

THE NEW CARBON FARMING LEGISLATION

INTRODUCTION

The Australian Federal Parliament has recently passed new legislation to implement the Government's Carbon Farming Initiative ("CFI"). This initiative will enable carbon credits to be generated by the land sector through its abatement activities. These credits will in turn be able to be used in domestic and international compliance as well as voluntary carbon markets.

The three bills that were passed into legislation in the Federal Parliament were the *Carbon Credits (Carbon Farming Initiative) Bill 2011*, the *Carbon Credits (Carbon Farming Initiative) (Consequential Amendments) Bill 2011* and the *Australian National Registry of Emissions Units Bill 2011*. The legislation will come into force on 1 January 2012.

The private sector should also be aware of the new legislative changes pertaining to carbon pricing, as it may have commercial implications that affect their business.

CARBON CREDITS (CARBON FARMING INITIATIVE) BILL 2011

This bill has three key objects:

1. **International Obligations:** To implement Australia's obligations under the Climate Change Convention and Kyoto Protocol.
2. **Incentives:** To generate incentives for people to conduct certain offsets projects.
3. **Carbon Abatement:** To increase carbon abatement in such a way that is consistent with protecting Australia's environment and improves resilience to the effects of climate change.

How it works

Australian Carbon Credit Units ("ACCUs") may be issued in relation to eligible offsets projects. In order for offsets projects to participate in the CFI and receive ACCUs, there are certain criteria which must be met.

The criteria include:

- **Methodology:** an approved methodology for offsets projects;
- **Recognised Entity:** that the project proponent (person in charge of the project) is a recognised offsets entity (meaning they are a fit and proper person, including that they have not been convicted of a criminal offence);
- **Reporting:** undertaking reporting (whereby the Administrator issues a certificate of entitlement, allowing the project proponent to receive a certain number of ACCUs), every 12 months to 5 years.

Key features

The CFI will cover land based activities that cause greenhouse gas abatement. Some of the abatement activities that are covered are removing carbon from the atmosphere by, for example planting trees as well as reducing or avoiding emissions by, for example, capturing methane emissions from landfill.

However, the initiative will exclude certain offsets projects, such as those that adversely affect employment and the local community, as well as those projects that would have a negative impact on the natural environment (including impacting water availability and biodiversity conservation).

Further amendments

Several further amendments were made to the bill shortly prior to being passed as legislation. These include: reducing the threshold for the exclusion of certain offsets projects where there is a “material risk” rather than a “significant risk” that the project will have negative impacts, for example agricultural access, also, allowing the Minister to exclude some types of projects, and increasing the requirements for the Domestic Offsets Integrity Committee when publishing certain information.

CARBON CREDITS (CARBON FARMING INITIATIVE) (CONSEQUENTIAL AMENDMENTS) BILL 2011

The aim of this bill is to ensure that the CFI can be practically implemented, which is to be realised by applying existing legal obligations concerning criminal activity such as money laundering and terrorism financing to ACCUs. This link between criminal offending and ACCUs ensures that the interests of holders of these units are protected.

How it works

The process for the approval of methodologies to support offset projects is submitting these methodologies to the Department of Climate Change and Energy Efficiency. The methodology is subject to public consultation, and then, if endorsed by the Department it

will be approved by the Minister and published on the Federal Registry of Legislative Instruments.

AUSTRALIAN NATIONAL REGISTRY OF EMISSIONS UNITS BILL 2011

This bill is the conduit for the recognition of emissions units created under the Kyoto Protocol in Australian legislation. It outlines the way in which those units can be created and traded, as well as recognising ACCUs.

This bill sets out the key aims of the Australian National Registry of Emissions Units (“Registry”), the rules surrounding the opening and closing of accounts and also the issuing and transfer of ACCUs within the Registry itself.

Key features

Essentially, the bill empowers the Administrator to open up an account in the name of a person and to make corrections in the Registry.

It also allows a person to request of the Administrator to close that person’s account. Further, it allows a person to apply to the Federal Court for the rectification of the Registry.

COMMERCIAL IMPLICATIONS

The new Carbon Farming Initiative legislation has commercial implications for the private sector. So, it is essential that companies seek advice and become well informed about the potential commercial issues regarding these new laws, in order that they may effectively take advantage of new commercial opportunities that arise in relation to these laws.