THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for the Environment and Energy
the Hon Josh Frydenberg MP)
The Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017 (the Bill) amends the \textit{Carbon Credits (Carbon Farming Initiative) Act 2011} in relation to the operation of the crediting element of the Emissions Reduction Fund. These amendments address implementation issues, primarily for savanna fire management projects in Northern Australia. They correct earlier drafting errors, reduce administrative burden and clarify the original intent of the Act.

The Bill provides minor or technical amendments to various sections of the Act.

Under the Emissions Reduction Fund, participants can earn Australian carbon credit units (ACCUs) for undertaking activities that reduce carbon emissions. One ACCU is earned for each tonne of carbon dioxide equivalent (tCO2-e) stored or avoided by a project. ACCUs can be sold to generate income, either to the government through a carbon abatement contract, or in the secondary market. The Fund is helping meet Australia’s emissions reduction targets at low cost. From the first four auctions the Government has contracted 178 million tonnes of emissions reductions at an average price of $11.83 a tonne.

There are 41 methodology determinations currently in operation under the Fund. Of these, 33 are available to new entrants and 8 are revoked but have operating projects registered under them. The methodology determinations cover a range of sectors to enable broad scale participation. Methodology determinations provide opportunities to reduce emissions in agriculture from livestock and by storing carbon in soil or vegetation and in the industrial sector by upgrading to more efficient lighting or industrial equipment. In the transport sector eligible emissions reduction activities include upgrading to more efficient engine technologies or implementing more efficient operational practices. The Fund also incentivises emissions reductions in the mining and energy sectors by reducing methane emissions from mines or by improving the efficiency of electricity generation. Activities to reduce emissions in the waste sector by combusting methane from landfills or composting organic waste are also eligible under the Fund. Throughout the development of the Fund, the Australian Government has consulted with business and industry sectors along with the wider public to help optimise and streamline the operation of the programme.

In Northern Australia, effective fire management is already making a significant contribution to reducing greenhouse gas emissions from wildfires in our savannas. Emissions of greenhouse gases are greater for very hot, high intensity fires that typically occur in the late dry season, than for cooler, lower intensity fires in the early dry season. As at the beginning of March 2017, there are 76 projects registered under methods that credit the emissions avoided from undertaking early dry season burns which reduces the number, size and intensity of wild fires in the late dry season. Of these, 53 have entered into contracts with the Australian Government with a combined total of over 13.5 million tonnes of abatement, representing close to 8 per cent of all emissions reductions contracted under the Fund.
These projects are operated by a wide range of participants and business models, including projects directly run by registered native title corporations, pastoralists, carbon service providers and Indigenous business enterprises. For many indigenous groups, the Fund provides essential revenue to provide employment opportunities and undertake traditional fire management practices on their lands.

The Government is developing a new savanna method for crediting both the avoided emissions from early dry season burning as well as the increase in the storage of carbon in dead organic matter. The science is now demonstrating how fire management can increase the dead organic matter, which is high in carbon, in these project areas and help Australia reduce its greenhouse gas emissions. This would be the first method to credit both the storage of carbon and avoidance of emissions in the same project. The proposed method and an updated method to credit only avoided emissions were released for consultation in November 2016 and are intended to be considered by the Emissions Reduction Assurance Committee this year.

Consultation on the new methodology determinations has highlighted a number of elements of the Act which are an unnecessary impediment to participation in both the existing methods and the new proposed method to credit the storage (sequestration) of carbon and avoidance of emissions. These amendments seek to address those impediments in a manner which will also assist other projects to store carbon in the landscape.

The key issues being addressed are as follows:

Removing unintended consent requirements
Since 2011 the Act has included requirements to ensure persons with a legal interest in land, who could be subject to requirements to store carbon (permanence obligations) applicable to carbon sequestration projects, provide consent to the projects being carried out. An error was introduced in the Act when it was amended in 2014. The amendments inadvertently applied the consent requirements to savanna fire management projects and irrigated cotton projects that are not credited for storing carbon. These projects are not subject to permanence obligations because the emissions have already been saved by the project. Items 1 and 2 of Schedule 1 to this Bill applies the obligation to obtain consent of eligible interest holders only to sequestration offsets projects and removes the obligation from existing area-based emissions-avoidance projects. While not subject to consent requirements, these emissions avoidance projects must demonstrate that they have the legal right to carry out the project which will often necessitate consultation or agreement from other landholders. As at the beginning of March 2017, over 20 savanna emissions-avoidance projects are subject to these consents and would benefit from the amendments.

Consents for certain native title land
The 2011 Act expressed a clear intention that those with determined exclusive possession native title should not need the consent of a State, Territory or Commonwealth Minister to participate in the scheme. Items 3 and 4 of Schedule 1 to this Bill remove any doubt that State and Territory Government Crown lands Ministers and Commonwealth Ministers responsible for land rights
legislation do not have consent rights for projects conducted on exclusive possession native title land that is Torrens system land or land rights land.

**Facilitate removal of parts of projects**
Under the Act it is currently very difficult to remove part of a sequestration project if credits have been issued for that area. Item 5 of Schedule 1 to this Bill will provide for legislative rules or regulations to allow parts of a sequestration offsets project to be removed and credits surrendered for the carbon stored in that area. The amendments will make it easier for a proponent to voluntarily remove an area of land from their project and ensure carbon credits required to be returned to the Government only relate to the area of land being removed. This increases flexibility to adjust projects over time while maintaining the integrity of credits previously issued and used by the Government or third parties.

**Correcting the definition of ‘net total number’**
The intention of the Act is to apply permanence obligations only on stored carbon as avoiding emissions is already a permanent saving for the atmosphere. However, the current definition of the ‘net total number’ of credits issued to a project would include credits issued for both sequestration and emissions avoidance under the proposed savanna sequestration method. Items 6, 7 and 8 of Schedule 1 to this Bill will ensure a sequestration project’s net total liability under the scheme does not include credits issued for emissions avoidance or credits that have already been relinquished. Without this amendment there would be a significant impediment to the uptake of the proposed new savanna sequestration method.

**Minor correction to clarify application of permanence obligations**
Item 9 of Schedule 1 to this Bill will clarify that requirements to relinquish (i.e. hand back) carbon credits, if carbon stores are lost, apply to sequestration projects that store carbon and avoid emissions, such as savanna sequestration projects.

**Facilitate savanna transfers between project types**
The current process in the Act to transfer between different methods does not contemplate the transition of a project from emissions-avoidance to sequestration, or sequestration to emissions-avoidance. The Bill will facilitate transfer of projects to the proposed savanna sequestration method that credits both emissions-avoidance and sequestration of carbon in the landscape. Items 10-16, 21-24, 26 and 27 of Schedule 1 to this Bill provide for projects to transfer between methods such that they can move between emissions-avoidance and sequestration and subject the transfer process to any requirements specified in legislative rules. This process would require the consent of all eligible interest holders before a project becomes a sequestration project, allow for the choice of permanence period and ensure credits are relinquished if a project moves back to emissions-avoidance.

**Facilitate savanna crediting options**
The current provisions create an anomaly where a crediting period longer than the permanence period may be applicable to the project. Items 17, 18, 19 and 20 of Schedule 1 to this Bill will ensure relinquishment requirements apply to projects whose crediting period extends beyond their permanence period. This will provide flexibility to extend the crediting period of savanna
sequestration projects without providing credits to projects that are not subject to enforcement of their permanence obligations relating to those credits. Item 25 of Schedule 1 to this Bill will ensure the end date of a project’s crediting period will be listed in the register of projects.

Facilitate removal of conditions after the end of the first reporting period
The Act currently requires regulatory approvals or consents to be obtained before the end of the first reporting period. However, there are circumstances where approvals or consents may not be obtained until after that period. Item 28 and 29 of Schedule 1 would allow legislative rules or regulations to provide for the removal of regulatory approval or consent conditions on declarations where that regulatory approval or consent has been obtained after the end of the first reporting period for the project.

The purpose of this Bill is to address these implementation issues and reduce unnecessary regulatory burden that has been created by unintended or unforeseen application of the Act. Broader policy questions with the operation of the Emissions Reduction Fund are intended to be considered through the current review of climate change policies. Issues of detail in the crediting and registration of savanna sequestration projects are intended to be dealt with in the finalisation of the methods and associated legislative rules.

Financial Impact Statements
This Bill has no financial implications.

Statement of Compatibility with Human Rights
This Bill is compatible with the human rights and freedoms recognised or declared in Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

See Statement of Compatibility with Human Rights at the end of this explanatory memorandum

Consultation
The Carbon Credits (Carbon Farming Initiative) Act 2011 was amended in 2014 by the Carbon Farming Initiative Amendment Act 2014. These amendments introduced revised consent requirements for land-based projects which undertake long-term storage of carbon, potentially limiting the land’s ability to be used for other purposes. Unintentionally, the amended provisions also covered land based projects which do not involve long-term storage of carbon. Such projects (e.g. savanna fire management or irrigated cotton) were not intended to be covered by the requirement to obtain consents, as these do not impose requirements for long-term storage of carbon.

In response to representations from proponents of savanna fire management projects, the Government introduced an amendment to the requirement for consent for savanna fire management projects through the Omnibus Repeal Day (Spring 2015) Bill 2015. The amendment was reviewed as part of the Senate Finance and Public Administration Legislation Committee’s consideration of the
Omnibus Bill, without comment. The Parliament was dissolved before the amendments could be considered by the Senate.

In November 2016 the Department of Environment and Energy held discussions with savanna fire management proponents in Darwin on the development of two new draft methods that will enable new opportunities to earn credits for conducting savanna fire management projects. Submissions were also provided to the Emissions Reduction Assurance Committee on these new draft methods. During this consultation, participants reiterated the need to remove the requirement for consent for savanna fire management from the Act. Participants also identified problems with the operation of the Act for projects to store carbon in savannas, such as in relation to the unfairness of including credits for avoided emissions in the net total number of units calculated for a project.

In February 2017 the Department of Environment and Energy provided an information paper to carbon service providers, non-governmental organisations, project proponents and state and territory governments which described possible amendments to the Act that would address the unintended consent requirement. The information paper also covered other amendments set out in this Bill. The Department of Environment and Energy invited submissions and discussions on the information paper. The consultation revealed broad support for the amendments, with strong support received from proponents subject to the requirements. Some comments noted the importance of being clear about the legal right to carry out projects and consultation by project proponents with other persons with an interest in the land once the consent requirement was removed.
NOTES ON CLAUSES

Clause 1 – Short Title

1. This clause provides for the Bill, when enacted, to be cited as the Carbon Credits (Carbon Farming Initiative) Amendment Act 2017.

Clause 2 – Commencement

2. This clause provides for the Bill to commence on the day after the Bill receives the Royal Assent.

Clause 3 – Schedules

3. Schedule 1 to the Bill contains the amendments the Bill proposes to make to the Carbon Credits (Carbon Farming Initiative) Act 2011 (the Act). This clause is the formal enabling provision for the Schedule. The clause also provides that the other items of the Schedule have effect according to their terms. In particular, item 2 of Schedule 1 is a transitional provision that has the effect of ensuring that the benefit of the amendments proposed in item 1 flow to existing projects.

Schedule 1 – Amendments

4. All of the amendments in this Schedule are to the Carbon Credits (Carbon Farming Initiative) Act 2011.

Part 1 – Consent requirements

Item 1 – Paragraph 28A(1)(a)

5. This item will amend paragraph 28A(1)(a) of the Act to replace the term ‘offsets project’ with the defined term ‘sequestration offsets project’. It will limit the need of the project proponents to obtain consents of eligible interest holders to sequestration offsets projects only, as originally intended and previously provided for by the Act.

6. Prior to amendments made to the Act on 13 December 2014, paragraph 27(4)(k) of the Act required that all eligible interest holders provide their consent to the making of an application for declaration of a ‘sequestration offsets project’. This consent requirement was limited to sequestration offsets projects because they are the only projects subject to a ‘permanence obligation’. A permanence obligation ensures that stored carbon is maintained for either 25 or 100 years. These long-term obligations can affect other eligible interest holders like financial institutions or, in the case of Crown land, the relevant State or Territory Minister.

7. The Carbon Farming Initiative Amendment Act 2014 of 13 December 2014 inserted a replacement provision requiring that a condition be imposed on a declaration that the consent of relevant eligible interest holders be obtained before the end of the first reporting period for the project, if those consents were not available at the time the project was declared.
8. However, the wording of paragraph 28A(1)(a) of the Act is currently not limited to ‘sequestration offsets projects’. While the explanatory memorandum to the Carbon Farming Initiative Amendment Bill 2014 indicated an intention for this only to apply to sequestration offsets projects, the wording of paragraph 28A(1)(a) has been interpreted to include all ‘area-based emissions avoidance projects’ because they have a ‘project area’ as defined by the Act. Area-based emissions avoidance projects, such as savanna burning and irrigated cotton projects, are not subject to any permanence obligations and so there is no need for the consent of a wide range of eligible interest holders to be obtained. Were the amendment not made, area-based emissions avoidance offsets projects would continue to be unintentionally subject to an unnecessary regulatory burden.

9. In making this amendment the Government notes the importance of the requirement in the Act that project proponents have the ‘legal right to carry out the project’. This may require agreements with other persons who have all or part of the legal right to carry out a particular project or rights conferred by State and Territory legislation. The Government encourages proponents to consult with other persons with an interest in any proposed project area to ensure there is not a dispute over who has the legal right for a particular project proposal. The registration and declaration of a project under the Act does not itself confer any legal right to carry out the activities which make up the eligible offset project.

10. Nonetheless, for an emissions-avoidance project, if a person has the legal right to carry out an activity, such as savanna fire management on certain areas of land, the Act should be able to reward that person for the emissions avoided by carrying out the activity without the need for consent from third parties. If any additional requirements are needed to assist with the question of legal right for savanna fire management projects, these would be best considered in the processes for revising the methodology determinations and legislative rules applicable to those projects.

Item 2 – Transitional provisions

11. This item will remove the effect of any conditional declarations for non-sequestration offsets projects made after the commencement of the 2014 amendments and the date of the amendment to paragraph 28A(1)(a) by this Schedule.

12. In particular, if a conditional declaration were made, sub item (2) will deem that condition has no effect and requires the Clean Energy Regulator to remove the condition from the declaration and the Emissions Reduction Fund Register. This applies whether or not the consents were obtained.

13. Accordingly, non-sequestration offsets projects with conditional declarations will not be disadvantaged compared to equivalent offsets projects registered before the 2014 amendments or after the amendments proposed in this Schedule. As at the beginning of March 2017, over 20 savanna fire management projects are subject to conditional declarations and would benefit from this amendment.
Part 2 – Eligible interests in exclusive possession native title land

Background

14. The explanatory memorandum to the Bill which became the original Act indicated a clear intention to treat Aboriginal and Torres Strait Islander land similar to freehold where appropriate, such that the Crown would not have an eligible interest for land subject to a determination of exclusive possession native title (see paragraph 4.24), nor consent rights with respect to projects on this land.

15. As currently drafted, the Act could be interpreted as providing a consent right to the Crown lands Minister in some rare circumstances where exclusive possession native title is also considered to be Torrens system land or land rights lands. However, the Government considers that section 302 of the Act and the explanatory material to the Act support the position that the Racial Discrimination Act 1975 applies to override inconsistent provisions of the Act in these circumstances, such that the Crown Lands Minister would not have an eligible interest nor consent rights.

16. To reaffirm that the Act is in alignment with the Racial Discrimination Act 1975, as per section 302 of the Act, items 3 and 4 clarify that a Crown Minister or a Commonwealth Minister responsible for land rights legislation does not hold an interest in relation to exclusive possession native title land where the land is also land rights land or Torrens system land. Therefore, the Crown Minister would not have consent rights with respect to sequestration projects on this land. This change reflects the original intention of the Act, and would provide certainty to native title holders and government about processes for eligible offsets projects on exclusive possession native title land.

Item 3 – Subsection 44(4)

17. This subsection will improve the clarity of the subsection by inserting an explicit reference to the requirement that the area of land in question is not exclusive possession native title land. This will make it clear that the Crown lands Minister of the State or Territory holds an eligible interest in an area of land that is Torrens system land if it is Crown land and the area of land is not exclusive possession native title land. The subsection will also align with the structure of subsection 45(2) of the Act and exclude land rights land. This is because the conferral of an eligible interest on the Crown lands Minister for relevant land rights land that is Torrens system land is already dealt with in subsection 44(7). This avoids duplication in the conferral of a consent right to the Crown lands Minister under both subsections 44(4) and (7).

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

18. This item inserts an explicit reference to the requirement that the area of land in question is not exclusive possession native title land. This will make it clear that:

   a. A Commonwealth Minister does not hold a consent right on Commonwealth land rights land that is exclusive possession native title land (whether or not the land is Torrens system land); and
b. the Crown lands Minister is not considered an eligible interest holder in relation to land that is both land rights land and exclusive possession native title land (whether or not the land is Torrens system land).

Part 3 - Amendments relating to sequestration projects

Division 1 – Net total number

Background

19. The Act creates a framework for issuing one Australian Carbon Credit Unit (ACCU) for one tonne of carbon dioxide offset. Under the Emissions Reduction Fund, projects generally either store carbon or avoid emissions. To ensure ACCUs earned by projects that store carbon represent an offset of one tonne of carbon dioxide equivalent emissions, that carbon must be stored for either 25 years or 100 years (referred to as the permanence period). If a project proponent decided to voluntarily revoke a project, ACCUs earned for that project must be returned to the Government as the carbon has not been stored for the permanence period. Section 42 of the Act provides the calculation of the maximum amount of ACCUs a project proponent must return to the Government in the event that carbon stores are not maintained, defined as the ‘net total number’. This is relevant to an application to exit the scheme (under section 32 of the Act) or for relinquishment (under sections 89, 90 and 91).

20. Under a new proposed draft savanna sequestration methodology determination, the early dry season burning of savannas would enable credits to be earned for both sequestration of carbon and avoided emissions. This is the first method that would allow carbon credits to be earned for both emissions avoidance and stored carbon. Under the current ‘net total amount’ definition, both types of credits will add to the ‘net total number’ and be subject to the permanence obligations. This results in the requirement for any project proponents wishing to exit the scheme to relinquish ACCUs equivalent to all ACCUs issued for the project, and not just those for sequestered carbon. The intention of the Act is for the ‘net total number’ to apply only to sequestration projects but the Act defines sequestration offset projects in a way that would capture ACCUs from avoided emissions under this method. The intention of the Emissions Reduction Fund is for the ‘net total number’ calculation to apply to stored carbon only as it is not possible to ‘reverse’ the avoidance of emissions.

21. Section 42 of the Act defines and includes the formula for ‘net total number’. Amendments to section 42 of the Act in item 6 clarify the calculation of carbon credits a project proponent must return to the Government if a project is voluntarily ceased and remove the obligation for proponents to relinquish ACCUs for avoided emissions. One effect of the amendments is that credits issued for emissions avoidance would not be added to the net total number.

   a. For example, a savanna sequestration project may have been issued 300,000 sequestration and 100,000 emissions avoidance credits in 2017. Under the current legislation, it would have a net total number of 400,000. After the amendments, the net total number would be 300,000. Therefore, to exit the scheme only 300,000
ACCUs would need to be relinquished rather than 400,000. The 100,000 credits issued for emissions avoidance are retained by the project because those emissions have been permanently avoided.

22. A similar unintended issue with the ‘net total number’ definition in section 42 arises for the variation of project area.

23. Section 29 of the Act and the associated legislative rules outline how a project proponent may voluntarily vary the size of the project area. However, the ‘net total number’ continues to apply (as calculated for the original size of the project area) regardless of modifications to the area. This imposes unnecessary regulatory burden if a project proponent wishes to reduce their project area and avoid the continued application of the ‘net total number’ as originally determined. An example of this is as follows:

a. A sequestration project area has been issued with 100 ACCUs. The project proponent now wishes to remove half the area from the project. Under the current operation of the Act, the ‘net total number’ would remain 100 ACCUs, despite the area being halved. It is administratively complex for a proponent to reduce the ‘net total number’ so as to avoid unintended liability in the event of a reversal or revocation of the project. Under the current legislative rules, a proponent needs to move the area to be removed to another eligible offset project and then apply to revoke that project. Section 57 of the Act and associated legislative rules would then allow for the ‘net total number’ to be adjusted.

24. Section 42 of the Act defines and includes the formula for ‘net total number’. Amendments to this section of the Act proposed by item 5 remove the complexities required for reducing a project’s area and allow proponents to relinquish ACCUs equivalent to that much of the net total number of ACCUs attributable to the land exiting the scheme. In the example above, the project would not have to move the area being removed from the scheme to another eligible offset project. They would instead make one application to remove the area and hand back the ACCUs for that part of the project. This amendment would ensure that the ‘net total number’ operates as originally intended in the Act – to apply only to carbon credits earned for storing carbon.

Item 5 – At the end of subsection 29(3)

25. This item clarifies that the power to make regulations or legislative rules under subsection 29(1) of the Act includes rules or regulations which determine a ‘net total number’ that relates to an area to be removed from a project (rather than the whole project) and for conditions to be imposed before a removal is approved such as in relation to the relinquishment of ACCUs for that net total number relating to the area to be removed. This will facilitate the amendment of the legislative rules so that a project proponent wishing to remove part of a project for which credits have been issued can relinquish credits issued in relation to the land and remove it from the scheme. The legislative rules will deal with how the estimation of this net total number will be undertaken given the potential difficulties in recalculating crediting for periods in the past for a subset of a project previously reported on as a whole. While it is expected that the legislative rules will have regard to the related concept of the ‘net total number’ under section 42 for a
whole project, the calculations may need additional rules to accommodate the varied accounting approaches in each of the methodology determinations. Where there is doubt or uncertainty about the precise calculation for a certain area, it is likely a conservative approach will be necessary in the rules to ensure the integrity of the scheme.

**Item 6 – Section 42 (formula)**

26. This item will replace the formula currently used in the Act for the ‘net total number’ of Australian carbon credit units issued in relation to an eligible offsets project. The new formula will calculate the ‘net total number’ by counting the total Australian carbon credit units issued, minus the Australian carbon credit units issued for emissions avoidance activities, minus Australian carbon credit units relinquished.

27. This item will insert defined terms used in the equation for ‘total units issued’ and ‘units issued for emissions avoidance’ and the concept of the ‘total units issued’ maintains the existing operation of the Act. The concept of units issued for emissions avoidance will need to be determined by looking at the applicable methodology determination. The proposed savanna sequestration determination includes different streams of credits for both avoidance and sequestration which are then summed to determine the net abatement amount for a reporting period.

28. The item will also introduce ‘units relinquished’ as a defined term. This will have the effect of taking into account, for the purpose of calculating the ‘net total number’, the total number of Australian carbon credit units that are relinquished, either to remove an area of land from a project area, comply with a sequestration related relinquishment requirement under Part 7 of the Act, or apply a methodology determination to the project. This avoids the double counting of all of the different forms of relinquishment in the net total number calculation. The relinquishment requirements under Part 7 have been divided up as relinquishment under section 88 of the Act for false or misleading information could relate to either or both of sequestration and avoidance credits in projects that both store carbon and avoid emissions. Where a relinquishment notice is issued under section 88 to a project, only those relinquished units related to sequestration are deducted from the net total number. An example of this is as follows:

a. A savanna sequestration project is issued 4,000 ACCUs, of which 1,000 are for the avoidance of emissions and 3,000 are for the sequestration of carbon. The project proponent made a miscalculation of the abatement and the correct number of ACCUs should have been 2,500, of which 500 are for the avoidance of emissions and 2,000 for the sequestration of carbon. The Regulator then issues a notice for the relinquishment of 1,500 ACCUs under section 88 of the Act. As only 1,000 ACCUs related to an error in the sequestration calculations, only 1,000 ACCUs are to be deducted off the net total number. In this case the net total number would be 3,000 – 1,000 = 2,000. This reflects the number of sequestration credits that should have been issued had the false or misleading information not have been provided. Note that it is
irrelevant whether the units relinquished to comply with the notice were from an emissions-avoidance or sequestration offsets project.

**Item 7 – Paragraph 175(2)(c)**

29. This item will insert a requirement to provide a notice to the Clean Energy Regulator if Australian carbon credit units are relinquished voluntarily to satisfy a condition for variation of declaration in relation to an offsets project under rules or regulations made consequential upon the amendment to subsection 29(3).

**Item 8 – Paragraph 175(5)(b)**

30. This item will specify that if an Australian carbon credit unit is voluntarily relinquished in order to satisfy a condition for variation of a declaration in relation to an offsets project, the unit is cancelled and the Regulator must remove the entry from the person’s Registry account.

**Division 2 – Requirements to relinquish Australian carbon credit units**

**Item 9 – Paragraphs 90(1)(a) and 91(1)(a)**

31. This item will remove the text ‘to remove carbon dioxide from the atmosphere’. The text that will be deleted is unnecessary as it describes ‘sequestration offsets project’ which is a term already defined in section 5 of the Act. Both types of sequestration offsets projects described in section 54 of the Act are subject to the potential relinquishment requirements in sections 90 and 91.

**Division 3 – Transition between methodology determinations**

*Carbon Credits (Carbon Farming Initiative) Act 2011*

**Item 10 – Section 5 (definition of 25-year permanence period project)**

32. This item will have the effect of changing the location of the definition of 25-year permanence period project in the Act. The item will retain the current meaning of 25-year permanence period project provided in the Act and facilitate the amendments relating to the transition between methodology determinations.

**Item 11 – Section 5 (definition of 100-year permanence period project)**

33. This item will have the effect of changing the location of the definition of 100-year permanence period project in the Act. The item will retain the current meaning of 100-year permanence period project provided in the Act and facilitate the amendments relating to the transition between methodology determinations.

**Item 12 – Paragraph 27(3)(e)**

34. This item will have the effect of changing the font of the term ‘100-year permanence period project’ in section 27(3)(e) of the Act to remove the italicisation and bolding of the term as it will no longer be a defined term in this section. This relates to item 11 which changes the location of the definition of 100-year permanence period in the Act.
Item 13 – Paragraph 27(3)(f)

35. This item will have the effect of changing the font of the term ‘25-year permanence period project’ in section 27(3)(f) of the Act to remove the italicisation and bolding of the term as it will no longer be a defined term in this section. This relates to item 10 which changes the location of the definition of 25-year permanence period in the Act.

Item 14 – Section 31A (heading)

36. This item will replace the current reference to ‘eligible offsets project’ with ‘sequestration offsets project’ to clarify the original intention of the Act for this subsection to apply only to sequestration projects. For example, it would not apply to a sequestration project which became an emissions-avoidance offsets project by applying a different methodology determination to the project.

Item 15 – Subsection 31A(1)

37. This item will replace ‘an offsets project’ with ‘a sequestration offsets project’ to clarify the original intention of the Act for this subsection to apply only to sequestration projects.

Item 16 – At the end of section 31A

38. This item will insert a new subsection that will allow the Clean Energy Regulator to remove a declaration relating to a permanence period for projects which have transitioned from a sequestration offsets project to an emissions-avoidance offsets project. It will also allow the Clean Energy Regulator to make a different declaration relating to a permanence period if an emissions avoidance offsets project later becomes a sequestration offsets project, such as to apply the new permanence period. The declarations referred to in this subsection are the ‘declaration’ that a project is a 100-year permanence period project or a 25-year permanence period project, not the declaration under subsection 27(2) of the Act.

Item 17 – Paragraphs 89(1)(d) and (e)

39. The Act includes a framework for enforcing the permanence of carbon storage during the permanence period for the project, which is either 25 or 100 years after credits are first issued to a project or after a declaration has been varied to add one or more project areas. The Act also includes flexibility provisions for a methodology determination to extend the crediting period for projects such that crediting periods longer than 25 years may be provided. Should the Government decide to propose crediting periods longer than 25 years for particular sequestration projects the current Act would operate so that permanence obligations could not be enforced for projects which took this option along with a 25-year permanence period. The amendments made by this item and the following three items ensure that permanence obligations can be enforced where the crediting period extends beyond a 25-year permanence period. This amendment will facilitate consideration of longer crediting arrangements for savanna sequestration projects if that is considered appropriate and consistent with the offsets integrity standards in section 133 of the Act.
40. In particular, this item ensures that the relinquishment power in section 89 applies where the crediting period is longer than the permanence period. For this purpose, if the project has been revoked, the end of the crediting period is the date when the crediting period would have ended had the project not been revoked. The item replicates the current arrangements where the permanence period is reset when project areas are added to a project. This includes where a new project area is added or the size of a project area is changed to include land which was not previously part of the project.

Item 18 – Paragraphs 90(1)(f) and (g)

41. This item ensures that the relinquishment power in section 90 applies where the crediting period is longer than the permanence period. It mirrors the amendment in item 17.

Item 19 – Paragraphs 91(1)(g) and (h)

42. This item ensures that the relinquishment power in section 91 applies where the crediting period is longer than the permanence period. It mirrors the amendment in item 17.

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

43. This item ensures that the end date of a carbon maintenance obligation extends to the end of the crediting period if that is longer than the permanence period. For this purpose, if the project has been revoked, the end of the crediting period is the date when the crediting period would have ended had the project not been revoked.

Item 21 – After paragraph 128(2)(d)

44. This item will insert a requirement that, where a proponent submits a request to the Clean Energy Regulator to apply a methodology determination that would result in the project becoming a sequestration offsets project, that request must be accompanied with a request that the project be treated as a 100-year permanence project or a 25-year permanence project. This allows such a project to choose an appropriate permanence period.

Item 22 – Subsection 130(3)

45. This item facilitates the transfer of projects between methodology determinations where that transfer changes the project’s status as an emissions-avoidance project or sequestration offsets project. This possibility will arise if the new proposed savanna sequestration methodology determination is made.

46. Under Section 128 of the Act, proponents may move from one methodology determination to another methodology determination within a reporting period if they are covered by the new method. However, the Act is not designed to accommodate projects shifting between emissions avoidance methods and methods that store carbon.

47. In particular, proponents currently on the existing emissions avoidance savanna fire management methodology determination may wish to move to the proposed new savanna sequestration
methodology determination (once it is made). Under the current operation of the Act and without restrictions in the methodology determination itself, a proponent could switch between methods, avoiding obligations intended to apply in relation to projects that store carbon. Specifically, these obligations are the requirement to maintain stored carbon for the permanence period and the requirement to obtain consent for projects that store carbon from third parties with an interest in the land on which the project will be undertaken.

48. This item will address the concerns with using section 128 to transfer between avoidance and sequestration projects. The current Act already requires that for projects to transfer they must be ‘covered by the methodology determination’. Proposed paragraph 130(3)(a) will continue this and also require that the project meets any relevant requirements in the methodology determination or legislative rules for the transfer to be approved. This provides flexibility to deal with circumstances where the transfer could undermine the integrity of the scheme or abatement calculations. Projects moving from sequestration to emissions-avoidance are then taken to be emissions-avoidance projects from the start of the reporting period during which the application is made (although this may become more than one reporting period if it is longer than the 2 years allowed by paragraphs 76(1)(e) and (2)(e) of the Act). Accordingly, after the approval is given to move methodology determinations no further units are issued for sequestration.

49. Proposed paragraph 130(3)(b) ensures that if a project moves from sequestration to emissions avoidance, the sequestration credits are handed back (relinquished). This ensures the scheme maintains environmental integrity. It is recognised that the credits handed back are unlikely to be the same as those originally issued, but they will represent an equivalent amount of carbon abatement to reflect the carbon that had been permanently sequestered. Project proponents are strongly advised to consult with the Regulator before relinquishing credits to ensure the correct ‘net total number’ is identified.

50. Proposed paragraph 130(3)(c) ensures that consents from eligible interest holders are obtained before a project becomes a sequestration offsets project. This means that the consent requirements in section 28A of the Act cannot be bypassed. By requiring the consents before the Regulator provides an approval, the situation is avoided where existing projects may need to be revoked for failing to meet a conditional declaration and cannot return to the scheme because of the newness requirement. Evidence that consents have been obtained will need to be part of an application under section 128 of the Act and it is intended that legislative rules under paragraph 128(2)(c) will make this clear.

51. Proposed subsections 130(3A) to (3D) mirror existing subsections of section 28A as to the form of the consents.

52. The current proposed savanna sequestration methodology determinations and changes to the legislative rule would allow for current savanna avoidance projects to revoke their existing project and start a new savanna sequestration project. The proposed methodology determinations also operate to restrict the operation of section 128 so that it cannot be used to move between savanna avoidance and sequestration methods. Given the desire to reduce any delay in providing
the opportunity for proponents to move to the savanna sequestration methodology determination, it is proposed to initially put in place these arrangements through the draft methodology determinations. However, the Government is considering how those arrangements could be simplified once the Act amendments came into force or options put into the methodology determinations that commence if the Bill is passed by Parliament.

**Item 23 – After paragraph 130 (4A)(a)**

53. This item will insert an obligation on the Regulator to amend the declaration for the project to ensure that a permanence period and conditions such as consent from eligible interest holders no longer apply where a project becomes an emissions avoidance offsets project. For emissions avoidance projects transitioning to become a sequestration offsets project, permanence period obligations are to be enforced and included on the declaration.

**Item 24 – Paragraph 130(4A)(b)**

54. This item will clarify that a declaration may also be varied as well as annotated to account for projects transitioning between methodology determinations and the relevant requirement variations. This will create a requirement that the Regulator provide an annotated or varied declaration to the project proponent as soon as practicable giving its approval under subsection 130(2).

**Item 25 – After Paragraph 168(1)(i)**

55. This item will insert an obligation on the Regulator to include additional information regarding the crediting period of projects into the Emissions Reduction Fund Register. The Regulator will be required to explicitly state when the crediting period, or the last crediting periods, for the project will end. This will help clarify when permanence obligations may end and when reviews of crediting periods are required under s 255A of the Act.

**Item 26 – After paragraph 175(2)(d)**

56. This item specifies that, if a project proponent is voluntarily relinquishing Australian carbon credit units to satisfy a condition relating to the approval of applying a specific methodology determination to a project, the notice provided to the Regulator must specify that it is for this purpose.

**Item 27 – After paragraph 175(5)(c)**

57. This item specifies that, if an Australian carbon credit unit is voluntarily relinquished to satisfy a condition relating to the approval of applying a specific methodology determination to a project, the unit will be cancelled and the Regulator will be required to remove the unit from the proponent’s Registry account and record the relevant notice in the Registry.

**Part 4 – Varying conditional declarations**

**Item 28 – Section 31 (heading)**
58. This item will amend the heading of section 31 to better reflect the contents of the section if amendments were to be made as set out in item 29. This will remove the reference to ‘conditions of declarations have been met’.

Item 29 – Paragraph 31(3)(b)

59. This item will allow regulations or legislative rules to be made that will allow the Regulator to vary a declaration to remove conditions imposed under subsection 28(2) relating to regulatory approvals or subsection 28A(2) relating to consents of eligible interest holders where any regulatory approval or consent was obtained after the end of the first reporting period for the project. Project proponents are still intended to use all reasonable endeavours to obtain regulatory approvals or consents before the end of the first reporting period for the project as required by subsections 28(2) and 28A(2). Failure to do so risks the revocation of the declaration of the project and no credits may be issued while these conditions are not met.

60. The Government recognises that there are circumstances where obtaining consents or approvals after the end of the first reporting period is justified and credits should be issued to the project. The legislative rules will provide guidance around the Regulator’s discretion in deciding whether late regulatory approvals or consents are justified and the conditions removed from the declaration.
Statement of Compatibility with Human Rights

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

Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017

This 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 Bill

The Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017 amends the Carbon Credits (Carbon Farming Initiative) Act 2011 (the Act) in relation to the operation of the Emissions Reduction Fund. These amendments address implementation issues for savanna fire management projects, correct a drafting error, reduce administrative burden and clarify the original intent of the Act.

Human rights implications

The Bill engages the following human rights:

- the rights of equality and non-discrimination, and

The rights of equality and to non-discrimination

The rights of equality and non-discrimination are contained in articles 2, 16 and 26 of the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of all Forms of Racial Discrimination, which lists a variety of rights guaranteed to everyone without distinction as to race, colour, or national or ethnic origin, including rights to own property (art 5(d)(v)) and economic and social rights (art 5(e)(i)).

The right to equality requires that laws, policies and programs should not be discriminatory and that public authorities should not apply or enforce laws, policies and programs in a discriminatory or arbitrary manner. The right to non-discrimination requires that no one is denied rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth.

The Racial Discrimination Act 1975 sets out a number of prohibited grounds for discrimination. It provides that it is unlawful to do any act 'involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life'.

The Act as a whole promotes the rights of equality and non-discrimination. The Act provides for participation of Aboriginal and Torres Strait Islander land holders in the Emissions Reduction Fund (ERF) scheme and section 302 of the Act also explicitly provides that the Act does not affect the operation of the Racial Discrimination Act 1975.
The amendments in this Bill continue to promote these rights, by ensuring that Aboriginal and Torres Strait Island land holders have equal rights to undertake sequestration projects as non-Aboriginal and Torres Strait Island land holders.

The Act and explanatory material demonstrate a clear intention to treat Aboriginal and Torres Strait Islander persons and freehold land holders equally in relation to rights to conduct sequestration projects under the ERF scheme. In particular, this means that just as for freehold land, a State, Territory or Commonwealth Minister should not be able to veto participation in the scheme by requiring consent to undertake sequestration projects on exclusive possession native title land.

If the Act established a right for the Crown to seek consent in these circumstances, it could be argued that Aboriginal and Torres Strait Islander persons would enjoy rights to a more limited extent than non-Aboriginal and Torres Strait Islander land holders, inconsistent with section 10 of the Racial Discrimination Act 1975.

Subsection 45(2) of the Act already makes it clear that consent is not required in relation to land that is exclusive possession native title land that is not Torrens system land. Section 302 of the Act also provides that nothing in the Act affects the operation of the Racial Discrimination Act 1975.

Items 3 and 4 of Schedule 1 of the Bill clarify that this is also the case for determined exclusive possession native title land that is also Torrens system land or land rights land. This ensures that the Act is consistent with and promotes Australia’s international human rights obligations and protections provided under the Racial Discrimination Act 1975.

Other parts of this Bill make minor and technical amendments and clarify the original intent of the legislation. These measures improve the ease of administering the legislation. They do not engage any human rights issues.

**Conclusion**

The Bill is compatible with human rights as it promotes the protection of human rights, particularly the rights of equality and non-discrimination and is consistent with Australia’s obligations under the International Convention on the Elimination of all Forms of Racial Discrimination.