

Chapter 1

Introduction

Referral

1.1 On 30 March 2017, the Senate referred the Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017 (the bill) to the Senate Environment and Communications Legislation Committee for inquiry and report by 9 May 2017.¹

Conduct of the inquiry

1.2 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to relevant organisations inviting written submissions by 11 April 2017. The committee received 13 submissions which are listed at Appendix 1 of this report.

1.3 The committee did not hold a public hearing for this inquiry. However, the committee requested the Department of the Environment and Energy (the department) to provide a written response to concerns raised in submissions. The department's response is provided at Appendix 2.

1.4 The public submissions and other information received during the inquiry are available on the committee's website at:
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/CarbonFarmingInitiative

Reports of other committees

1.5 When examining a bill or draft bill, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills. The Scrutiny of Bills Committee assesses legislative proposals against a set of accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary propriety.

1.6 The Scrutiny of Bills Committee made no comment on the bill.²

Background

1.7 The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) established a voluntary carbon offsets scheme with the purpose of creating incentives for carbon abatement projects in the land. There are two broad types of carbon

1 *Journals of the Senate*, 2016–17, No. 38, 30 March 2017, pp. 1244–46.

2 Scrutiny of Bills Committee, *Scrutiny Digest 4/17*, p. 5.

abatement projects—emissions *avoidance* projects that prevent the release of emissions into the atmosphere (i.e. savanna burning) and emissions *sequestration* projects that store carbon from the atmosphere into the land (i.e. tree planting).

1.8 The CFI Act also 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.³ The permanence obligations ensure that stored carbon is maintained for either 25 or 100 years. These long-term obligations can affect other eligible interest holders, for example financial institutions or the relevant state or territory minister in the case of Crown land.⁴ Under the original Act, these consent requirements applied only to emissions *sequestration* projects as emissions *avoidance* projects do not entail permanence obligations.

1.9 Amendments to the CFI Act in 2014 established the Emissions Reduction Fund (ERF) and amended administrative aspects of the consent requirements for land-based projects involving the long-term storage of carbon.

1.10 However, in doing so, the 2014 amendments also introduced an error in the CFI Act as the amendments 'inadvertently applied the consent requirements to savanna fire management projects and irrigated cotton projects that are not credited for storing carbon'.⁵ This meant that savanna emissions *avoidance* projects were inadvertently required to obtain consent despite there being no permanence obligations associated with those projects. This outcome was in conflict with the original operation of the Act since 2011, as well as the intention of the 2014 amendments. However, as a consequence, consent for these projects must be obtained from third parties. The department indicated that over 20 registered savanna fire management projects, which have been conditionally approved, are subject to unintended requirements to obtain consent from third parties. The department noted that projects, for which consent has not been obtained, risk being revoked.⁶

1.11 In response to representations from savanna fire management projects affected by the unintended consequences of the 2014 amendments, the Government sought to amend the CFI Act. The Omnibus Repeal Day (Spring 2015) Bill 2015 was introduced in November 2015. The bill lapsed at the prorogation of the Parliament on 15 April 2016 and was not restored to the Senate *Notice Paper* before the dissolution of the Parliament on 9 May 2016.

3 Explanatory Memorandum (EM), Carbon Credits (Carbon Farming Initiative) Amendment Bill 2017, p. 3.

4 EM, p. 7.

5 EM, p. 3.

6 Department of the Environment and Energy, *Submission 5*, p. 3.

1.12 In late 2016, the department held discussions with savanna fire management proponents on new opportunities to earn credits for carrying out savanna fire management projects. 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.⁷

1.13 In early 2017, the department distributed an information paper describing possible amendments to the Act that would address the unintended consent requirement as well as other amendments. The department noted that there was 'strong support received from proponents subject to the [unintended consent] requirements'.⁸

Purpose and overview of the bill

1.14 The bill proposes to amend the CFI Act in relation to the crediting elements of the ERF. The proposed amendments will remove the unintended consent requirements, address implementation issues, reduce administrative burden and clarify the original intent of the Act. The Minister for the Environment and Energy stated, in his second reading speech, that the bill will build on the success of the ERF and:

...will also reduce regulatory burden and increase flexibility for projects. It will help participants in the fund by clarifying consent requirements to conduct projects. It will make it easier for projects to adapt their project areas to their evolving needs, preserving emissions reductions and business flexibility. It will also ensure the requirements to return credits if a proponent reduces the size of their project or ends a project as appropriate.⁹

1.15 The Minister concluded that the 'amendments demonstrate the government's ongoing commitment to reduce red tape, streamline administrative processes and reduce emissions'.¹⁰

1.16 The bill would amend the consent requirements by replacing the term 'offsets project' with the defined term 'sequestration offsets project' in paragraph 28A(1)(a). The proposed amendment 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. The amendment will reflect the intent of the CFI Act as passed in 2011.

7 EM, p. 6.

8 EM, p. 6.

9 The Hon Josh Frydenberg MP, Minister for the Environment and Energy, *House of Representatives Hansard*, 23 March 2017, p. 2966.

10 The Hon Josh Frydenberg MP, Minister for the Environment and Energy, *House of Representatives Hansard*, 23 March 2017, p. 2966.

1.17 The bill also provides transitional provisions to 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).¹¹

1.18 The bill would amend section 44 of the CFI Act to clarify 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.

1.19 The bill also proposes a number of amendments relating to sequestration projects. The major amendments are as follows:

- Providing for legislative rules or regulations to allow proponents to remove parts of a sequestration offsets project and to surrender credits for the carbon stored in that area (proposed paragraph 29(3)(l)). The intent is to provide greater flexibility for adjustments to projects over time 'while maintaining the integrity of the credits previously issued and used by the Government or third parties'.¹²
- Replacing section 42 to provide for a new formula for 'net total number' of Australian carbon credit units issued in relation to an eligible offsets project. In addition, the proposed new section 42 introduces defined terms 'total units issued', 'units issued for emissions avoidance' and 'units relinquished'. The proposed amendment is intended to assist in the uptake of the proposed new savanna sequestration method.¹³
- Amendments facilitating the transfer of projects to the proposed savanna sequestration method that credits both emissions-avoidance and sequestration of carbon in the landscape.¹⁴
- Amendments facilitating savanna crediting options to 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.¹⁵
- Amendments facilitating removal of conditions after the end of the first reporting period. Amendments to section 31 will allow legislative rules or regulations to provide for the removal of regulatory approval or consent

11 EM, p. 8.

12 EM, pp. 4, 11–12.

13 EM, pp. 4, 12–13.

14 EM, pp. 4, 13–17.

15 EM, pp. 4, 17–18.

conditions on declarations where that regulatory approval or consent has been obtained after the end of the first reporting period for the project.¹⁶

16 EM, pp. 4–5, 17–18.

