Schedule 1, items 55, 58, 85, 92, 105, 108, 147 and 148, paragraph 27(4)(j), subsection 27(6)]

1.48 In place of this provision, the Bill introduces a general requirement that when making or varying a methodology determination, the Minister must consider any adverse environmental, social or economic impacts arising from the projects under the methodology. [Schedule 1, item 204, paragraph 106(4)(c)] The Minister may decide not to make, or to vary a methodology or require restrictions on projects to be included in a methodology to prevent risks of adverse impacts.

**Dealings by relevant ministers**

1.49 The current law requires relevant state or Commonwealth ministers who have consented to a sequestration project to also certify that they will not deal with the land in a way that makes it difficult or impossible to carry out the project.

1.50 The Bill removes this requirement, which may make it easier to obtain the necessary consents to undertake sequestration projects. [Schedule 1, items 105, 108 and 114, paragraphs 27(4)(h) and 27(4)(i) and subsections 27(6)-(9)] The measure was designed to safeguard project participants but, in practice, would not prevent future dealings such as the resumption of land to construct a road. Further, there are arrangements outside this legislation that would apply where this occurs.

**Additionality test**

1.51 Under the current law, projects must satisfy an additionality test to be eligible for credits. This test has two elements:

- the project must be of a kind that goes beyond common practice and has been listed in the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (CFI Regulations), known as the ‘positive list’; and

- the project must not be required by another law.
1.52 Additionality is also addressed through methodologies because emissions reductions must be estimated relative to a baseline that represents what would likely occur in the absence of the project.

1.53 The Bill will repeal the common practice test and the provision for methodology baselines. [Schedule 1, items 32, 130 and 207, paragraph 106(4)(f)] References to these provisions have been removed and minor, related amendments have been made. [Schedule 1, items 25, 106, 134, 138, 139, 203, 227 and 232]

1.54 While the common practice test has been repealed, the concept of common practice remains a useful way to identify whether an activity is additional and is likely to be applied in the context of methodology development and assessment. For example, some methodologies may exclude common practice activities or set baselines that take account of emissions reductions likely to be achieved through common practices. See chapter 2 for further detail on methodologies and the offsets integrity standards.

1.55 The Bill replaces the old additionality provisions with new project eligibility requirements and an express definition of additionality in the offsets integrity standards, requiring that a methodology must result in carbon abatement that is unlikely to occur in the ordinary course of events. [Schedule 1, item 223]

**Project eligibility requirements**

1.56 The Bill specifies project eligibility requirements to determine whether emissions reductions are new, required by regulations or likely to occur because of funding from another state or Commonwealth government programme. The Bill provides flexibility for methodologies to specify approaches for determining additionality in line with these requirements. [Schedule 1, items 103 and 107, subparagraphs 27(4A)(a)(ii) 27(4A)(b(ii)) and 27(4A)(c)(ii)]

1.57 The Bill includes a new requirement for registration, that the project (including upgrades and expansions) must not have begun to be implemented before it has been registered. [Schedule 1, item 107, paragraph 27(4A)(a)] This will ensure that the Government does not spend funds on projects that are already underway without support from the Emissions Reduction Fund.

1.58 The Bill includes a non-exhaustive list of examples of actions that will be taken as evidence that the project has commenced, such as installing equipment, as well as actions that do not indicate a project has commenced. This clarifies that proponents can, for example, begin planning projects, obtain regulatory approvals or undertake sampling to
establish a project baseline before a project is registered. [Schedule 1, item 107, subsections 27(4B) and 27(4C)] The Regulator will provide further guidance on the types of project preparation activities that do not indicate that a project has commenced.

1.59 To facilitate the rapid implementation of the Emissions Reduction Fund following the end of the carbon tax, proponents can notify the Regulator that they intend to commence a new project from 1 July 2014.

1.60 The notification must include the name and location of the project, and a project description. The Regulator will treat the project as new provided that the project begins after the date of notification. Proponents will have until 1 July 2015 to register projects for which notice has been given under this provision. [Schedule 1, items 388B and 388C]

1.61 The Bill introduces a new requirement that the project is not likely to occur because of funding from another state or Commonwealth government programme. [Schedule 1, Item 107, paragraph 27(4A)(c)]

1.62 The purpose of this requirement is to ensure that emissions reduction activities are not paid for twice. It is not the Government’s intention to prevent proponents from obtaining funding or in-kind support from multiple sources where this is necessary for the project. For example, the Government anticipates that environmental planting projects could receive assistance from the Green Army and fire management projects may involve rangers involved in Indigenous ranger programmes.

1.63 The Regulator will issue guidance that lists government programmes that typically provide sufficient funding for emissions reductions activities, for example the New South Wales Energy Savings Scheme. In making this assessment, it is not relevant whether the programme is to reduce emissions or has another objective.

1.64 Proponents will need to choose whether to seek support for their project through the Emissions Reduction Fund or one of the other listed programmes.

1.65 Under the CFI Act, the Regulator can deregister a project if the proponent no longer meets the requirements for project registration. This provision will continue to apply under the Emissions Reduction Fund. For example, a project would lose its registration if the proponent later obtained further funding for the project under a listed programme.

1.66 The Regulator will require proponents to make a statement about support from other government programmes as part of their application.
for project registration. The Regulator will use this information to identify and, if necessary, add to the list of programmes over time.

1.67 The Bill retains and moves the requirement under the current law that a project cannot be mandatory under a Commonwealth, state or territory law. These provisions are moved from the additionality test in section 41 into the requirements for declaration as an eligible project in section 27. [Schedule 1, items 103 and 107, paragraph 27(4A)(b)]

1.68 Methodologies may also take account of best practice and other guidelines issued by regulatory authorities when determining project baselines.

1.69 For example, it may be difficult to determine whether expanding methane capture at a coal mine constitutes a new activity or a continuation of an existing activity or practice. In these circumstances it may be easier to define new abatement by reference to historic levels of methane capture, such that only methane capture beyond historical levels is credited.

1.70 Similarly, the Bill provides that a methodology may deem a set percentage of abatement for an activity beyond which any further abatement is considered additional.

**Crediting periods**

1.71 Under the Carbon Farming Initiative, projects are approved and registered for a specific crediting period, which begins when a project is declared eligible and registered. The **crediting period** is the period during which emissions reduction activities are eligible to generate credits.

1.72 Crediting periods under the Emissions Reduction Fund will be similar to those under the Carbon Farming Initiative. Under the current law, the standard crediting period is seven years unless a different crediting period is provided for the activity through the CFI Regulations. The CFI Regulations currently provide a 15-year crediting period for reforestation and new regulations will soon be made under the current law to provide a 15-year crediting period for soil carbon projects.

1.73 The Bill will provide a standard seven-year crediting period for emissions reduction projects and a 25-year crediting period for sequestration projects. The Bill also enables crediting periods of different lengths to be provided through methodologies (see Chapter 2 for further details). [Schedule 1, item 152, sections 68 and 69]

1.74 Longer crediting periods have been provided for sequestration projects because sequestration projects must retain carbon stores for a
minimum permanence period of 25-years and carbon stores in trees and soils take a long time to grow and establish.

1.75 The Bill will enable proponents to nominate the start of the crediting period for their project, which must be within 18 months of project registration unless another time limit is specified in a legislative instrument. Proponents will be able to vary the nominated start of their crediting period when they first report on their project provided this falls within the time limit. \[Schedule 1, item 152, section 69\]

1.76 This will enable proponents to align the start of their crediting period with the start of their project. This recognises that, for large or complex projects, there could be a significant period between project registration and commencement. The 18-month time limit is to encourage proponents to commence projects within a reasonable time following registration.

1.77 Under the current law, after the first crediting period has expired, project proponents can apply for a subsequent crediting period. The Regulator can approve a subsequent crediting period if the project continues to pass the additionality test and meet other criteria. The Bill removes the ability for projects to have more than one crediting period.

1.78 The Bill repeals these crediting period provisions and provides instead that projects will be approved and registered for a single defined crediting period. \[Schedule 1, items 38 and 152, sections 68 and 69\] This will ensure that the Emissions Reduction Fund continues to target new projects that build on previous gains.

The Emissions Reduction Fund Register

1.79 The Emissions Reduction Fund Register is the register of projects that have been declared eligible and can be issued with Australian carbon credit units. It will be published on the Regulator’s website and will provide information to the market and the community about the operation of the Emissions Reduction Fund.

1.80 This Register is based on the Register of Offsets Projects under the Carbon Farming Initiative. Under the current law, the Register provides a description of the project, the proponent’s name, the applicable methodology, the location of the project, and the number of Australian carbon credit units that have been issued to the project.

1.81 The Bill changes the name of the Register of Offsets Projects to the Emissions Reduction Fund Register. \[Schedule 1, items 3 to 4, 7 to 10 and 12 to 13\]
1.82 Transitional arrangements ensure that projects approved under the Carbon Farming Initiative will remain on the Register. [Schedule 1, item 15] Further, references made to the Register of Offsets Projects in other Commonwealth laws and contractual agreements will be treated as referring to the Emissions Reduction Fund Register as a result of the change in name.
Chapter 2
Making methodologies

Outline of chapter

2.1 This chapter explains how methodologies are made for use under the Emissions Reduction Fund, including the requirements for methodologies and the process for assessing whether methodologies are suitable. The chapter includes information about the establishment and role of the Emissions Reduction Fund Assurance Committee.

Context of amendments

2.2 The Emissions Reduction Fund will build on the framework under the Carbon Farming Initiative for assessing and making new estimation methodologies. Methodologies explain how to estimate genuine and additional emissions reductions from different types of activities. Credits are issued for emissions reductions that are estimated using approved methodologies.

2.3 The process for proposing, assessing and making methodologies will be streamlined for the Emissions Reduction Fund. This will focus methodology development on opportunities that generate the largest volume of genuine abatement and that are likely to encourage the most participation.

2.4 The existing Domestic Offsets Integrity Committee is being renamed the Emissions Reduction Assurance Committee and its membership will be expanded. It will continue to assess and provide advice to the Minister for the Environment on the suitability of methodologies. The Minister will identify the priorities for methodology development, following advice from business and the Emissions Reduction Assurance Committee. The Government will work collaboratively with business, through technical working groups, to develop priority methodologies, which will be assessed by the Emissions Reduction Assurance Committee.

2.5 The requirements for methodologies have been amended to provide greater flexibility to develop methodologies for emissions
reduction activities across the economy while retaining the same high standards as under the Carbon Farming Initiative.

**Comparison of key features of new law and current law**

<table>
<thead>
<tr>
<th><strong>New law</strong></th>
<th><strong>Current law</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Making and varying methods</strong></td>
<td></td>
</tr>
<tr>
<td>The Minister must have regard to certain matters when deciding to make a methodology, including the advice of the Emissions Reduction Assurance Committee and whether a methodology complies with the offset integrity standards.</td>
<td>The Minister can only make a methodology that has been proposed under the legislation and endorsed by the Domestic Offsets Integrity Committee. The Minister must not make a methodology if it does not comply with, amongst other things, the offset integrity standards.</td>
</tr>
<tr>
<td>The process for proposing methodologies will be repealed.</td>
<td>Anyone can propose new methodologies for activities that meet the common practice test to the Domestic Offsets Integrity Committee for assessment.</td>
</tr>
<tr>
<td>There will be 28 days public consultation on draft methodologies or method variations unless the Emissions Reduction Assurance Committee determines that a shorter public consultation period, of no less than 14 days, is appropriate.</td>
<td>A minimum of 40 days of public consultation is required before the Domestic Offsets Integrity Committee can endorse a methodology.</td>
</tr>
</tbody>
</table>

**Independent expert committee**

<table>
<thead>
<tr>
<th><strong>New law</strong></th>
<th><strong>Current law</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Emissions Reduction Assurance Committee must have regard to certain matters when advising the Minister on the suitability of methodologies, including the offsets integrity standards, directions by the Minister in relation to methods, and advice from the Clean Energy Regulator.</td>
<td>The Domestic Offsets Integrity Committee must not endorse a method unless it complies with the offsets integrity standards and other specified requirements.</td>
</tr>
</tbody>
</table>
Chapter 2: Making methodologies

<table>
<thead>
<tr>
<th>In addition to its existing functions, the Emissions Reduction Assurance Committee will monitor and review methodologies on an ongoing basis to ensure that they are consistent with the offsets integrity standards.</th>
<th>The functions of the Domestic Offsets Integrity Committee are to provide advice on methodologies, matters relating to offsets projects and any other matters referred to them by the Minister or the Secretary of the Department of the Environment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Emissions Reduction Assurance Committee will have a maximum of nine members, including the Chair. Restrictions on the number of members from the Commonwealth Scientific and Industrial Research Organisation will be removed.</td>
<td>The Domestic Offsets Integrity Committee has six members, including the Chair. No more than two members can come from the Commonwealth Scientific and Industrial Research Organisation.</td>
</tr>
</tbody>
</table>

**Methodology requirements**

<table>
<thead>
<tr>
<th>The offsets integrity standards will include a definition of additionality and the current additionality (common practice) test will be repealed.</th>
<th>The offsets integrity standards provide that methodologies must relate to activities that pass the additionality test.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The offsets integrity standards will provide for methodologies to be supported by clear and convincing evidence, which may include relevant scientific results published in peer-reviewed literature.</td>
<td>The offsets integrity standards provide that methodologies must be supported by relevant scientific results published in peer-reviewed literature.</td>
</tr>
<tr>
<td>The offsets integrity standards will provide for methodologies to account for material increases in emissions as a direct result of the project.</td>
<td>The offsets integrity standards provide that methodologies must account for increases in emissions as a result of the project.</td>
</tr>
<tr>
<td>The offsets integrity standards will provide for methodologies to ensure that emission reductions can be counted towards Australia’s climate change targets.</td>
<td>The offsets integrity standards provide that methodologies must be the same as those in the National Greenhouse and Energy Reporting System, where applicable, and otherwise consistent with the National Inventory.</td>
</tr>
<tr>
<td>The Minister will be able to direct the Emissions Reduction Assurance Committee to have regard to specified matters when giving advice</td>
<td>There are no provisions for the Minister to give directions to the Domestic Offsets Integrity Committee in the current law.</td>
</tr>
</tbody>
</table>
about the suitability of methodologies.

<table>
<thead>
<tr>
<th>Crediting periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Methodologies can specify crediting periods.</td>
</tr>
</tbody>
</table>

**Detailed explanation of new law**

2.6 The current law establishes a process that allows anyone to propose a new methodology to the Domestic Offsets Integrity Committee for an activity that meets the common practice test.

2.7 The experience of participants in the Carbon Farming Initiative has been that this process has not enabled the timely development of widely-applicable methodologies for the most prospective emissions reduction activities.

2.8 To enable methodologies for the Emissions Reduction Fund to be assessed and made more quickly than under the Carbon Farming Initiative, the Bill repeals the provisions allowing a person to make an application for endorsement of their methodology by the Domestic Offsets Integrity Committee. [Schedule 1, items 205, 207, 209 and 211]

2.9 Instead, the Bill sets out matters to which the Minister must have regard in deciding whether to make a methodology determination. [Schedule 1, item 204] This provides appropriate discretion for the Minister to make judgements about whether the draft methodology is suitable for use under the Emissions Reduction Fund.

2.10 Specifically, the Bill requires the Minister to have regard to the offsets integrity standards and any advice provided by the Emissions Reduction Assurance Committee. [Schedule 1, items 198 to 204, 206, 208, 210 and 216, subsections 106(10), 114(2) and 114(6)]

2.11 The Bill also provides that the Minister must have regard to whether a methodology is likely to cause any adverse environmental, economic or social impacts, and may consider any other relevant matters. [Schedule 1, item 204, paragraphs 106(4)(c)-(d)]

2.12 This requirement replaces project eligibility criteria in the current law that are designed to ensure that projects approved under the Carbon Farming Initiative do not have specified adverse impacts. It will be easier for businesses to participate in the Emissions Reduction Fund if
potential adverse impacts are considered when a methodology is made, rather than when a proponent applies to register their project. Proponents will still have to obtain any necessary regulatory approvals for their projects before they can receive any credits, in accordance with section 28 of the CFI Act.

2.13 Under the current law, the Minister can also vary methodologies. The process for varying a methodology is similar to that for making a new methodology.

2.14 The Bill provides flexibility for the Minister to make minor variations to methodologies without first seeking the advice of the Emissions Reduction Assurance Committee. [Schedule 1, item 210, subsection 114(9)] This will allow minor amendments to be made more quickly and efficiently than under the Carbon Farming Initiative.

2.15 Emissions reduction methodologies will be legislative instruments, as they are under the Carbon Farming Initiative. This means they must be made in accordance with the Emissions Reduction Fund legislation and can be disallowed by the Parliament. This will provide confidence to the community that methodologies will enable crediting of genuine emissions reductions and are appropriately scrutinised.

2.16 To allow methodologies to be made quickly and efficiently, the Minister can delegate decisions to make methods to the Secretary or Senior Executive Service officers (of the Department). [Schedule 1, item 361]

2.17 The Bill requires public consultation on draft methodologies or methodology variations for a period of 28 days before a methodology can be made. The Bill also gives the Emissions Reduction Assurance Committee the ability to determine that a shorter period of public consultation, of no less than 14 days, is appropriate. [Schedule 1, item 218, subsection 123D(3)]

2.18 The formal period of public consultation is shorter than the 40 days provided under the current law. This will streamline the process for making methodologies, recognising that consultation on draft methodologies will also occur throughout the collaborative method development process. Information about the progress of technical working groups will be provided through the Emissions Reduction Fund Update newsletter and published on the Department of the Environment website. This newsletter provides regular updates on the implementation of the Emissions Reduction Fund.

2.19 The Emissions Reduction Assurance Committee will have similar functions to the Domestic Offsets Integrity Committee established under the Carbon Farming Initiative.
2.20 The Bill provides that in giving advice, the Emissions Reduction Assurance Committee must have regard to the offset integrity standards and any specified matters as directed by the Minister. [Schedule 1, item 218, sections 123A and 123B] This provides some discretion for the Emissions Reduction Assurance Committee to make judgements about whether the draft methodology meets the requirements for the Emissions Reduction Fund.

2.21 The Emissions Reduction Assurance Committee must also have regard to any relevant advice from the Clean Energy Regulator. [Schedule 1, item 218, paragraph 123A(5)(c)] The advice of the Regulator will be important in ensuring that methodologies, including the monitoring and reporting requirements, are practical and cost-effective.

2.22 As a consequence of providing for the Emissions Reduction Assurance Committee to take account of any relevant advice from the Regulator, the Bill adds the provision for such advice to the functions of the Regulator. [Schedule 1, item 355]

2.23 In developing its advice, the Emissions Reduction Assurance Committee may seek advice from external experts on technical details and the evidence base for models and other elements. This will ensure that the Emissions Reduction Assurance Committee’s advice reflects the best available knowledge and expertise. This does not require legislation.

Other functions

2.24 In addition to its existing functions, the Bill provides for the Emissions Reduction Assurance Committee to monitor and review the ongoing compliance of methodologies over time. This includes undertaking public consultation in relation to the reviews of methodologies. [Schedule 1, item 278] A key focus of the reviews will be to ensure that emission reductions credited under methods continue to be genuine and additional over time, taking into account such factors as changing market conditions.

2.25 Consistent with the policy outlined in the Emissions Reduction Fund White Paper, the Minister will request that the Emissions Reduction Assurance Committee review each methodology at least once every four years.

2.26 As outlined in the White Paper, the Minister can seek advice of the Emissions Reduction Assurance Committee on the priorities for methodology development. This includes advice on bespoke methodologies for large projects, which have the potential to deliver more than an average of 250,000 tonnes of carbon dioxide equivalent (CO2-e) a year over the crediting period.
Chapter 2: Making methodologies

2.27 The committee will have significant industry experience and will be well placed to identify gaps in the available methodologies or where the development of different tools or approaches could make it easier for business to participate.

2.28 The Bill repeals the provisions in the current law that make the decisions of the Domestic Offsets Integrity Committee subject to review by the Administrative Appeals Tribunal. [Schedule 1, items 268, 269 and 270] This amendment has been made to reflect the fact that the Emissions Reduction Assurance Committee provides advice to the Minister and, unlike the Domestic Offsets Integrity, does not receive or make any administrative decisions on applications from third parties (proposing methodologies).

Requirements for methodologies

2.29 Methodology determinations must specify the circumstances or types of activities to which the method applies, and include rules for estimating net emissions reductions from the project.

2.30 Methodologies typically provide relatively detailed rules for estimating emissions reductions and a number of them adopt detailed rules specified in online calculators or technical reference guides as in force from time to time. Some methodologies used in other emissions reduction programmes provide high-level guidance rather than detailed rules for estimating emissions reductions. Proponents use these types of methodologies to develop project-specific approaches, which are approved by the scheme administrator.

2.31 The Bill makes minor amendments to provide greater flexibility for the Minister to make methodology determinations that provide high-level guidance rather than rules for estimating emissions reductions. Specifically, a methodology determination can provide for proponents to estimate their emissions and net carbon abatement in accordance with the guidance in the determination rather than specifying rules. [Schedule 1, items 199A, 223A, 225A and 229A]

2.32 The Bill provides that methodology determinations can empower the Regulator to make administrative decisions. For example, the Regulator may be required to approve project-specific estimation approaches. Without this explicit legislative authority, the Regulator would not be able to make such decisions. [Schedule 1, items 205A and 369, subsection 106(9A)]
Estimating emissions reductions

2.33 The offsets integrity standards currently provide for emissions reductions to be measurable, capable of being audited, and estimated on the basis of conservative assumptions. These provisions will remain part of the offsets integrity standards.

Additionality

2.34 Under the current law, the offsets integrity standards refer to the additionality test, which requires that an activity is not common practice within an industry or industry subsector and is not required by Commonwealth or state government regulations.

2.35 As described in chapter 1, the Bill replaces the additionality test in the current law with project eligibility requirements and a general additionality requirement in the offsets integrity standards, that the application of the methodology should result in credits being issued for emissions reductions that are unlikely to occur in the ordinary course of events. [Schedule 1, items 107 and 223]

Kyoto consistency

2.36 The current law requires that methodologies are the same as those under the National Greenhouse and Energy Reporting System, where applicable. The National Greenhouse and Energy Reporting System covers industrial sources of emissions, including emissions from waste.

2.37 The Bill repeals these provisions and replaces them with a single, broader requirement that abatement estimated under the methodology is eligible carbon abatement. This means that emissions reductions that are credited under the methodology must be able to be counted towards Australia’s climate change targets, in accordance with Australia’s obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol or a successor agreement. [Schedule 1, items 40, 54, 225 and 234]

2.38 This requirement can be met by adopting methodologies from the National Greenhouse and Energy Reporting System, which is used as the basis for Australia’s National Greenhouse Gas Inventory (National Inventory). The amended provision will also provide flexibility to adopt more accurate methodologies, which have not yet been incorporated into the National Greenhouse and Energy Reporting System.

2.39 The Department of the Environment is responsible for Australia’s National Inventory. Under the current law, the departmental member of the Domestic Offsets Integrity Committee provides advice on
whether methodologies are consistent with methodologies used to develop the National Inventory and will result in emissions reductions that are counted towards Australia’s climate change targets. These arrangements will be retained under the Emissions Reduction Assurance Committee. [Schedule 1, item 218, section 123C]

**Evidence to support methodologies**

2.40 The current law requires methodologies to be supported by relevant scientific results published in peer-reviewed literature. This requirement reflects the importance of scientific evidence in developing new methodologies for land-based activities.

2.41 The Bill replaces this requirement with a similar but broader requirement that methodologies are supported by clear and convincing evidence. [Schedule 1, items 224, 226, 227, 230, 233 and 234, subsection 133(2)] Data about energy use will typically be needed to support new industrial methodologies, whereas scientific evidence is more likely to be needed to underpin many new land sector methodologies.

**Other matters**

2.42 The Bill provides for the Minister to make directions specifying other matters that the Emissions Reduction Assurance Committee must take into account when assessing whether a methodology determination should be made, varied or revoked. [Schedule 1, item 218, section 123B]

2.43 These directions will provide detailed guidance on technical issues such as whether emissions are material and need to be estimated as part of the project, as well as options for setting realistic baselines and ensuring emissions reductions are additional.

2.44 Directions will be published and will also provide guidance to technical working groups, similar to the Methodology Development Guidelines under the Carbon Farming Initiative.

2.45 Under the current law, the offsets integrity standards provide for methodologies for sequestration activities to take account of significant cyclical variations. The Bill repeals this requirement as the options for addressing this methodological issue can be addressed more effectively through ministerial directions. [Schedule 1, items 228, 229 and 231] For example, the Minister may make directions specifying how methodologies are to account for the impacts of natural climatic variability and cyclical activities such as harvesting, as well as other sources of emissions variability affecting industrial projects.
2.46 Ministerial directions to the Emissions Reduction Assurance Committee are legislative instruments and, in accordance with sections 44 and 54 of the *Legislative Instruments Act 2003* regarding ministerial directions to any person or body, are not subject to disallowance or sunsetting.

**Crediting periods**

2.47 The Bill enables methodologies to set crediting periods of different lengths. *[Schedule 1, item 152, paragraphs 69(2)(b) and 69(3)(b)]*

2.48 Ministerial directions will specify the criteria for setting crediting periods of different lengths, consistent with the policy on crediting periods set out in the Emissions Reduction Fund White Paper.

**Leakage**

2.49 The current law provides for methodologies to account for increases in emissions as a result of the project. This is often referred to as avoiding ‘leakage’.

2.50 The Bill amends this requirement in the current law to clarify that methodologies must provide for deductions to be made for material increases in emissions that are a direct result of the project. *[Schedule 1, item 228]*

2.51 Ministerial directions may specify the circumstances in which methodologies will need to include deductions for the indirect or flow-on effects of projects across the economy. These effects may be significant but outside the control of the proponent or difficult for proponents to estimate. For example, reductions in harvesting in one area may largely be offset by increases in harvesting elsewhere to meet unchanged demand for timber. Ministerial directions could specify a simple discount factor to account for this type of leakage. This is consistent with the current approach under the Carbon Farming Initiative.

**Other requirements**

2.52 The Bill repeals the requirement that a methodology determination must not specify a type of project by reference to a state or a part of a state. This is a requirement under the Constitution of Australia and does not need to be included in this legislation.
Emissions Reduction Assurance Committee

2.53 The Emissions Reduction Assurance Committee is a continuation of the Domestic Offsets Integrity Committee, with expanded functions and membership. The Committee will assess methodologies from the commencement of the Emissions Reduction Fund.

2.54 The Bill expands the membership of the Emissions Reduction Assurance Committee to a maximum of nine members, including the Chair. [Schedule 1, item 282] This is to include a broader range of industry experience than under the Domestic Offsets Integrity Committee, which has a maximum of six members.

2.55 To provide flexibility, the Bill removes the restriction on the number of members (two) that can come from the Commonwealth Scientific and Industrial Research Organisation. [Schedule 1, item 289] The restriction in the current law reflects the six person limit on the size of the Domestic Offsets Integrity Committee.

2.56 Existing members of the Domestic Offsets Integrity Committee will continue as members of the Emissions Reduction Assurance Committee (without the need for reappointment) until their terms expire, by virtue of this provision and s 25B of the Acts Interpretation Act 1901.

Transitional arrangements

2.57 To facilitate the implementation of the Emissions Reduction Fund, the Government will appoint an interim Emissions Reduction Assurance Committee. This will enable the committee to assess methodologies for the Emissions Reduction Fund prior to the passage of this Bill so that new methodologies can be made well before the first auction. The interim committee will cease to operate on commencement of the Emissions Reduction Fund.

2.58 To facilitate this, the Bill provides that advice given by the interim Emissions Reduction Assurance Committee can be treated as advice provided by the Emissions Reduction Assurance Committee for the purposes of this legislation. [Schedule 1, item 393]

2.59 The Bill also provides transitional arrangements to ensure that proposals to make or vary methodologies under the Carbon Farming Initiative can be finalised quickly and smoothly by the Emissions Reduction Assurance Committee following the commencement of the Emissions Reduction Fund.
The Bill provides that, following the commencement of the Emissions Reduction Fund, the Minister can make or vary a methodology based on the advice of the Domestic Offsets Integrity Committee in accordance with the CFI Act. The Minister will not need to ask the Emissions Reduction Assurance Committee to reassess the proposals under the new law. [Schedule 1, item 392A(1) and 392B(1)]

If a proposal to make or vary a methodology has been subject to public consultation under the CFI Act, this will satisfy the requirement for public consultation on methodologies under the Emissions Reduction Fund and does not need to be undertaken again. [Schedule 1, item 392A(2) and 392B(2)]

Under the CFI Act, decisions by the Domestic Offsets Integrity Committee are subject to review by the Administrative Appeals Tribunal. The Bill includes transitional provisions to ensure that a methodology proposal may be approved following a review of a decision by the Administrative Appeals Tribunal. Following a review by the Administrative Appeals Tribunal, the Minister can decide to approve the new methodology or methodology variation under the old law, notwithstanding that the methodology has not been assessed by the Emissions Reduction Assurance Committee against the requirements of the Emissions Reduction Fund. [Schedule 1, item 392A(3) and 392B(3)]

Relevant confidentiality obligations continue to apply under the new law to information provided in confidence to the Domestic Offsets Integrity Committee. [Schedule 1, items 61, 62 and 383]

Transitional provisions have been included to ensure that relevant provisions of the CFI Act can apply after the commencement of the CFI Act as amended. [Schedule 1, items 394 and 395]

As a consequence of changing the name of the Domestic Offsets Integrity Committee to the Emissions Reduction Fund Assurance Committee, references to the current name will be replaced with references to the new one and other minor amendments will be made. [Schedule 1, items 39, 45, 46, 47, 49, 70, 72, 73, 74, 214, 215, 216, 217, 271, 272, 273, 276, 277, 279 to 281, 283 to 326, 328, 332 to 354 and 363]
Chapter 3
Reporting and auditing

Outline of chapter

3.1 This chapter outlines the arrangements for reporting and auditing under the Emissions Reduction Fund.

Context of amendments

3.2 The CFI Act provides various mechanisms to enable the effective monitoring, reporting and auditing of emissions reductions. The Emissions Reduction Fund builds on this existing framework. For example, monitoring and enforcement arrangements for the Emissions Reduction Fund will be the same as those under the Carbon Farming Initiative.

3.3 The Bill introduces a risk-based approach to auditing emissions reductions and provides flexibility to report emissions reductions more frequently. Together, these changes are intended to allow project proponents to optimise their cash flow, and make it easier and less costly to participate in the Emissions Reduction Fund.

Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th></th>
<th>New law</th>
<th>Current law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reporting</strong></td>
<td>Proponents can choose to report every six months or, in some circumstances, more frequently.</td>
<td>Proponents can choose when to report on their project, provided that the reporting period is no less than 12 months and no more than five years.</td>
</tr>
<tr>
<td><strong>Auditing</strong></td>
<td>A risk based approach will be applied to determine the level of assurance, frequency and scope of audit required for a project.</td>
<td>Every application for a certificate of entitlement and project report must be accompanied by a reasonable assurance audit report, unless otherwise specified in regulations.</td>
</tr>
</tbody>
</table>
Detailed explanation of new law

Reporting

3.4 Under the Emissions Reduction Fund, reporting requirements will be specified in methodology determinations and participants will be required to submit offset reports to the Regulator in accordance with these requirements.

3.5 The current law enables project proponents to choose when to report on their project, provided that the period between reports is no less than twelve months and no more than five years. The Regulator can only issue credits on receipt of a project report.

3.6 The Bill will reduce the maximum reporting period for emissions reduction projects from five years to two years. [Schedule 1, items 153, 154, 156 and 158A] Sequestration projects will continue to have a maximum reporting period of five years, recognising that it can take a long time for these projects to become established.

3.7 The Regulator can only issue credits on receipt of a project report. Proponents may therefore have an interest in reporting their emissions and receiving credits more frequently.

3.8 The Bill will give proponents the option to submit project reports and receive credits more frequently than currently under the Carbon Farming Initiative. Proponents can choose to submit reports every six months or more frequently where allowed under a legislative instrument. [Schedule 1, items 153, 154 and 156] This will improve cash flow for some project operators and, with reduced audit requirements, improve the cost effectiveness of some projects.

3.9 The Government will make a legislative instrument that allows reporting more frequently than every six months in certain circumstances. The Government will take account of the administrative costs of allowing more frequent reporting and may restrict more frequent reporting to medium and large projects.

3.10 Contracts for the purchase of emissions reductions will include a schedule for the delivery of Australian carbon credit units submitted by the project proponent. This schedule would typically provide for delivery of Australian carbon credit units at least once every two years over the contract period, consistent with the policy set out in the Emissions Reduction Fund White Paper. Once a contract is agreed, the frequency and timing of reporting will be governed by this schedule.
3.11 The current law requires reports to be submitted within three months of the end of the reporting period. The Bill amends this provision to enable methodologies to provide for reports to be submitted within six months of the end of the reporting period or at different intervals where this is provided for under a methodology determination. [Schedule 1, item 158A paragraph 76(4)(e)] This will provide more time for project proponents to finalise their methodologies following the end of the reporting period.

Reporting on aggregated projects

3.12 The Bill provides for proponents to divide their projects into two or more parts for the purpose of reporting emissions reductions from the project and receiving credits. Where a project comprises multiple facilities or areas of land, this will allow proponents to report separately, as necessary, on each facility or area of land. [Schedule 1, item 159A]

3.13 Where this occurs, each part of the project is treated as a project in its own right for the purposes of crediting. Consistent with this, the methodology must apply and be used to estimate emissions from all parts of the project. It will not be possible to divide and report on projects in ways that are inconsistent with a methodology determination. For example, a methodology determination could provide that it is not possible to report separately on sources of emissions within a project boundary that have fallen and to delay reporting on sources of emissions that have increased.

No double counting

3.14 The Bill gives effect to the principle that emissions reductions should not be credited more than once. [Schedule 1, items 55A and 85A] Double counting could arise, for example, where emissions reductions are inadvertently reported as part of an aggregated project and an individual project or where a proponent chooses to use another applicable methodology.

3.15 Specifically, the Bill enables the Regulator to not issue credits for emissions reductions that have been reported previously or in relation to another registered project. In the event that an incident of double counting was uncovered, the Regulator would issue a certificate of entitlement to credits that reflects the net emissions reductions reported for the project minus any emissions reductions that have already been credited.

3.16 This provision does not address potential double counting that could arise where emissions reductions are counted under the Emissions Reduction Fund and other government programme. The Australian Government will work with relevant state government agencies to
establish information sharing and other arrangements with a view to avoiding double counting between programmes.

**Reporting on waste diversion**

3.17 Emissions reductions from most activities occur as the activity takes place. Waste diversion differs from other activities because it reduces emissions over many years as the waste would otherwise have slowly decomposed and emissions emitted from a landfill. For this reason, emissions reductions from waste diversion during the crediting period will be reported, and credits issued, beyond the crediting period.

3.18 Consistent with the policy set out in the White Paper, methodologies for waste diversion (called alternative waste treatment) will provide for credits to be issued over seven years. This means, for example, that credits for the last year of eligible waste diversion during a seven-year crediting period will be reported and issued over the subsequent seven years.

3.19 The Bill enables this by allowing methodologies to provide for emissions reductions to be reported beyond the crediting period, known as an **extended accounting period**, for activities, such as waste diversion, which will be listed in a legislative rule. [Schedule 1, items 48, 74A, 82, 83, 155, 157 and 219A, paragraph 76(4)(e) and subsection 77A(2)]

**Auditing**

3.20 Under the current law, a project proponent receives credits by submitting a report for their project and applying for a certificate of entitlement. In practice, a project proponent applies for a certificate of entitlement when they submit their project report by indicating that they wish to be issued with credits in line with the report.

3.21 The current law requires all project reports to be accompanied by a reasonable assurance audit report, with minor exceptions in the CFI regulations. An application for a certificate of entitlement must be accompanied by a project report and the associated audit report.

3.22 The Bill repeals the requirements for an audit report to be provided with all project reports and applications for a certificate of entitlement. [Schedule 1, items 79, 80 and 158] It also repeals the provision for regulations to set out types of projects that are exempt from audit requirements. [Schedule 1, item 159] Consistent with this, the Bill provides that an application for a certificate of entitlement need only be accompanied by an audit report if this is required for the associated project report. [Schedule 1, items 79 and 80]
3.23 The Bill provides that, in addition to the criteria in subsection 15(2) of the CFI Act, the Regulator must not issue a certificate of entitlement unless it is satisfied that the project passes the no double counting test, as defined in the Bill. [Schedule 1, items 55A, 83 and 85A]

3.24 In place of current audit provisions, the Bill introduces a risk-based approach to auditing emissions reductions. The Bill provides for legislative rules to be made by the Regulator, specifying the level of assurance, frequency and scope of the audit report that must be provided with project reports for different types of projects. [Schedule 1, items 158 and 159, subsection 76(4)(c)]

3.25 Consistent with the policy set out in the Emissions Reduction Fund White Paper, the Regulator will make legislative rules that provide for projects to undertake an initial audit at the beginning of the crediting period with a minimum of three audits, including the initial audit, in total over crediting periods of seven years or more. The rules may also provide for fewer audits over shorter crediting periods.

3.26 The legislative rules outlining audit requirements for different types of activities will be made available well in advance of the first auction to provide certainty to participants.

3.27 The Regulator can also give a project proponent written notice that they are required to submit an audit report with a project report, provided that the Regulator has determined that it is appropriate and in accordance with effective risk management. [Schedule 1, items 158 and 159, subsection 76(5)]

3.28 Where an audit report is required, it must be conducted by a registered greenhouse and energy auditor. [Schedule 1, item 158, subparagraph 76(4)(c)(ii)]

3.29 The Bill makes minor amendments to replace the term ‘CFI audit’ with the term ‘Emissions Reduction Fund audit’ in the NGER Act, and to allow for accurate cross-referencing. [Schedule 1, items 377, 378, 380 and 381]
3.30 Risk-based audit arrangements established under the Emissions Reduction Fund will apply automatically to Carbon Farming Initiative projects (see Chapter 5 for further information on transitional arrangements). Existing Carbon Farming Initiative projects will also have the option to report more frequently. Note that six month reporting intervals may not be possible under some methodologies, such as for savanna burning.

3.31 For the purpose of monitoring compliance and substantiating information provided under the Carbon Farming Initiative, the current law sets out that an inspector may enter the premises of a project proponent with their consent.

3.32 The current law enables the Regulator to appoint an employee of the Department of the Environment to be an inspector. The Bill amends this provision to allow the Regulator to appoint its employees to be inspectors. [Schedule 1, item 265]

3.33 Employees of the Regulator are more likely to have the experience and skills needed to undertake monitoring functions than employees of the Department.
Chapter 4
Purchasing

Outline of chapter

4.1 This chapter explains the new provisions for the purchase of emissions reductions by the Clean Energy Regulator. It covers the process for selecting low cost emissions reductions, the powers of the Regulator to enter contracts on behalf of the Government and the treatment of Australian carbon credit units once purchased.

Context of amendments

4.2 The Bill authorises the Regulator to conduct purchasing processes to select persons from whom eligible emissions reductions will be purchased. Generally, the Regulator will do this by conducting reverse auctions to purchase emissions reductions at lowest available cost. Eligible proponents will have the opportunity to submit registered projects into the auction.

4.3 The Regulator will have significant discretion in relation to the conduct of purchasing processes and can purchase emissions reductions through other processes such as through a tender.

4.4 Following a purchasing process, the Regulator will enter into a contract with a successful seller for the purchase of carbon abatement.

4.5 Contracts entered into, following auctions or other procurement processes, will be standardised to reduce transaction costs, increase transparency and ensure projects compete for funding at auctions on equal terms. Contracts will include a range of commercial provisions to manage the delivery of emissions reductions.

Summary of new law

4.6 The Regulator will conduct purchasing processes to select persons from whom eligible emissions reductions will be purchased. The Regulator will have significant discretion regarding the form and conduct of the purchasing process. The Regulator may select the form of the
purchasing process (reverse auction, tender or other process), set requirements or conditions that a person must satisfy to participate in the process and set procedures for selecting projects from which the Regulator, on behalf of the Commonwealth, will purchase emissions reductions.

4.7 The Regulator’s discretion will be bound by principles outlined in the legislation. The principles require the Regulator to, among other matters, design the purchasing process to deliver value for money, maximise abatement, minimise administrative costs and ensure the integrity of the purchasing process.

4.8 The Bill provides for the Regulator to enter into a carbon abatement contract to purchase eligible carbon credit units as a result of the purchasing process.

4.9 The Regulator has the powers and obligations of the Commonwealth in respect of carbon abatement contracts.

4.10 The Regulator may publish certain information about the purchasing process including when the process occurred, the weighted average price paid by the Commonwealth for emissions reductions purchased in an auction and other information or statistics. This information will assist proponents who are considering participating in the Emissions Reduction Fund.

**Comparison of key features of new law and current law**

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<thead>
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<tr>
<td><strong>Conduct of auctions</strong></td>
<td></td>
</tr>
<tr>
<td>The Regulator will be able to conduct reverse auctions or other procurement processes. The Bill sets out the principles that will guide the conduct of purchasing processes.</td>
<td>No equivalent provisions.</td>
</tr>
<tr>
<td><strong>Contracts</strong></td>
<td></td>
</tr>
<tr>
<td>The Regulator will be able to enter into and enforce contracts to purchase eligible carbon credit units from registered projects.</td>
<td>No equivalent provisions.</td>
</tr>
</tbody>
</table>
Publication of information

| The Regulator will be required to publish information about auctions and purchased emissions reductions. | No equivalent provisions. |

Detailed explanation of new law

Purchasing process

4.11 The Bill provides for the Regulator to purchase emissions reductions from a project proponent for an eligible offsets project through a reverse auction, a tender or other purchasing process. [Schedule 1, items 1, 2 and 5]

4.12 Generally, the Regulator will purchase emissions reductions through a reverse auction. The Regulator will have discretion to use other procurement processes, subject to the purchasing principles set out in the legislation. [Schedule 1, item 5, section 20G] For example, the Regulator may contract directly with proponents for the purchase of emissions reductions from large projects that may not be selected through the auction despite having the potential to provide carbon abatement at low cost. This can occur where projects have long lead times and deliver significant emissions reductions outside the contract period.

4.13 The Regulator will also have significant discretion regarding the design and conduct of reverse auctions and other purchasing processes, subject to the purchasing principles set out in this legislation. This will allow the Regulator to adjust the conduct of reverse auctions to reflect lessons learned over time.

4.14 The Regulator may only enter into a contract with a project proponent for an eligible offsets project. That is, the project must be registered in order for the project to be included in an auction or other purchasing process. [Schedule 1, item 5, subsection 20C(2)]

4.15 The Regulator may set conditions or pre-qualification requirements for participation in a reverse auction or other purchasing process. That is, the mere fact that a person is a project proponent for an eligible offsets project will not automatically entitle the person to participate in a purchasing process. [Schedule 1, item 5, subsection 20G(5)]

4.16 Consistent with the policy set out in the Emissions Reduction Fund White Paper, these conditions or requirements will include a credible estimate of emissions reductions for the project, a minimum bid size and the capacity of the applicant to carry out the project. These
requirements would be set out in documents published by the Regulator prior to the purchasing processes.

4.17 In exercising its purchasing powers, the Regulator must have regard to principles set out in the legislation. [Schedule 1, item 5, section 20G] The principles that the Regulator must consider when purchasing emissions reductions are:

- Purchasing carbon abatement at least cost.

Purchasing processes must ensure value for money.

- Maximising the carbon abatement purchased under the Emissions Reduction Fund within the resources appropriated for this purpose.

Purchasing processes should maximise the amount of emissions reductions that can be purchased.

- Ensuring administrative costs are reasonable.

Administrative processes should be as streamlined as possible to facilitate participation in the Emissions Reduction Fund and reduce operational costs.

- Ensuring the integrity of the purchasing process.

The assessment and selection of emissions reduction projects must be conducted in a fair and orderly manner. The process must be free from fraud and other misconduct.

- Encouraging competition.

A competitive process will help ensure the Emissions Reduction Fund delivers value for money.

- Fair and ethical treatment for all participants.

The highest ethical standards will be applied, in line with other types of government procurement.

[Schedule 1, item 5, subsection 20G(3)]

4.18 The principles articulated in the Bill give effect to the core objects of the Commonwealth Procurement Rules and specifically, the overarching requirement to deliver value for money. The Bill also includes provisions regarding reporting, auditing and issuance of units to
ensure that there is accountability, transparency, and provisions to ensure that the Regulator conducts appropriate risk assessments.

4.19 The Bill includes a provision specifying that, to avoid doubt, neither an instrument made under section 105B of the Public Governance, Performance and Accountability Act 2013, nor the Commonwealth Procurement Rules apply to the exercise of purchasing and contracting powers under the Emissions Reduction Fund. [Schedule 1, item 5, section 20J] This is because there would be a significant overlap between the purchasing principles in the Bill (and legislative rules made) and the Commonwealth Procurement Rules, which both have as their primary purpose ensuring that Commonwealth procurement processes deliver value for money. Having both sets of rules apply to procurement processes undertaken for the Emissions Reduction Fund would create administrative complexity without improving purchasing processes.

4.20 The Minister can make legislative rules that provide further guidance regarding the conduct of reverse auctions or other purchasing processes. [Schedule 1, item 5, subsection 20G(2)] This is to provide flexibility to adjust purchasing processes as necessary to ensure value for money over time. There are currently no plans to provide further guidance.

4.21 Procurement processes allocate scarce resources amongst competing participants. Consistent with the approach to other government procurement decisions, the outcomes of purchasing processes conducted by the Regulator will not be subject to merits review. This gives proponents certainty about the outcome of procurement processes.

Contracts

4.22 After a reverse auction or other procurement process, the Regulator, on behalf of the Commonwealth, may enter into a carbon abatement contract with a successful project proponent to purchase emissions reductions. [Schedule 1, item 5, sections 20A, 20B and 20C]

4.23 The contract will set out the Commonwealth’s obligation to pay for carbon abatement and the contractor’s obligation to deliver Australian Carbon Credit Units. [Schedule 1, items 3 and 6, section 20B]

4.24 The Regulator will be able to contract for carbon abatement from projects at different stages of implementation. The Bill provides that units may or may not be in existence when the contract is agreed. [Schedule 1, item 5, subsection 20B(2)] This recognises that some projects will have already begun generating credits under the Carbon Farming Initiative whereas other proponents may use the contract to secure project finance.
4.25 The Regulator will only pay for emissions reductions once they have occurred, units have been issued and they have been transferred to the relevant Commonwealth Registry account. The Regulator will make payments on behalf of the Commonwealth. [Schedule 1, item 5, section 20D]

4.26 The Regulator can purchase emissions reductions in the form of eligible carbon credit units, on behalf of the Commonwealth.

4.27 The Bill does not expressly require the Regulator to purchase the ACCUs issued in respect of a particular eligible offsets project. In accordance with the Emissions Reduction Fund White Paper, this will enable proponents who cannot deliver the contracted emissions reductions through their original project to ‘make good’ using units from other eligible offsets projects.

4.28 It is intended that if the declaration for an eligible offsets project is revoked after the contract is entered into, the contract continues and the contracting party (the proponent) will be required to meet contractual obligations to supply units.

4.29 The Bill specifies that a carbon abatement contract is not an instrument within the meaning of the Act as amended. This is merely to ensure that section 145 of the CFI Act does not apply to Emissions Reduction Fund contracts. Section 145 states that where a project has more than one proponent, obligations imposed under an instrument made under the Act are imposed on each proponent. Contractual obligations will only apply to the actual parties to a contract. [Schedule 1, item 5, section 20K]

**Eligible carbon credit units**

4.30 Eligible carbon credit units are Kyoto Australian carbon credit units or prescribed eligible carbon units. This gives the Commonwealth the option to purchase prescribed eligible carbon units under ‘make good’ provisions of a contract if the Government determines that this is appropriate in the future. There is no current intention to specify prescribed eligible carbon units. [Schedule 1, items 2, 3, 3A and 5, sections 4, 20A and 20B]

4.31 Under the current law, a range of international units can automatically be used as substitute units for Kyoto Australian carbon credit units where there is a relinquishment requirement. The Bill removes these provisions so that proponents must use credits from domestic projects to meet relinquishment requirements. [Schedule 1, items 36, 44, 52, 67, 68, 68A, 241, 242, 242A, 243 and 260] A relinquishment requirement may apply where a proponent wishes to withdraw a project, carbon sequestration is reversed, or a proponent receives units on the basis of false or misleading information.
Registry operations

4.32 Legislative rules may specify procedures for the transfer and cancellation of purchased eligible carbon credit units. [Schedule 1, item 5, Section 20H]

4.33 The Regulator will be given the power to restore eligible carbon credit units where they are transferred to a cancellation account by mistake. A determination made by the Regulator to restore units is not a legislative instrument. It is an administrative decision of the Regulator, it cannot determine the law or alter the content of the law, and therefore, it is not within the meaning of section 5 of the Legislative Instruments Act 2003. An exemption from the Legislative Instruments Act is not sought or required. [Schedule 1, item 5, section 20H]

Powers of the Regulator concerning contracts

4.34 The Regulator will enter into a carbon abatement contract on behalf of the Commonwealth. Accordingly, the Bill provides that the Regulator will possess all of the rights, responsibilities, duties and powers of the Commonwealth in relation to entering into a carbon abatement contract. [Schedule 1, item 5, section 20D]

4.35 The Regulator’s powers include any powers conferred on the Regulator by the carbon abatement contract. [Schedule 1, item 5, section 20E]

4.36 Carbon abatement contracts will be commercial contracts and include commercial terms and conditions. In line with Government policy set out in the Emissions Reduction Fund White Paper, this will include, for example, conditions relating to non-performance or under-delivery of contracted emissions reductions by the contractor.

4.37 The Regulator will have full powers of enforcement in relation to carbon abatement contracts. There is express provision for the Regulator to commence a legal action or proceeding concerning contractual matters, if necessary. [Schedule 1, item 5, section 20D]

4.38 In the case that damages in relation to a contract are sought by the Regulator, any amount payable by a carbon abatement contractor to the Commonwealth is to be paid to the Regulator. [Schedule 1, item 5, section 20D]

Publication of purchasing information

4.39 The Bill stipulates that the Regulator may publish specified information about purchasing processes.
4.40 After holding an auction or other purchasing process, the Regulator may publish information about when it occurred and the weighted average price awarded to successful projects. The Regulator may also publish any other summary information or statistics that the Regulator considers appropriate. [Schedule 1, item 6, section 163]

4.41 In making judgments about the publication of information, the Regulator will be guided by the principles for purchasing in the legislation.

4.42 In addition to the information published after each purchasing process, the Regulator must publish annual (financial year) reports about purchases of eligible carbon credit units on its website. These reports will provide a summary of the total number of eligible carbon credit units that the Commonwealth has contracted and is liable to pay, purchased and received and other summary information as appropriate. [Schedule 1, item 6, section 163A]

4.43 The Emissions Reduction Fund Register will also set out information about each carbon abatement contract that the Regulator has entered into, on behalf of the Commonwealth. The Register will set out the name of the carbon abatement contractor and the project for which they are the proponent, the duration of the contract, the number of eligible carbon credit units to be delivered, and the number of units the contractor has sold to the Regulator. [Schedule 1, item 11]

4.44 The Register will not include confidential commercial information.
Chapter 5
Carbon Farming Initiative

Outline of chapter

5.1 This chapter outlines how Carbon Farming Initiative projects and methodologies will transition into the Emissions Reduction Fund. It also explains how and when new arrangements established under the Emissions Reduction Fund will apply to carbon farming projects.

Context of amendments

5.2 The Emissions Reduction Fund will build on and streamline the Carbon Farming Initiative. This will facilitate the rapid implementation of the Emissions Reduction Fund and make participation easier and less costly.

5.3 Transitional provisions will provide continuity and certainty for existing and prospective participants in the Carbon Farming Initiative so they will be well placed to bid for funding under the Emissions Reduction Fund.

5.4 Transitional provisions will also set out how and in what circumstances new arrangements will apply to carbon farming projects. Some new arrangements will apply automatically while others will be available as options.

Summary of new law

5.5 Existing Carbon Farming Initiative projects will automatically be registered under the Emissions Reduction Fund. Methodologies made under the Carbon Farming Initiative will continue to apply under the Emissions Reduction Fund until they are varied or revoked.

5.6 Generally, projects transitioning from the Carbon Farming Initiative will receive a second crediting period that begins on commencement of the Emissions Reduction Fund.
5.7 For a transitional period until 1 July 2015, applications for project registration will be able to be made under the eligibility rules and methodologies which are in place prior to the start of the Emissions Reduction Fund.

5.8 Proponents of sequestration projects can nominate a 25 or 100 year permanence period. Projects with a 25-year permanence period will be subject to a 20 per cent discount on the number of credits that would otherwise be issued for the project.

5.9 Existing sequestration projects can request a 25-year permanence period and relinquish credits as necessary to reflect the 20 per cent crediting discount.

5.10 The Bill repeals special rules for crediting native forest projects. This will allow avoided deforestation and avoided harvest projects to be credited when the emissions reductions occur, in the same way as other projects. Transitional arrangements are provided to ensure that native forest protection projects approved under the relevant Carbon Farming Initiative methodology can continue to operate as they do currently.

**Comparison of key features of new law and current law**

<table>
<thead>
<tr>
<th></th>
<th><strong>New law</strong></th>
<th><strong>Current law</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transition of projects, project applications and methodologies</strong></td>
<td>Carbon Farming Initiative projects will automatically be registered under the Emissions Reduction Fund.</td>
<td>A person can apply to the Regulator to have a project declared and registered.</td>
</tr>
<tr>
<td></td>
<td>Until 1 July 2015, transitional applications for project registration can be made under the eligibility rules and methodologies in force immediately prior to the commencement of this Bill.</td>
<td>There are no provisions for transitional applications in the current law.</td>
</tr>
<tr>
<td></td>
<td>Methodologies made under the Carbon Farming Initiative will continue to apply under the Emissions Reduction Fund unless varied or revoked.</td>
<td>The Minister can make a methodology determination.</td>
</tr>
</tbody>
</table>
### Detailed explanation of new law

#### Existing Carbon Farming Initiative projects and methodologies

5.11 Projects registered under the Carbon Farming Initiative will automatically be registered under the Emissions Reduction Fund. [Schedule 1, item 388]
5.12 Carbon Farming Initiative methodologies will continue to apply under the Emissions Reduction Fund unless they are varied and until they are revoked. [Schedule 1, item 392]

5.13 Methodologies for landfill gas capture and waste diversion will be amended to enable project proponents to receive credits for reductions in emissions from waste deposited after the end of the carbon tax as well as ‘legacy’ waste (waste deposited before the start of the carbon tax).

Application of new or varied methodologies

5.14 Under the current law, proponents of existing projects can apply to use another methodology that covers their project. If the Regulator confirms that the project is covered by the new methodology, the project declaration will be varied to reflect the change to the applicable methodology for the project. This will continue to be the case under the Emissions Reduction Fund.

5.15 Methodologies made under the Carbon Farming Initiative may be streamlined or new Emissions Reduction Fund methodologies developed for existing Carbon Farming Initiative activities. These methodologies may apply to existing carbon farming projects and include relevant transitional arrangements, or may apply to new projects only.

Transitional applications for carbon farming projects

5.16 Until 1 July 2015, project applications can be lodged under the Carbon Farming Initiative eligibility rules in operation at the commencement of the Emissions Reduction Fund where the project is covered by a methodology determination in force at commencement. [Schedule 1, items 382 and 389]

5.17 This will provide continuity for landholders and others that have an application under consideration or are putting together applications based on the current Carbon Farming Initiative rules. Applicants will not need to submit or develop another application under the new Emissions Reduction Fund rules.

5.18 In particular, projects will need to comply with section 41 and regulation 3.28 of the old law rather than the additionality test in subsection 27(4A) of the new law.

5.19 After 1 July 2015, the project eligibility rules that will be established through this Bill will apply to all new projects. These rules require that a project cannot have commenced before it is approved by the
Regulator. In other words, project applications cannot be backdated as under the Carbon Farming Initiative.

5.20 Offset entities will not be separately recognised under the Emissions Reduction Fund. Instead, the Bill incorporates a similar fit and proper person test into the process for project registration. This will ensure that there remain measures in place to reduce the risk of fraud, deceptive or unfair conduct. Existing recognised offsets entities seeking to transition to the Emissions Reduction Fund will be taken to have satisfied the new requirements. [Schedule 1, item 389, paragraph 389(2)(b)]

5.21 If a proponent has submitted an application to become a recognised offsets entity before commencement of the amendments, the Regulator will be able to utilise information contained in that application to assess whether they satisfy the fit and proper person requirements under the Emissions Reduction Fund. [Schedule 1, item 389, paragraph 389(2)(c)]

5.22 Other than in relation to eligibility and the fit and proper person test, the new law will apply to decisions on these transitional applications. In particular, projects will need to be covered by an applicable methodology determination in force at the time the Regulator makes a decision under section 27 on the application (which could include a variation to a determination which existed at commencement).

Crediting periods for transitioning projects

5.23 Under the current law, proponents can apply for a subsequent crediting period unless the project is a native forest protection project which receives a single, 20-year crediting period.

5.24 The Regulator will approve a subsequent crediting period for the project if there is an approved methodology for the project, the project is not required by law, and the activity is still on the ‘positive list’ regulations made under section 41 of the CFI Act. The positive list sets out types of projects which are not common practice.

5.25 The general rule for projects transitioning from the Carbon Farming Initiative is that their current crediting period will end on commencement of the Emissions Reduction Fund legislation and a second crediting period will begin the following day. [Schedule 1, item 70] This will provide certainty for proponents regarding their crediting period and align crediting periods for transitional and new Emissions Reduction Fund projects.

5.26 The second crediting period applied to transitioning projects will be 7 years for emissions reduction projects or 25 years for sequestration
projects unless different crediting periods are specified in the methodology. [Schedule 1, item 152, section 70] If an existing project moves to a 25-year permanence period, this will also recommence from the start of the second crediting period, bringing the crediting period for sequestration and the minimum permanence period into alignment. [Schedule 1, item 390 and 390A]

5.27 For transitioning savanna fire management projects that report on a calendar-year basis, the second crediting period will begin at the start of the calendar year after the commencement of the Emissions Reduction Fund legislation. This will enable proponents to finalise their reports for the current reporting period and enable a smooth transition into the Emissions Reduction Fund. [Schedule 1, items 38A and 152, subsections 70(3) and 70(4)]

Permanence periods

5.28 Under the current law, all sequestration projects must be maintained for 100 years or the credits issued for the project must be relinquished. Credits issued for sequestration projects are subject to a five per cent risk of reversal buffer, which insures projects against carbon losses from natural events such as bushfires.

5.29 The Bill provides for proponents of new sequestration projects to nominate a 100 or 25 year permanence period when they apply to register their project. [Schedule 1, item 96] The permanence period cannot be varied following declaration of the project, as this would create complexity calculating credits in accordance with the respective discount rates. [Schedule 1, item 121] Minor amendments have been made to account for these changes. [Schedule 1, items 23, 24, 53, 57, 167, 168, 169, 170, 178, 182, 193 and 2522A]

5.30 The number of credits issued for 25-year projects will be discounted by 20 per cent to cover the potential cost to Government of replacing carbon stores after the projects end. The risk of reversal buffer will also apply to these projects. [Schedule 1, items 88 and 89] Projects that nominate a 25-year permanence period will therefore receive 75 per cent of the credits that would otherwise be issued for the project.

5.31 Proponents of existing sequestration projects can request to convert from a 100 to a 25-year permanence period. This request must be made within two years of the commencement of the Emissions Reduction fund. If no request is made, the project remains a 100-year permanence period project. [Schedule 1, item 390]

5.32 When the permanence period is reduced, the project proponent has 90 days to relinquish credits to reflect the 20 per cent discount.
Alternatively, the proponent can seek the Regulator’s agreement to an alternative relinquishment schedule. [Schedule 1, item 390, subsections 390(5)-(8)]

5.33 The Bill provides for a legislative instrument to be made in relation to the relinquishment of credits following transition from a 100 to a 25-year permanence period. [Schedule 1, item 390, paragraph 390(6)(a)] This will enable rules to be made in relation to the calculation of the discount where projects have transitioned from another programme that used a different methodology for estimating emissions reductions.

5.34 The Emissions Reduction Fund Register will indicate the nominated permanence period for the project. [Schedule 1, item 246] This will ensure that anyone buying land that includes a sequestration project or buying credits from a sequestration projects can find out whether the project is for 100 or 25 years.

**Transition of offsets projects from non-CFI offsets schemes**

5.35 The current law includes provisions that enabled projects to transition to the Carbon Farming Initiative from previous programmes such as the New South Wales Greenhouse Gas Abatement Scheme and the Australian Government’s Greenhouse Friendly programme. The provisions enabled these projects to transition within two years of the commencement of the CFI Act. The Bill repeals these expired provisions. [Schedule 1, items 59, 91, 93, 95, 112, 177 and 186]

5.36 Transitional provisions ensure that the rules relating to the calculation of credits for projects transitioning between programmes continue to apply. [Schedule 1, item 386] These ensure that Australian carbon credit units are not issued for abatement that has been recognised under the previous scheme. These provisions remain relevant because not all projects that have transitioned from other schemes have finalised their initial project reports and have been issued with credits under the Carbon Farming Initiative.

5.37 To facilitate the transition of sequestration projects from previous programmes into the Carbon Farming Initiative, the current law provides for the Carbon Farming Initiative to take over the enforcement of permanence obligations incurred under the previous programmes. If carbon stored through a transitional sequestration project is reversed during the permanence period, the Regulator can require relinquishment of the same number of credits as were issued under both the Carbon Farming Initiative and the previous programme. The transitional provisions preserve the application of the relinquishment provisions to sequestration projects that have transitioned from previous programmes. [Schedule 1, item 386]
**Verified Carbon Standard**

5.38 The Verified Carbon Standard is a voluntary greenhouse gas programme. In Australia, only a small number of forest management projects were approved under the Verified Carbon Standard. Following Australia’s decision to count forest management towards its emissions reduction target the Verified Carbon Standard determined that these projects could no longer generate credits under their programme.

5.39 The Bill will enable Australian-based projects approved under the Verified Carbon Standard to transition to the Emissions Reduction Fund. This will enable these projects, which involve the protection of native forests on private land, to continue to deliver additional emissions reductions and other biodiversity benefits. [Schedule 1, item 388A]

5.40 Australian projects that were registered under the Verified Carbon Standard, previously called the Voluntary Carbon Standard, before the commencement of this Bill can submit a transitional application for registration under the Emissions Reduction Fund. Consistent with the approach to projects under the Carbon Farming Initiative, these projects will not be subject to the requirement that projects must be new. The crediting period for these projects can be backdated to 1 January 2013, which is when Australia first began to count forest management towards its emissions reduction target. [Schedule 1, item 388A]

**Transitional arrangements for native forest protection projects**

5.41 Native forest protection projects avoid clearing or harvesting of native forest.

5.42 The Carbon Farming Initiative provides for credits for the net total abatement from these projects to be issued over a single, 20-year crediting period.

5.43 This Bill will remove these special arrangements for crediting avoided harvesting and avoided deforestation. [Schedule 1, items 76, 86 and 87] This will allow new Emissions Reduction Fund methodologies for avoided deforestation and avoided harvest to determine when clearing or harvesting is avoided. This will typically bring the issuance of credits forward, creating stronger incentives to participate in the Emissions Reduction Fund.

5.44 The existing methodology for avoided deforestation is premised on a single 20-year crediting period. To enable existing projects to continue unaffected, transitional arrangements will be made to preserve the application of the 20-year crediting arrangements for existing avoided
deforestation projects. [Schedule 1, items 387 and 388A] Further, there will be no change to the start of the crediting periods for these projects on transition to Emissions Reduction Fund. [Schedule 1, item 152, section 71]

5.45 Transitional arrangements are also made to enable the current 20-year crediting arrangements to apply to projects approved using the existing avoided deforestation methodology under a transitional application (made before 1 July 2015). [Schedule 1, item 152, section 71]

**Minor amendments**

5.46 The Bill makes other minor amendments to ensure the continuity of Australian carbon credit units that existed immediately before the commencement of the Act as amended. [Schedule 1, item 384]

5.47 The Bill also includes transitional provisions to ensure that the new law applies to certificates of entitlement where, before the commencement of the CFI Act as amended, the Regulator fulfilled obligations to issue units under section 11 of the CFI Act. [Schedule 1, item 385]
Chapter 6
Miscellaneous provisions

Outline of chapter

6.1 This chapter addresses the miscellaneous provisions (other than transitional provisions) which are not addressed in other chapters of the explanatory memorandum.

Context of amendments

6.2 The miscellaneous provisions predominantly make amendments to streamline the existing legislation by removing unnecessary or outdated provisions and correcting errors.

Summary of new law

6.3 The Bill extends the coverage of the Emissions Reduction Fund such that it applies not only to Australia, Australia’s external territories and the coastal sea, as provided for under the Carbon Farming Initiative, but also to Australia’s exclusive economic zone or the continental shelf.

6.4 As well as the powers of the Regulator provided through other parts of the Bill, the Regulator will have expanded information sharing powers to facilitate administration of the Emissions Reduction Fund.

6.5 The penalty to be included in infringement notices issued under the NGER Act will be reduced to make it more practical and consistent with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide).

6.6 Expired provisions relating to the backdating of methodology determinations and the exchange of Kyoto Australian carbon credit units for international (Kyoto) units are repealed.

6.7 The Voluntary Automatic Unit Cancellation regime is closed.

6.8 The Minister has the power to make legislative rules where authorised in the CFI Act, as amended.
6.9 The Bill provides that certain additional persons are not liable to an action for damages for acts done in good faith (or omissions) in the performance of their functions under the bill or the associated provisions.

6.10 The Bill includes an alternative constitutional basis for the CFI Act, as amended.

6.11 The Bill repeals expired provisions.

6.12 Minor amendments are made to update drafting to reflect current practice and to correct errors and inconsistencies.

### Comparison of key features of new law and current law

<table>
<thead>
<tr>
<th>New law</th>
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</tr>
</thead>
<tbody>
<tr>
<td>The Bill extends the coverage such that the Emissions Reduction Fund applies to Australia, Australia’s external territories, the coastal sea, and Australia’s exclusive economic zone or the continental shelf.</td>
<td>The current law provides that the Carbon Farming Initiative applies to Australia, Australia’s external territories and the coastal sea.</td>
</tr>
<tr>
<td>The penalty amounts will be reduced to enable penalties to be applied in a broader range of circumstance.</td>
<td>The penalty in an infringement notice under the NGER Act is one fifth of the maximum penalty for a civil contravention. Maximum penalties range from 120 penalty units ($20,400) to 2,000 penalty units ($340,000).</td>
</tr>
<tr>
<td>The Regulator will have greater flexibility to provide information needed to support implementation of relevant Government policies.</td>
<td>Under the CER Act, the Regulator can disclose specific information to authorised employees of certain bodies for defined purposes.</td>
</tr>
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</table>

### Detailed explanation of new law

#### Exclusive economic zone and the continental shelf

6.13 The current law covers Australia and extends to all its external territories. It also extends to the coastal sea in accordance with section 15B of the Acts Interpretation Act 1901.
6.14 The Bill extends coverage to Australia’s exclusive economic zone or the continental shelf. [Schedule 1, item 75, section 9A] This means that projects, such as those on oil and gas facilities and carbon capture and storage facilities, in the exclusive economic zone or the continental shelf will be able to participate in the Emissions Reduction Fund. The ‘continental shelf’, ‘exclusive economic zone’ and ‘territorial sea’ are defined in the Acts Interpretation Act 1901. This amendment has been made to the CFI Act as the Carbon Farming Initiative only covered land-based projects and did not require coverage of the exclusive economic zone.

6.15 However, the CFI Act, as amended, will not apply to the extent that its application would be inconsistent with the exercise of rights of foreign ships in the territorial sea, exclusive economic zone or waters of the continental shelf in accordance with the United Nations Convention on the Law of the Sea. [Schedule 1, items 69 and 75, section 9B]

NGERS infringement notices

6.16 Part 1, Division 2 of the NGER Act sets out an infringement notice scheme for the civil penalty provisions outlined in the NGER Act. Section 41 of the NGER Act provides that the penalty for an infringement notice should be “equal to one fifth of the maximum penalty that a Court could impose on the person for that contravention”. In some cases this could result in penalties of up to $68,000.

6.17 The Guide states that infringement notice penalties should not be more than 12 penalty units for individuals or 60 penalty units for bodies corporate. This equates to $2,040 for individuals, or $10,200 for bodies corporate.

6.18 Section 41 of the NGER Act will be amended so that the maximum infringement notice penalty is consistent with the Guide. [Schedule 1, item 379, NGER Act]

Information sharing powers under the CER Act and NGER Act

Amendments to the CER Act

6.19 The Regulator will have streamlined information sharing powers to facilitate administration of the Emissions Reduction Fund.

6.20 The Bill amends section 46 of the CER Act to expand the limited circumstances in which information can be shared with the Secretary or authorised Departmental officers. These amendments will ensure that the Department responsible for administering the Emissions
Chapter 6: Miscellaneous Provisions

Reduction Fund can be given information relevant to monitoring or evaluating the operation of the Emissions Reduction Fund. [Schedule 1, item 370, CER Act]

6.21 The Bill amends section 49 of the CER Act to permit the Regulator to share information with any Freedom of Information Act 1982 agency and a prescribed agency or authority of the Commonwealth, subject to the existing limitation, that it must only be disclosed to assist the agency, body or person to perform and exercise its functions and powers. This will ensure that the Regulator is not prevented from sharing valuable information as a result of mere administrative changes (for example, when agencies change names). [Schedule 1, items 376 and 376A, CER Act]

6.22 The Bill also amends sections 49 and 50 of the CER Act to allow a particular class of information to be disclosed to Commonwealth agencies and bodies (section 49, CER Act) and certain financial bodies (section 50, CER Act) in addition to particular information. This avoids the need for the Chair of the Regulator to authorise the release of particular information on a case by case basis, which is administratively cumbersome. [Schedule 1, items 375A, 376B, 376C and 376D, CER Act]

6.23 As an administrative efficiency measure, section 46 of the CER Act will also be amended to allow the Secretary of the Department to specify authorised staff by referring to their position number or role, rather than by name, where those positions or roles require relevant security clearances and training. This will improve avoid unnecessary revision of authorisations to reflect staff changes. [Schedule 1, items 371 and 376E, CER Act]

6.24 Section 47 of the CER Act will be amended to allow the Regulator to continue to disclose protected information contained in an application for endorsement of a proposal for a methodology or variation to a methodology. [Schedule 1, item 397, CER Act] The Bill also amends section 47 to remove references to methodology proposals. This will no longer be required, as methodologies will be developed by the Department in collaboration with business through technical working groups. [Schedule 1, items 372 to 375, CER Act]

6.25 These transitional provisions relating to the disclosure of information are taken to be a climate change law, so that under section 44 of the CER Act which provides for officials of the Regulator to use and disclose protected information for the purposes of climate change law, the officials will also be able to use and disclose information to perform their duties under the transitional provisions. [Schedule 1, item 399, CER Act]
**Amendment to the NGER Act**

6.26 The Bill amends section 23 of the NGER Act to permit information about greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production to be disclosed for the purposes of preparing advice to the Minister on such matters. The amendment permits specified people, such as Departmental officers, to disclose information directly to the Minister, to ensure that the Minister can administer relevant policy effectively. [Schedule 1, item 378A] This purpose is consistent with the objects of the NGER Act.

**Legislative rules**

6.27 The amendments to the CFI Act include a number of heads of authorities for the Minister to make legislative rules prescribing certain matters. Section 308 of the CFI Act will be expanded to give the Minister the power to make legislative rules. [Schedule 1, items 14, 367 and 368]

6.28 The CFI Act provides for regulations to apply, adopt or incorporate any matter contained in an instrument or other writing as in force or existing from time to time. The Bill will extend this provision to include the legislative rules, to allow the content of regulations to be migrated to legislative rules over time. This will help to alleviate the workload of the Federal Executive Council relating to the making of regulations. The regulations, legislative rules and methodology determinations deal with highly technical matters, often requiring cross-references to Australian or international standards, industry databases, models and methodologies. Including the content of these documents in subordinate legislation would make those instruments unwieldy, by expanding their volume considerably and requiring frequent updating.

6.29 The Bill also provides that legislative rules may confer a power on the Regulator to make a decision of an administrative character. This parallels section 305 of the CFI Act, which empowers the Regulator to make administrative decisions under regulations. [Schedule 1, item 369]

6.30 A number of amendments will be made where other provisions in the CFI Act cross-reference the legislative rules or regulations, and to provide for the Regulator to make administrative decisions under those rules. [Schedule 1, items 28, 29, 43A, 90, 118, 119, 120, 231, 239, 240, 266, 356, 357, 359, 360, 364, 365, 369 and 400 to 546]

**Liability for damages**

6.31 Under section 297 of the CFI Act, certain persons are not liable to an action for damages for acts done in good faith (or omissions) in the
performance of their functions under the bill or the associated provisions. This type of provision is common in Commonwealth legislation and enables persons with statutory functions to perform their functions without fear of legal action being taken against them, as long as they perform those functions in good faith.

6.32 The Bill amends section 297 to add ‘inspectors’ (who exercise monitoring powers under Part 18 of the CFI Act) and ‘persons assisting inspectors’ to the list of people who are not liable to an action for damages. [Schedule 1, item 362]

6.33 The Bill also includes an exception to section 297 to provide that the Regulator can be liable for damages payable under a carbon abatement contract. [Schedule 1, item 13A]

Alternative constitutional basis

6.34 The amendments to the CFI Act are supported by the treaty implementation aspect of the external affairs power in section 51(xxxi) of the Constitution. The first object of the CFI Act is to implement Australia’s obligations under the Climate Change Convention and the Kyoto Protocol. The CFI Act, as it will be amended by the Bill, is also supported, wholly or partly, by several other Commonwealth legislative powers, including the corporations power.

6.35 The Bill provides an alternative constitutional basis for the legislation that is intended to operate in the event that the High Court considers that CFI Act is not fully supported by the treaty implementation aspect of the external affairs power. [Schedule 1, items 37A and 366] This cautionary approach is necessary in light of the fact that the Emissions Reduction Fund will significantly expand the scope and uptake of the Carbon Farming Initiative, and that the Emissions Reduction Fund is the centrepiece of the Government’s Direct Action Plan to address climate change.

Expired provisions

6.36 The Voluntary Automatic Unit Cancellation regime was transitional measure included in the CFI Act. It allowed businesses that had received payment for potential future emissions reductions to have credits issued for verified reductions and automatically cancelled, consistent with the expectations of their customers in the voluntary market. These provisions have been repealed as they are no longer required, and companies that were expected to use these provisions have adopted new business models. [Schedule 1, items 71, 94, 97, 102, 150 and 246]
Subsection 122(3) of the CFI Act allowed for the backdating of methodology determinations that were made before 30 June 2013. This provision is now redundant and will be repealed. [Schedule 1, items 212 and 213]

Section 157 of the CFI Act allowed for the exchange of Kyoto Australian carbon credit units for Kyoto units if an application was submitted to the Regulator before 1 July 2013. This provision is now redundant because it has expired and will be repealed. [Schedule 1, item 244]

Provisions in the ANREU Act, relating to section 157 of the CFI Act, will also be repealed. [Schedule 1, items 17 to 19 and 21, ANREU Act]

Provisions relating to the interim Domestic Offsets Integrity Committee have expired and will also be repealed [Schedule 1, item 222]

**Minor technical improvements**

The matters to be included in declarations of eligible offsets projects under subsection 27(3) will be expanded to include items that are currently required under the CFI regulations (the applicable methodology determination and crediting period for the project). [Schedule 1, item 101]

The Bill will add an additional requirement to update eligible offset project declarations where information in the original declaration changes. This reflects the Regulator’s current practice and will ensure that declarations are up-to-date at all times. [Schedule 1, items 220 and 221]

Provisions relating to the carbon maintenance obligation under the CFI Act will be amended to reflect the

A number of other minor technical amendments will be made to rectify incorrect numbering of provisions, to reflect current drafting practice, or to clarify the meaning of provisions. [Schedule 1, items 34, 35, 37, 48A, 51B, 94A, 94B, 98, 113, 133 to 135, 146A, 146B, 149A, 317, 160, 189 to 192, 232, 244A, 245A, 253, 261, 263, 267, 327, 329 to 331 and 396]
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