



COMMODITIES | JUNE 2022

SUSTAINABILITY: DEVELOPMENTS IN AGRICULTURE

The UN IPCC Report 2022 on the Mitigation of Climate Change has reemphasised the importance of rapid climate reform to reach net zero emissions by 2050. Below we outline some of the key developments affecting the agriculture sector in Australia and globally.

Australia

The IPCC's Special Report on Climate Change and Land (2020) found that "land use contributes about one-quarter of global greenhouse gas emissions, notably CO₂ emissions from deforestation, CH₄ emissions from rice and ruminant livestock and N₂O emissions from fertiliser use."¹ In Australia, the agriculture and forestry sectors account for approximately 23 percent of Australia's greenhouse gas (GHG) emissions. Therefore, addressing sustainability in agricultural and farming practices – and across the agriculture value chain as a whole – is an integral component of Australia's climate change strategy.

Australia's Federal Government (Federal Government) has continued to signal its commitment to reach net zero by allocating over \$18 billion in investments for low emissions technologies such as carbon capture and storage (CCS) to measure and facilitate emission reduction activities across various sectors, including agriculture.

Certain mandatory reporting obligations exist in respect of GHG emissions in Australia, as per the *National Greenhouse and Energy Reporting Act 2007* (Cth). This legislation is primarily applicable to corporations intending to be in 'operational control' of any facilities. More generally, to the extent that a corporation may be required to make any directors' financial reports or financial disclosures in Australia (depending on the business structure of the trading entity), it may need to report on its exposure to climate change risks. The *Corporations Act 2001* (Cth) requires reporting on any matter or circumstance which may significantly affect a company's future operations or the results of those future operations.

Importantly, the Federal Government has initiated an Emissions Reduction Fund (ERF) that seeks to offer monetary incentives to farmers who offset the amount of GHG emissions created as a result of unsustainable farming practices. The ERF involves crediting emission reduction activities through carbon offset projects and soil carbon sequestration practices. Soil carbon sequestration involves adopting practices that increase the amount of carbon stored in soils and trees, including increasing plant growth and/or cover, adding compost/mulch, decreasing losses through reduced stubble burning or minimal tilling practices, and increasing the clay content of sandy soils.

The Western Australian Government has signalled its commitment to soil carbon sequestration practices by pledging to invest \$3.2 million in its Carbon Farming and Land Restoration program (CF-LR Program). The CF-LR Program aims to improve soil carbon in the cropping process by awarding carbon credits to farmers in exchange for adopting land restoration and carbon sequestration practices. Furthermore, the CF-LR Program aims to fund and support research on carbon-sequestration and storing practices in order to develop a more comprehensive framework for adopting such practices.

By participating in these carbon storing activities, farmers can also earn Australian Carbon Credit Units (ACCUs) for every tonne of emissions reduced or stored through their projects. These ACCUs may also be sold on the voluntary carbon market for around \$15 per tonne of carbon, providing farmers and landowners with significant revenue maximising opportunities. Projects under the ERF must use methodologies approved by the Federal Government to calculate the number of ACCUs earned, and the framework contains measures aimed at minimising fraud and dishonest reporting of carbon credits. Of note, ACCUs have more than doubled in value in the past year, surging

¹ <https://www.ipcc.ch/srccl/chapter/chapter-1/>

209% from \$15/t at the start of last year, to around \$49/t in December; thereby signalling an Australian carbon boom and increased demand from corporate buyers to commit to sustainable practices.

Ultimately, consideration of these instruments towards meeting net-zero targets provides farmers, graziers and other landowners with renewed commercial incentives to engage in sustainable farming.

Case Study: Australia: Greencollar

The ERF has created a market for carbon farming project development. The ability to earn ACCUs for the purpose of selling them to the Federal Government and/or voluntary carbon market has enabled farmers to generate additional revenue from non-arable land. Greencollar, an environmental project developer, assists farmers and landowners with designing and implementing carbon offset projects in accordance with the legislative requirements under the ERF. In doing so, Greencollar provides farmers with the ability to generate and sell ACCUs from non-arable land.

Case Study: Asia, West Africa and Latin America: The Sustainable Rice Landscapes Initiative

"...the Sustainable Rice Landscapes Initiative (SRLI) was founded by six partner organizations in 2017 with the objective to increase the resource use efficiency and reduce climate change and other environmental impacts through the sustainable transformation of rice-based landscapes.

By implementing landscape-based rice initiatives in key producer countries (including ASEAN, South Asia, West Africa and Latin America), SRLI plans to deliver massive GHG emissions reductions at scale through Nature-Based Solutions, both on farm (for example, on-farm GHG methane emissions can be reduced by up to 70% through innovative agricultural practices), but also through maximising the role of the landscapes within which rice is grown as essential carbon sinks, ecosystem services and biodiversity habitats."²

The United Kingdom and European Union

UK Agricultural Transition Plan 2021-2024

The UK government has pledged to offer farmers grants and schemes to help farmers implement and manage sustainable agricultural practices.

The UK farming policy [Environmental Land Management schemes](#) (ELMS) rewards farmers for making agro-ecological improvements to their land through measures including tree-planting, water retention and improving biodiversity. Farmers who graze livestock less intensively and who designate more area of their land for nature, will similarly be rewarded.

The European Green Deal

The European Green Deal sets the EU's blueprint for its response to climate change and a renewed demand for sustainable practices. The European Green Deal includes a variety of climate reform policies that range from drastically reducing GHG emissions, to investing in technology geared towards preserving the environment. The EU's Green Deal includes policies and legislative proposals that set out how the EU intends to achieve carbon neutrality by 2050, and how it aims to reach its intermediate target of a 55% net reduction in GHG emissions by 2030. See below for a list of legislative initiatives which form part of the European Green Deal:

- **A greener Common Agricultural Policy**

On 2 December 2021, the European Commission (EC) introduced additional reforms to their Common Agricultural Policy (CAP) framework in support of the EU's transition towards a more sustainable future. For instance, one such reform seeks to impose stronger biodiversity requirements on arable land in order to support carbon storage activities. Alternatively, the EC has pledged to divest 40% of the CAP budget towards climate-relevant objectives, further signalling their commitment towards reaching carbon-neutrality.

- **EU 'Farm to Fork' Strategy**

The Farm to Fork Strategy seeks to implement a range of climate reform policies with the aim of making the food production process more sustainable. These strategies are designed to drastically reduce the GHG emissions released from food systems, accelerating the EU's goal towards cutting GHG emissions by at least 55% by 2030.

Key elements of the Farm to Fork Strategy involve reducing the use of both chemical pesticides and more hazardous pesticides by 50% respectively by 2030.

Further to the above initiatives, as part of the Farm to Fork Strategy, the EC has pledged to increase the development of EU organic farming and aims to achieve 25% of total farmland utilizing organic farming practices by 2030.

² <https://www.foodandlandusecoalition.org/case-studies/sustainable-rice-2/>

- **The EU Soil Strategy for 2030**

The EC has also committed to combat desertification, restore degraded land, soil and other carbon-rich ecosystems, and reduce nutrient losses by at least 50%. A cost-effective mitigation practice noted by the EC as vital to its soil strategy is the implementation of carbon sequestration techniques in arable farming, and regenerative farming practices.

Environmental, Social and Governance Considerations

As market demands evolve rapidly in the wake of COP26, and consumers and investors increasingly favour sustainable products, businesses in the agriculture sector will need to address the Environmental, Social and Governance (ESG) responsibilities and reporting duties within the jurisdictions they operate. Prompt due diligence across all operations – including supply chains – will increase investment opportunities and reduce trade restrictions, while increasing consumer satisfaction and limiting litigation risk and the threat of penalties and/or sanctions.

While government mandated ESG reporting in Australia is in its infancy, with discussion currently dominated by environmental considerations and obligations to disclose climate-related impacts on the value chain, the broader social and governance components of ESG are coming into focus. This is reflected in a major and rapid international shift towards what is often called "double materiality" reporting, which is likely to gain traction domestically or at least materially impact businesses with connections to international markets that adopt similar reporting requirements. For example:

- the International Sustainability Standards Board (**ISSB**) is working with the Australian Accounting Standards Board (**AASB**) to support the inclusion of the global baseline reporting into domestic jurisdictional requirements, consistent with current exposure drafts on International Financial Reporting Standards (**IFRS**); and
- the Global Reporting Initiative (**GRI**) tasked its independent Global Sustainability Standards Board (**GSSB**) in 2019 to develop a sector specific reporting Standard for Agriculture, Aquaculture, and Fishing on a broad range of non-financial material topics, which is expected to be released in June 2022.

In Australia, the agriculture sector is recognised as being exposed to a high risk of modern slavery and as operating in many challenging international jurisdictions with heightened risk of encountering corruption. Each is already subject to express and onerous legislative obligations under Australian law. It is therefore prudent for companies to undertake appropriate due diligence to identify the risk of modern slavery and corruption both within their businesses and in their supply chains, together with a need to develop increasingly sophisticated processes to identify and mitigate any other social, labour and community-related factors that may affect their social licence to operate and pose legal risk.

The Modern Slavery Act 2018 (Cth) (MSA) currently requires all companies with \$100 million in revenue to provide public statements on the risks of modern slavery within their business and supply chains and the steps being taken to address same. In NSW, the law requires such statements from companies with \$50 million in revenue. While there are currently no financial penalties for failing to comply with the reporting obligations, there could be reputational risk associated with non-compliance. In 2022, the MSA is to be reviewed, with pundits expecting proposed amendments to expand reporting obligations and increase penalties in Australia, following the lead of their counterparts, the United States, Canada and United Kingdom.

Importantly, especially for companies with dealings in the EU, the EC has recently proposed significant ESG-related directives, which would create legal duties for companies to perform due diligence relating to human rights and environmental impacts, across their global value chains. With many other jurisdictions expected to increase regulations of this nature, as broadly illustrated above, it is now recommended that ESG risk management form a central pillar of any business' risk management strategy and companies without this expertise would benefit from seeking external advice to ensure compliance with regulatory regimes.

Following COP26, where over 141 global leaders made commitments to reduce deforestation and land degradation by 2030, the UK Government began consultation on plans to amend its Environment Act in an effort to reduce illegal deforestation. The measures will require businesses to undertake adequate due diligence and provide annual reports on same, to ensure that commodities used in the manufacturing of products are produced in accordance with local laws. Specifically, the amendments will make it illegal for businesses in the UK to use commodities sourced from or associated with illegal deforestation³.

In the aftermath of COP26, and given the most recent UN IPCC report, the science of climate change is uncontroversial. Given the inevitability of an uptick in extreme weather events and subsequent disruptions to markets, the agriculture sector is particularly at risk. Every enterprise should consider its climate resilience, including its prospective insurance needs, and undertake a thorough review of all ESG-related risk in order to future proof their business and maximise opportunity.

³ Government sets out plans to clean up the UK's supply chains to help protect forests - GOV.UK (www.gov.uk)

About HFW's Commodities team

Our global team is built up of experts across all areas of the commodities industry, including physical supply, transportation, OTC and exchange-traded derivatives, regulation, blockchain and finance. Many of our lawyers have worked in the industry, giving us unrivalled experience and expertise. We understand the industry at every stage of the supply chain and work with our clients through evolving markets and assist them with the new challenges faced due to changes in products, market participants, trading platforms, financing and regulation.

We advise on all sectors of the grain and feed industry, from production and terminal operation through physical and derivatives trading to end use.

For more information, please reach out to a member of our team:



STEPHEN THOMPSON

Partner, Sydney

T +61 (0)2 9320 4646

E stephen.thompson@hfw.com



JO GARLAND

Partner, Perth

T +61 (0)8 9422 4719

E jo.garland@hfw.com



DR MICHAEL MAXWELL

Partner, Perth

T +61 (0)8 9422 4701

E michael.maxwell@hfw.com



JO DELANEY

Partner, Sydney

T +61 (0)2 9320 4621

E jo.delaney@hfw.com



PETER ZAMAN

Partner, Singapore

T +65 6411 5305

E peter.zaman@hfw.com



RANJANI SUNDAR

Partner, Sydney

T +61 (0)2 9320 4609

E ranjani.sundar@hfw.com



OWEN WEBB

Special Counsel, Melbourne

T +61 (0)3 8601 4526

E owen.webb@hfw.com



KATE FISHER

Senior Associate, Melbourne

T +61 (0)3 8601 4532

E kate.fisher@hfw.com

References

Source: [factsheet-farm-fork_en.pdf.pdf](#)

Source: [2030 Climate Target Plan \(europa.eu\)](#)

Source: [EUR-Lex - 52021DC0699 - EN - EUR-Lex \(europa.eu\)](#)

Source: [i3084e26.pdf \(fao.org\)](#)

Source: [Fact Sheet.pdf \(climatechangeauthority.gov.au\)](#)

Source: [Small farms making money from carbon credits | The Land | NSW](#)

Source: [EUR-Lex - 52021DC0699 - EN - EUR-Lex \(europa.eu\)](#)

Source: <https://www.miragenews.com/cefc-commits-to-new-solar-farm-as-australia-709560/>

Source: <https://thewest.com.au/news/environment/work-starts-on-major-new-sa-wind-farm-c-5341501>

Source: <https://www.graincentral.com/property/ten-projects-get-3-2m-from-wa-govt-carbon-farming-program/>

Source: <https://stockhead.com.au/energy/australian-carbon-credit-units-doubled-in-price-last-year-and-there-are-no-signs-of-slowing-down/>

Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145

Source: <https://www.foodandlandusecoalition.org/case-studies/sustainable-rice-2/>

Source: <https://www.ipcc.ch/report/ar6/wg1/>

Source: <https://theconversation.com/un-climate-change-report-land-clearing-and-farming-contribute-a-third-of-the-worlds-greenhouse-gases-121551#:~:text=Emissions%20from%20land%20use%2C%20largely,this%20contribution%20up%20to%2029%25.>

Source: <https://aasb.gov.au/news/afaanz-insight-series-issb-general-requirements-and-climate-exposure-drafts/>

Source: <https://www.globalreporting.org/standards/standards-development/sector-standard-project-for-agriculture-aquaculture-and-fishing/>

hfw.com

© 2021 Holman Fenwick Willan LLP. All rights reserved. Ref:

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice. Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please email hfwenquiries@hfw.com

Americas | Europe | Middle East | Asia Pacific