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fast track information for clients

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Parliament has passed the [Carbon Farming Initiative Amendment Bill 2014](#) to establish the Emissions Reduction Fund – the central element of the Government’s Direct Action Plan.

The Bill provides a power for the Clean Energy Regulator to enter into carbon abatement contracts. It was amended by the Senate to also include a safeguard mechanism to limit the net emissions of certain large facilities from 1 July 2016.

Emissions Reduction Fund legislation passed

On 24 November 2014 the House of Representatives agreed to the Carbon Farming Initiative Amendment Bill 2014 with a number of Government and cross-bench amendments that were proposed in the Senate. The Bill received royal assent on 25 November and is expected to commence in early December.

What does the Bill do?

The Bill’s primary purpose is to establish the Emissions Reduction Fund through amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011*. The primary objective of the fund is to help Australia to meet its obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol to reduce emissions of greenhouse gases.

The fund has 3 elements: crediting emissions reductions, purchasing emissions reductions and safeguarding emissions reductions.

Under the crediting component, the Government will issue Australian carbon credit units (ACCUs) (which are a form of personal property) to approved projects that reduce or sequester carbon emissions (for example, by improving the energy efficiency of industrial facilities or by capturing landfill gas).

Under the purchasing component, the Commonwealth will purchase low-cost carbon reductions from proponents of approved projects. The Bill provides for the Clean Energy Regulator to enter into contracts with proponents of approved projects for the purchase of ACCUs.

The safeguard mechanism, to be included in the *National Greenhouse and Energy Reporting Act 2008* from 1 July 2016, is to ensure that emissions reductions that the Government pays for are not displaced by a significant rise in emissions elsewhere in the economy. The key details are to be set in legislative rules determining which ‘designated large facilities’ are covered and how their baselines will be established.

The amendments introduced in the Senate provide that it will be the entity with operational control of these facilities that will need to comply with the obligation to keep its net emissions below its baseline or face a civil penalty. This obligation is not limited to constitutional corporations but extends to any legal person.

How was the Bill amended in the Senate?

Along with minor Government amendments, Senator Nick Xenophon moved [amendments](#), which the Government supported, to:

- include reference to ‘an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol’ in the object of the Act
- allow for rules to set the proposed general length of carbon abatement contracts at 7 years
- include reviews to consider extending crediting periods for offset projects
- introduce the safeguard mechanism.

The Palmer United Party moved [amendments](#), which the Government supported, to:

- maintain aspects of the current *Carbon Credits (Carbon Farming Initiative) Act 2011* relating to the role of the expert advisory committee (the Emissions Reduction Assurance Committee) and natural resource management planning
- allow for the suspension of methodology determinations by the Emissions Reduction Assurance Committee
- extend the crediting for savannah burning projects from 7 to 25 years.

To secure passage of the Bill, the Government also agreed to commission the Climate Change Authority to review a number of matters, including whether Australia should introduce an emissions trading scheme.

AGS involvement

A team of AGS lawyers, including Bridget Gilmour-Walsh (Senior General Counsel), Peter Nicholas (Counsel), Kathryn Graham (Senior General Counsel), Jenny Burnett (Deputy General Counsel), Kathryn Grimes (Senior Executive Lawyer), John Scala (Chief Counsel Commercial), Leo Hardiman (National Group Leader, Office of General Counsel), Anna Lehane (Counsel), and Sacha Moran (Senior General Counsel), has advised the Department of the Environment on the Emissions Reduction Fund and the amendments.

For further information please contact:

Bridget Gilmour-Walsh

Senior General Counsel

T 02 6253 7563

bridget.gilmour-walsh@ags.gov.au

Jenny Burnett

Deputy General Counsel

T 02 6253 7199

jenny.burnett@ags.gov.au

Peter Nicholas

Counsel

T 02 6519 7197

peter.nicholas@ags.gov.au

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