Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment and Energy portfolio

Question No: 310

Hearing: Supplementary Budget Estimates

Outcome: Agency

Program: Clean Energy Regulator (CER)

Topic: Queensland Land Clearing – Land Sector Applications

Hansard Page: 108

Question Date: 17 October 2016

Question Type: Spoken

Senator Waters, Larissa asked:

Senator WATERS: In relation to land clearing, Queensland's land-clearing laws are yet to be reinstated, although they have been talked about for a very long time now. How does that affect the potential additionality were there to be any land sector applications from Queensland that would be presently legal under the Queensland laws but unlawful had the bill have passed but which may pass at some point? Has anyone worked that out?
Ms C Munro: We have examined this matter in detailIt is worth saying that the methods to which I think you were referring would have avoided deforestation would require you to have had a land-clearing permit and then not to proceed to clear had a cut-off date in them. So that is no longer accessible, and I understand that is not accessible in Queensland either.
Senator WATERS: Yes, if you could elaborate on that?
Ms C Munro: Yes, Mr Purvis-Smith can you give some more explanation.
Senator WATERS: It bends my mind but I want to understand.
Ms C Munro: I think that is the main point of reassurance for you.
Senator WATERS: Okay.
Mr Purvis-Smith: I think it is better that it is a question we take on notice, potentially to give some worked examples because there is a cut-off date. It is complex.
Senator WATERS: Do you know what the cut-off date is?
Mr Purvis-Smith: No, I can find out. But that is why I would like to give some worked examples in a question on notice.
Senator WATERS: Could you trace that back through the number of scenarios where we had the initial laws? They were then repealed under the Newman state administration—mostly repealed. And can you give me a few examples under each of those time periods, so that I can understand that additionality question as it has flowed through in real time?
Mr Purvis-Smith: We can do our best. We will try and be as fulsome as we can be.

Answer:

Additionality in the Emissions Reduction Fund generally

The Emissions Reduction Fund (ERF) is designed to ensure that only genuine, additional abatement is credited and purchased. The *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (CFI Act), the Carbon Credits (Carbon Farming Initiative) Regulations 2011 (CFI Regulations), the Carbon Credits (Carbon Farming Initiative) Rule 2015 (CFI Rule) and methodology determinations made under the CFI Act (methods) support this.

The CFI Act has three tests to determine if abatement generated by project is additional. These tests are that the project is:

- new[1]
- not required to be carried out by or under any Australian law (regulatory additionality – this is discussed further below)
- not likely to be supported under another Government program[2].

Summary of the legislative position on regulatory additionality

This section summarises the legislative position on regulatory additionality insofar as it is relevant in the context of the intersect between regulatory additionality and the *Vegetation Management Act 1999* (Qld) (VM Act).

Regulatory additionality requirement

The CFI Act defines "regulatory additionality requirement" as the requirement that the relevant set of activities comprising a project is not required to be carried out by or under an Australian law (other than the *National Greenhouse and Energy Reporting Act 2007* (Cth)).[3]

A method can prescribe an alternative to the regulatory additionality requirement for projects covered by that method.[4]

Exclusion of certain offsets projects

A project involving an activity that was required under a law is prescribed by the CFI Regulations to be an "excluded offsets project" if that requirement was removed or made less onerous as a result of a change of law that occurred after 24 March 2011.[5] This ensures that regulatory additionality operates as intended.

Assessment by the Clean Energy Regulator prior to project declaration

The Clean Energy Regulator is required to assess whether a project satisfies the regulatory additionality requirement and whether it is an excluded offsets project, at the time the Regulator makes its decision on the application to declare that project as an eligible offsets project.[6] If at that time the Clean Energy Regulator finds that a project does not satisfy the regulatory additionality requirement, or that the project is an excluded offsets project, the Regulator must not register and declare the project as an eligible offsets project.

Changes to laws after project declaration

Changes in laws occurring after projects have been declared by the Clean Energy Regulator as eligible offsets projects will not cause their regulatory additionality or status as excluded offsets projects to be reviewed. There is no legislative power to review a project declaration on this basis.

---

[1] Paragraph 27(4A)(a) of the CFI Act, read with subsections 27(4B) to (4E) of that Act.
[2] Paragraph 27(4A)(c) of the CFI Act read with rule 21 of the CFI Rule.
[3] Subparagraph 27(4A)(b)(i) of the CFI Act. See also definition of "project" in section 5 of the CFI Act.
[4] Subparagraph 27(4A)(b)(ii) of the CFI Act.
[5] Paragraph 3.36(1)(a) of the CFI Regulations. 24 March 2011 is when the Carbon Credits (Carbon Farming Initiative) Bill was introduced in the House of Representatives.
[6] Paragraphs 27(4)(d) and (m) of the CFI Act.

The intersect between regulatory additionality and the VM Act

The VM Act regulates the activity of clearing certain vegetation in certain land areas in Queensland. Amendments were made to the VM Act in 2013 (amended VM Act) to, amongst other matters, remove or modify that Act's restrictions on clearing activities.

Projects under the *Carbon Credits (Carbon Farming Initiative–Avoided Clearing of Native Regrowth) Methodology Determination 2015* (Avoided Clearing method) effectively involve the non-clearing of land which has native forest cover in circumstances where unrestricted clearing of the land would have been permitted (ie via an unrestricted clearing permit). The unrestricted clearing permit must be in place at the time the application for declaration of the project as an eligible offsets project is made.

The intersect between regulatory additionality and the amended VM Act arises when an application is made to the Clean Energy Regulator to declare a project as an eligible offsets project under the Avoided Clearing method.[7] The intersect only occurs where the project includes land in Queensland.

Because of the intersect, the Clean Energy Regulator assesses whether a proposed project under the Avoided Clearing method on land subject to an unrestricted clearing permit via the VM Act amendments is an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations.

Scenario analysis of the intersect

If the Clean Energy Regulator receives an application to declare a project as an eligible offsets project under the Avoided Clearing method on land which is wholly or partly situated in Queensland, the Regulator will assess whether the VM Act (as amended) applies to the land (or to that part situated in Queensland), and whether it is category X land under the VM Act (as amended).

Non-category X land

If the VM Act (as amended) applies to the land and the land is not category X land, the Clean Energy Regulator will assess whether in the circumstances in which the unrestricted clearing permit is claimed by the applicant, that permit would have existed if the VM Act had not been amended.

If, after consultation with the Queensland Government's Department of Natural Resources and Mines (DNRM), the agency responsible for administration of the VM Act, the Clean Energy Regulator finds that to be the case, the project will be considered as not being an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations and will be declared by the

[7] There is no intersect between regulatory additionality and the amended VM Act in the context of projects under the *Carbon Credits (Carbon Farming Initiative–Avoided Deforestation 1.1) Methodology Determination 2015* because for a project that involves not clearing native forest to be eligible under this method, a clearing consent to clear the native forest must have been issued before 1 July 2010. There is also no intersect between regulatory additionality and the amended VM Act in the context of projects under the *Carbon Credits (Carbon Farming Initiative)(Human-Induced Regeneration of a Permanent Even-Aged Native Forest–1.1) Methodology Determination 2013* (HIR method) because this method covers projects for regeneration of native forest through one or more specific human actions that facilitate regeneration, such as exclusion of livestock; grazing management; feral animal (pest) management; non-native plant (weed) management; and permanent cessation of mechanical or chemical destruction or suppression of regrowth.

Clean Energy Regulator as an eligible offsets project if all other requirements of the CFI Act and the Avoided Clearing method are met.

Otherwise, the project will be considered as an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations and will not be declared as an eligible offsets project.

Category X land

If the Clean Energy Regulator receives an application to declare a project as an eligible offsets project under the Avoided Clearing method on land situated in Queensland which is category X land under the VM Act (as amended), the Regulator applies a two stage test.

The first stage is an assessment of whether unrestricted clearing is permitted on the land. If the answer to the first stage question is yes, the Regulator will then assess whether the land was category X land on which unrestricted clearing was permitted prior to the 2013 amendments to the VM Act.

If, at the first stage, the Clean Energy Regulator finds that unrestricted clearing is not permitted on the land, it will refuse to declare the project as an eligible offsets project under the Avoided Clearing method as the project would not have an unrestricted clearing permit, which is a requirement for coverage under that method.

If the Clean Energy Regulator finds that unrestricted clearing is permitted on the land now and was also permitted before the VM Act amendments, the project will not be considered as an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations. In this circumstance, the Clean Energy Regulator will declare the project as an eligible offsets project if all other requirements of the CFI Act and the Avoided Clearing method are met.

Land converted to category X

It is possible for land to convert to category X.

If the Clean Energy Regulator finds that unrestricted clearing is currently permitted on the land, but it was not category X before VM Act amendments, the Clean Energy Regulator will assess whether in the circumstances in which the land converted to category X, that conversion would also have occurred under the unamended VM Act.

If, after consultation with DNRM, the Clean Energy Regulator finds that to be the case, the project will be considered as not being an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations, and as having an unrestricted clearing permit for that land. In this circumstance, the Clean Energy Regulator will declare the project as an eligible offsets project if all other requirements of the CFI Act and the Avoided Clearing method are met.

Otherwise, the project will be considered as an excluded offsets project under paragraph 3.36(1)(a) of the CFI Regulations and will not be declared as an eligible offsets project.

Interaction of regulatory additionality with any future amendments to the VM Act

The Clean Energy Regulator will assess applications for declaration of projects as eligible offsets projects under the Avoided Clearing method against regulatory additionality as it interacts with any future amendments to the VM Act as and when those amendments are made and those assessments arise. The interaction will depend on the form of amendments made. It would be speculative to explore this at this time.

Illegal clearing under the amended VM Act

If land has been illegally cleared under the amended VM Act, a project under the Avoided Clearing method on that land may not be eligible to be declared as an eligible offsets project as it may not be covered by the method. The coverage provisions of the Avoided Clearing method include the requirement that land in the project must have native forest cover and be substantially uniformly covered in trees. The method defines land to have "native forest cover" if it is dominated by trees located within their natural range that have attained a crown cover of at least 20% of the land area and a height of at least 2 metres.

A project under the *Carbon Credits (Carbon Farming Initiative)(Human-Induced Regeneration of a Permanent Even-Aged Native Forest–1.1) Methodology Determination 2013* (HIR method) on land that has been illegally cleared of a native forest[8] under the amended VM Act will be an excluded offsets project[9] and therefore ineligible for declaration as an eligible offsets project.

Legal clearing under the amended VM Act

A project under the HIR method on land which has been legally cleared of a native forest under the amended VM Act will be an excluded offsets project and therefore ineligible for declaration as an eligible offsets project if that clearing occurred within 7 years of the lodgement of an application for the project to be declared an eligible offsets project or, if the land has had a change of ownership after the clearing, within 5 years of the lodgement of such an application.[10]

A project under the Avoided Clearing method on land which has been legally cleared of a native forest under the amended VM Act may not be eligible to be declared as an eligible offsets project if as a result of the clearing it does not have native forest cover or is not substantially uniformly covered in trees.

[8] The term "native forest" has been defined in regulation 1.3 of the CFI Regulations.
[9] Paragraph 3.36(1)(e) of the CFI Regulations designates a project for the establishment of vegetation on land that has been subject to illegal clearing of a native forest or illegal draining of a wetland as an excluded offsets project. An HIR project is a project for the establishment of vegetation.
[10] Paragraph 3.36(1)(f) of the CFI Regulations.