

CG LAW BULLETIN

AN OVERVIEW OF THE CARBON FARMING INITIATIVE

As part of its 'Clean Energy Future' laws the Australian Government has introduced the 'Carbon Farming Initiative' (**CFI**).

The CFI is intended to encourage landowners – and farmers in particular – to take steps to do things which will either reduce or 'capture' (or 'store') greenhouse gas emissions.

On 23 August 2011 the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (**the Act**) was passed by parliament. Regulations are on their way (but are yet to be made law).

WHAT IS THE CARBON FARMING INITIATIVE AND HOW DOES IT WORK?

Stating it as simply as possible, the CFI is a scheme by which people (typically landowners) will be able to make (some) money by doing things which either reduce or store greenhouse gas emissions - although of course it's all rather more complex than that.

An understanding of what the CFI is and how it works requires an understanding of some of the terms used in the Act. Two terms in particular underpin the entire scheme.

The first term that needs to be understood is **Australian carbon credit units**. These units – ACCUs - will be issued by the Carbon Credits Administrator – a body established by the Act. ACCUs are personal property, and can be dealt with (as a general rule) in the same way that any other form of personal property can be dealt with at law. They can be bought and sold, transferred, left in a will, borrowed against, and so on. Most importantly, ACCUs will have a monetary value.

The CCA will issue units in relation to **eligible offsets projects** – which is the second term that needs to be understood. An eligible offset project – EOP – is a project that is recognised by the government as meeting certain (complex) criteria set out under the Act. An EOP will need to (amongst other things):

- reduce emissions or store carbon in vegetation or soil;
- be carried out in Australia; and
- satisfy a test of 'additionality' – so that proponents are not rewarded for 'business as usual' activities, or things that they are required by law to do anyway.

Easy examples of the sorts of projects that are likely to be approved as EOPs are growing forests, or reducing tillage of soils on farms.

Project proponents apply to the Carbon Credits Administrator for approval of a particular EOP. Once the EOP is approved, the proponent undertakes the project and in due course submits reports to the Administrator about the EOP. Assuming that the EOP has gone according to plan the proponent will then apply for a 'certificate of entitlement' which will in turn allow the proponent to have issued to it the number of ACCUs to which the proponent is entitled. The proponent – who by now is the owner of the ACCUs – can then hold, sell, transfer, or do whatever else they wish to do with the ACCUs.

The main idea behind the scheme is that ACCUs will be sold to other parties who either need to:

- 'surrender' units to the government under the overarching 'Clean Energy Future Plan' (also known as the 'carbon tax' – see the article on our website of September 2011 'An Overview of the 'Clean Energy Legislative Package''); or
- who simply wish to be 'carbon neutral' (even though they are not obliged by law to do that).

The Act also understandably tries to ensure that EOPs are 'permanent'. There are provisions which contemplate scenarios where – for example – if an EOP which is a forest burns down, then a proponent can be required to 'relinquish' ACCUs issued for the project

Predictably enough, the government will have powers to inspect, monitor, and audit EOPs, to compel the production of records, and to penalise for any offences under the Act.

There's a lot more to the CFI scheme, and anyone considering proposing an EOP will have to proceed carefully to ensure that they understand what is required to successfully propose and execute an EOP – and what their obligations are if the project runs into trouble (or fire, or drought).

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