

## The Emissions Reduction Fund and permanence on the land

The Emissions Reduction Fund is a voluntary scheme that credits organisations and individuals (project proponents) for adopting new practices and technologies to reduce greenhouse gas emissions. It is administered by the Clean Energy Regulator and implemented under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (the Act) and associated legislation. We are responsible for assessing projects against the scheme's eligibility criteria, registering them, and crediting Australian carbon credit units (ACCUs).

Other people and entities also have roles and responsibilities under the scheme, for example, project proponents are responsible for meeting various obligations under the Act, including notifying us if they cease to hold the legal right. Agents, aggregators and other service providers may assist project proponents to meet these obligations, however, under the Act, these obligations are the responsibility of the project proponent.

### Permanence obligations under the Emissions Reduction Fund

The Emissions Reduction Fund allows landholders to earn ACCUs by storing carbon or reducing greenhouse gas emissions. Once issued, ACCUs can be sold or traded, making them an attractive option for some land owners to supplement their income.

However, carbon stored in vegetation or soils can only offset emissions occurring elsewhere if it is stored permanently (for example, for 25 or 100 years). If the stored carbon were to be subsequently released back into the atmosphere over shorter periods, for example through over-grazing, fire or the clearing of vegetation, then no emissions offsets would take place.

For this reason, carrying out sequestration projects that store carbon in vegetation or soils on the project land gives rise to 'permanence obligations' that run with the land (see Parts 7 and 8 of the Act). Permanence obligations commence as soon as ACCUs have been issued for a sequestration project, and are designed to ensure that carbon sequestered (for example, in a forest) by registered projects is maintained for 25 or 100 years (depending on the project proponent's choice made at the start of the project). Permanence obligations can mean that specific parcels of land must be dedicated to sequestration activity, maintained, protected or reinstated (in the event of a reversal event) for the entire 25 or 100 year period. This has obvious implications for land owners and prospective purchasers.

To remove the permanence obligation, it is possible for projects to be withdrawn. However, any ACCUs that have been issued for the project must be returned (relinquished)—either by sourcing the required amount at the prevailing market price, or from another project.

### Relinquishment and carbon maintenance obligations

Carbon stored by a sequestration project may be lost, due to unavoidable natural disturbance or deliberate conduct. In certain circumstances, we may require a project proponent to relinquish a certain number of ACCUs issued for a sequestration project.

Instances where we may require relinquishment include where:

- the ACCUs were issued based on false or misleading information provided to us
- registration of the project has been revoked

- carbon stored by the project was lost due to conduct (other than reasonable actions taken to reduce the risk of bushfire) engaged in by the project proponent, or another person within the reasonable control of the project proponent, or
- carbon stored by the project was lost due to natural disturbance (bushfire, drought, flood, pests or disease which could not reasonably be prevented by the project proponent) and the project proponent fails to take reasonable mitigation steps.

We may declare a carbon maintenance obligation on the whole or part of project area of a sequestration project if relinquishment obligations relating to the project are not met, or if we consider it likely that relinquishment obligations will not be met.

A carbon maintenance obligation protects remaining carbon stores and is designed to prevent further losses of sequestered carbon. It does not prevent land from being used for productive purposes, so long as the carbon stores on the land when the obligation is declared are maintained.

Declaration of a carbon maintenance obligation means that:

- A person (regardless of whether or not they were involved in the project) must not conduct an activity that reduces or is likely to reduce the carbon stores on land subject to the obligation, below the level of when the obligation was declared (benchmark sequestration level), unless the activity is declared by the Clean Energy Regulator as a permitted carbon activity.
- An owner or occupier of the land subject to a declared obligation is required to take reasonable steps to ensure that the carbon stores on the land are not less than the benchmark sequestration level. This obligation applies whether or not the person was owner or occupier of the land when the project was first registered.

Failure to comply with the above obligations may result in a court imposing a pecuniary penalty for breach. A court may also order observance of these obligations.

Pecuniary penalties can be up to 10,000 penalty units for corporates and up to 2,000 penalty units for individuals, for each contravention.

A carbon maintenance obligation will be removed if:

- all ACCUs issued for the project are returned to the Clean Energy Regulator and land subject to the carbon maintenance obligation is not part of any sequestration project
- all outstanding penalties for failing to relinquish ACCUs are paid in full, or
- the permanence period of the project expires.

## Land transactions and permanence

Prospective buyers of land can consult our project register<sup>1</sup> to identify information about whether land of interest is subject to permanence obligations under the Emissions Reduction Fund.

The registered proprietor of the land may be able to apply to their state and territory land registry to note their sequestration projects on the project land titles to ensure that anyone buying the property is aware of the project. There are currently no notices on land titles for Emissions Reduction Fund projects.

Landholders that wish to sell land on which a sequestration project has been registered, should inform prospective buyers and property agents of actual or potential permanence obligations associated with such land. Before completing the sale, parties should consider whether they want the project to continue on the land or withdrawn from the Emissions Reduction Fund.

Further information about permanence<sup>2</sup> can be found on the Clean Energy Regulator's website.

<sup>1</sup> [www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register](http://www.cleanenergyregulator.gov.au/ERF/project-and-contracts-registers/project-register)

<sup>2</sup> [www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Permanence-obligations](http://www.cleanenergyregulator.gov.au/ERF/Choosing-a-project-type/Opportunities-for-the-land-sector/Permanence-obligations)