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Opportunities for participation in the ERF

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Introduction to the ERF

- ERF is part of the Government's Direct Action Plan
- ERF is a fund allocated to the purchase of emissions reductions
- Expenditure of \$2.55b over next four years
- ERF has three primary components: crediting, purchasing, safeguarding
- The design of the ERF has had regard to three principles:
 - Lowest-cost emissions reductions
 - Genuine emissions reductions
 - Streamlined administration
- Implemented through amendments to the Carbon Farming Initiative legislation and National Greenhouse and Energy Reporting Scheme legislation
- Administered by the Clean Energy Regulator

Legislative Framework

- *Carbon Credits (Carbon Farming Initiative) Act 2011*
 - as amended by *Carbon Farming Initiative Amendment Act 2014*
- *Carbon Credits (Carbon Farming Initiative) Regulations 2011*
 - as amended by *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2014 (No 2)*
- *Carbon Credits (Carbon Farming Initiative) Rule 2015*
- Subordinate legislation or guidance
 - Methodology Determinations (statutory instruments)
 - Carbon Abatement Contract
 - Audit Thresholds Instrument
 - Auction Guidelines

CFI in a nutshell

- Started on 8 December 2011
- Project based domestic carbon offset mechanism
- Receive credits for abatement activities in the land sector, by:
 - Reducing or avoiding emissions (“**emissions avoidance projects**”)
 - Removing carbon from the atmosphere and storing it in soil or trees (“**carbon sequestration projects**”)
- Creation of credits called “Australian Carbon Credit Units” (**ACCUs**)
- Projects carried out under rules known as “**methodology determinations**”

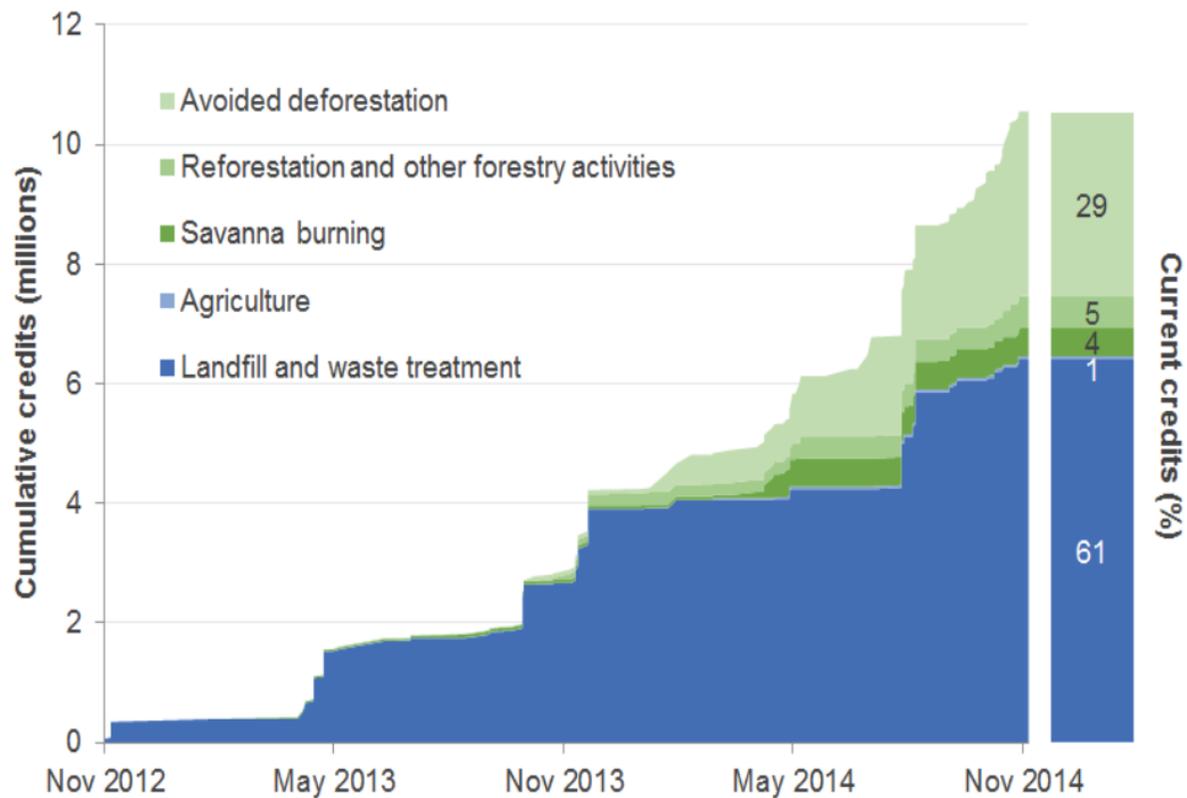


Key concepts or terms

- *Additionality*
- *Project proponent*
- *Project declaration*
- *Crediting period*
- *Reporting period*
- *Offsets reports*
- *Certificate of entitlement*

Carbon Farming Initiative	Emissions Reduction Fund
Project proponent	Scheme participant
Certificate of Entitlement	Abatement statement
Domestic Offsets Integrity Committee	Emissions Reduction Assurance Committee
Methodology determination	Method
Eligible offsets project	Registered project
Project offsets report	Project report
Project declaration	Project registration

Progress to date



Source: Climate Change Authority

Steps to participate in the ERF

Transitioning projects



New projects



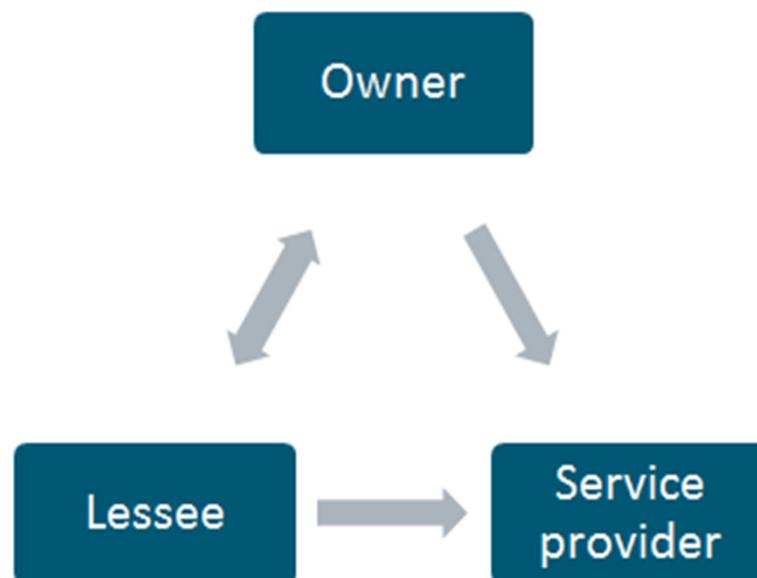
Sourced from the White Paper

Registering new ERF projects

- Projects will be eligible for registration if:
 - the project is in **Australia**
 - the project is consistent with a relevant **methodology determination** and meets any requirements of the methodology determination;
 - the applicant is the **project proponent** for the project;
 - the applicant passes the ‘**fit and proper person**’ test
 - the project meets the **additionality** requirements
 - the project meets any eligibility requirements in the **regulations or rules** (Rule 20: consent will be required from facility operator for large projects)

Project proponent

- Project proponent is the person who:
 - is responsible for carrying out the project; and
 - has the legal right to carry out the project
- For carbon sequestration projects, the person must hold the carbon sequestration right or have the consent of eligible interest holders



- Note – Regulator’s Fact Sheet re timing of demonstrating legal right

Fit and proper person

- Fit and proper person test
- Not an insolvent under administration
- Not externally-administered body corporate
- Rule 61 specifies events, including:
 - committing an offence under any law that relates to dishonest conduct, the conduct of a business, environment protection or work health and safety;
 - breaching the Act, Regulations or Rule;
 - breaching ANREU, NGERs and RET legislation; and
 - “any other events that the Regulator considers relevant”

Additionality requirements

- the project has not “begun to be implemented” (***newness requirement***)
- the activity is not required by law (***regulatory additionality requirement***)
- the activity will not be carried out under another government program (***government program requirement***)
- Compare to “common practice” text under CFI

Newness requirement

Implementation **doesn't include**:

- Feasibility studies
- Planning/design
- Obtaining approvals or consents
- Obtaining advice
- Conducting negotiations
- Sampling to establish baseline

Implementation **includes**:

- Making final investment decision
- Acquiring or leasing tangible assets for use wholly or mainly for project
- Commencing construction work
- Preparing soil, planting, fertilising, irrigation, drainage

Government program requirement

Replaced by rules (Rule 21)

- Activities funded by 20 Million Trees Programme
- Accredited power stations under RET (except methane avoidance projects and waste coal mine gas projects)
- Activities receiving small-scale certificates under RET
- Activities under state based energy efficiency schemes

Undertaking projects

- Obtain registration
- Undertake activity
- Report on carbon abatement (different reporting periods)
- Undertake audit (if required)
- Apply for certificate of entitlement
- ACCUs issued into Registry Account

Selling credits

- Purchasing undertaken by Clean Energy Regulator
- Three forms of procurement: auction, tender and “any other process”
- Intent to proceed through reverse price auctions – cost is only factor

Key features of auction process:

- Projects must be registered before bid submitted
- Sealed bids ; “Pay as bid”
- Only one bid per project (minimum bid size of 2,000 t) per auction
- Benchmark price can be made public for first auction but not subsequent auctions
- 80% rule

Pre-auction steps

- Auction process:
 - **Qualify:** Agree to the “code of common terms” of the Contract (20 business days before auction)
 - **Register:** Apply to the Regulator to participate in a particular auction and provide the Regulator with your proposed Delivery Terms which will form part of the Contract (5 business days before auction)
 - **Bid:** Submit a bid via AusTender (single-round, pay-as-bid, sealed-bid auction format) (day of the auction)
- Can nominate authorised bidder
- Participants and authorised bidders must not disclose bid, proposed bid or bid-related information which may affect the integrity or outcome of auction

Carbon Abatement Contract

- Final version released (February 2015)
- Carbon Abatement Contract comprises:
 - Code of Common Terms
 - Commercial Terms – project/conditions precedents
 - Delivery Terms – agreed quantity/delivery schedule/contract term
 - Financial Terms – price per ACCU
- Contract is between Seller (bidder) and Buyer (Regulator)
- Contract must be with “project proponent” (NB multiple project proponent option)
- If bidder successful at auction, Contract automatically entered
- Primary contract requirement: **delivery of agreed quantity of ACCUs in accordance with delivery schedule**
- Payment to follow delivery (note – no CPI or indexation)

Contract Term

- Three options:
 - Long term contract (7-10 years)
 - Short term contract
 - Immediate delivery contract
- Three contracts allowed for short term contract
- Ten contracts allowed for immediate delivery contract
- Other restrictions:
 - If short term contract or immediate delivery contract used, project cannot be rebid until 2016/17 (tbc)
 - A contract must be satisfied before a project can be rebid
 - Immediate delivery contracts can only be used if ACCUs are in Registry account
 - Minimum delivery volume for immediate delivery contract of 10% of forward abatement estimate or 15,000 ACCUs (whichever is lower)

Delivery options

- Early delivery
 - Can deliver ACCUs earlier than specified in delivery schedule
 - But if delivery date is in earlier financial year than that specified in delivery schedule must have Regulator's consent
- Late delivery – amending the delivery schedule
 - Delivery impossible due to technical issue with Registry
 - Regulator agrees
 - Regulator doesn't agree
 - Force majeure event
 - Includes inability to deliver ACCUs from project specified in contract

Financial consequences and termination rights

- Implications of delivery failure
 - Reallocate up to 20% of scheduled volume elsewhere in delivery schedule
 - Liquidated damages required to be paid for undelivered volume over 20% (if can't reach agreement with Regulator over revised delivery schedule or at end of term)
 - Damages = amount Regulator has to pay to purchase undelivered volume (calculated at average spot price or determined by independent expert valuer), plus interest, costs and expenses
- Termination
 - Either party can terminate for non-payment; false or misleading representations; insolvency/bankruptcy; force majeure event; by mutual agreement
 - Damages payable for termination, except in case of force majeure event or mutual agreement
 - Contract automatically terminates once all ACCUs have been delivered

Existing CFI methodology determinations

- Destruction of methane generated from dairy manure
- Destruction of methane from piggeries
- Feeding supplement to beef/dairy cows
- Sequestering carbon in soils in grazing systems
- Human-induced regeneration of a native forest
- New farm forestry plantations
- Avoided deforestation
- Permanent plantings
- Reforestation and Afforestation
- Savanna burning
- Diversion of waste
- Capture and combustion of landfill gas
- Alternative waste treatment

New ERF methodology determinations

- Landfill gas
- Alternative waste treatment
- Avoided clearing of native regrowth
- Commercial buildings (NABERS)
- Coal mine waste gas
- Land and sea transport
- Aviation

Draft ERF methodology determinations

Consultation closed:

- Aggregated small energy users
- Avoided land clearing
- Beef cattle herd management
- Designated Verified Carbon Standard projects
- **Facilities**
- Fertiliser use efficiency in irrigated cotton
- **Industrial Fuel and Energy Efficiency**
- Reforestation
- Savanna fire management
- Sequestration of carbon in soil using modelled abatement estimates
- Wastewater treatment

Draft ERF methodology determinations cont..

Consultations open:

- Oil and gas fugitives
- Commercial and public lighting
- High efficiency commercial appliances
- Refrigeration and ventilation fan upgrades

Project opportunities

- Coal mine methane capture
- Transportation
- Industrial fuel and energy efficiency
- Facilities
- Avoided deforestation?

Safeguard mechanism

“Baseline and penalty” scheme

- Coverage:
 - Facility level
 - Direct emissions (Scope 1)
 - 100,000 tonnes CO₂-e p.a.
 - Entity with operational control over facility
- Baselines:
 - Absolute emissions
 - Highest year over 5 year historical period (based on NGERS data)
 - Options:
 - Minimum baseline of 100,000 tonnes
 - Changes to reporting (changes to GWP; VIPP reporters can “fill in gaps” or CER will pro-rate based in 2014/15 data; boundary adjustments)
 - “Independent assessment” option for mining facilities

Safeguard mechanism (cont)

- Investments already underway
 - Facilities which exceed 100,000 tonnes before 1 July 2020
 - Facilities with less than 5 years data can choose highest year of existing reports or “independent assessment” approach
- Independent assessment:
 - CER sets baselines based on expected emissions for highest production year within 3 years after threshold exceeded
 - Default baseline of 100,000 tonnes
 - NGERS auditor provides assurance over assumptions
- New investments without final investment decision
 - Facilities which exceed 100,000 tonnes after 1 July 2020
 - Best practice: average emissions intensity of production of top 10% of Australian industry output (if limited data, use international data)
- Significant expansion
 - Increase in production capacity over 20% resulting from new plant or equipment

Safeguard mechanism (cont)

- Compliance:
 - use of ACCUs
 - International units?
- Penalty?
- Credits?
 - Can generate ACCUs but no double counting allowed
- Multi-year averaging
 - Maximum 3 years monitoring period

The logo for Norton Rose Fulbright, featuring a grey upward-pointing arrow above the letter 'N' in the word 'NORTON', followed by the words 'ROSE' and 'FULBRIGHT' in red, all in a bold, sans-serif font.

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