ACCU Review Implementation Consultation: ANU/UNSW ERF Research Team-GreenCollar Joint Submission

1. Introduction

This is a joint submission by the Australian National University (ANU) and University of New South Wales (UNSW) ERF research team and GreenCollar in relation to the implementation of the recommendations of the Independent Review of ACCUs (ACCU Review) and specifically in response to the ACCU Review Discussion Paper.[1]

The ANU/UNSW ERF research team has deep expertise in Australia's environmental and carbon markets, including the Australian Carbon Credit Unit (ACCU) scheme. The team includes Professor Don Butler, Professor Andrew Macintosh, Dr Megan Evans, Associate Professor Dean Ansell, and Ms Marie Waschka.

GreenCollar's team, including Dr Jenny Sinclair, Dr Tim Pearson, Dr Luke Shoo, Mike Berwick, Nerida Bradley and James Schultz, likewise have deep experience in Australia's carbon market and environmental markets more broadly, as researchers, practitioners and authors of market frameworks and accounting methods. GreenCollar also has extensive experience and knowledge of on-ground carbon projects with current operations comprising over 200 environmental markets projects in development or delivery with hundreds of partners, including agricultural land managers and Traditional Owners, both in Australia and internationally.

Both the ANU/UNSW ERF research team and GreenCollar support the use of offsets, and particularly land-sector offsets, to help facilitate a timely transition to a low carbon economy. High integrity offsets, when coupled with an effective carbon-pricing scheme, lower the cost of reducing greenhouse gas emissions, making more ambitious emissions reduction targets possible. In the land sector, well-designed offset projects can also generate important environmental and social co-benefits, including improved biodiversity outcomes and regional employment.

In supporting the role of offsets in decarbonisation, we strongly support the need for robust governance of the ACCU scheme. The ACCU Review made a number of sensible recommendations to reform the ACCU scheme's governance structures, including:

- replacing the Emissions Reduction Assurance Committee (ERAC) with a new Carbon Abatement Integrity Committee that will have a fulltime chair and independent secretariat;
- removing the Clean Energy Regulator's method development and purchasing powers so its role is confined to compliance and enforcement of scheme rules; and
- amending the *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) to promote transparency and ensure that methods can only be made (or varied) if they satisfy the offsets integrity standards.

In addition, we consider that, in order to deliver greater clarity and transparency in line with the recommendations of the ACCU Review, the reforms should also include:

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[1] See: https://consult.dcceew.gov.au/publishing-accu-scheme-information (4 October 2023).

a. clarifying the objective of the ACCU scheme to ensure it is focused on helping Australia meet its international greenhouse gas reduction targets through the generation of high integrity offsets that represent real, additional and permanent abatement; and

b. requiring release of key information needed to assess the integrity of individual projects, including crediting period details, offset reports and audit reports.

In addition to items (a) and (b), the ANU/UNSW ERF research team also recommends the CFI Act be amended to include:

- open standing provisions to promote access to justice; and
- a new offence or civil penalty provision that makes it unlawful for any person, including public servants and statutory office holders, to knowingly disseminate false or misleading information about ACCUs or ACCU projects.

GreenCollar does not take a position on these issues but notes that if open standing provisions are included in the Scheme, these should be balanced with appropriate controls including provisions which mitigate the risk of frivolous or vexatious litigation.

We return to these issues (where relevant) in the following sections that respond to the consultation questions.

2. New ACCU Scheme Principles

In considering the ACCU scheme's governance arrangements, the ACCU Review found that interpreting the Offsets Integrity Standards (OIS) is 'inherently complex' and recommended the OIS be 'clearly defined and supplemented with ACCU Scheme Principles to support their consistent application in method development and project implementation and administration'.

There are two aspects of this recommendation:

a. ensuring the OIS are clearly defined; and

b. develop Principles to help ensure consistent interpretation and application of the OIS and scheme rules that apply to projects.

2.1 Clearly defined OIS

The OIS are ambiguous and do not adequately cover the main integrity risks associated with carbon offsets. This is partly acknowledged in the ACCU Review report, where it states that '[p]lain English definitions of the OIS supplemented with a suite of clearly defined principles would support best-practice method development and project implementation, regulation and assurance'.

The deficiencies of the OIS could be addressed by:

a. including an overarching standard that clarifies that, for a method to meet the OIS, there must be high confidence (e.g. >90%) that: (i) a substantial proportion (>80%) of the abatement that is likely to be credited under the method will be real and additional, and (ii) the treatment of permanence risks is conservative;

b. amending the additionality standard (s 133(1)(a)) so it provides that there must be high confidence (e.g.>90%) that a substantial proportion (>80%) of the abatement that is likely to be credited under the method would not occur in the absence of the incentive provided by the scheme;

c. amending the measurement standard (s 133(1)(b)) so it provides that the method must require abatement to be measured conservatively, and with a high degree of certainty and confidence;

d. inserting a new standard that covers leakage risks, and explicitly covers both direct and indirect leakage;

e. inserting a new standard that covers permanence risks; and

f. amending the conservatism standard (s 133(1)(g)) to clarify that conservativism in this context requires high confidence that the method is more likely to underestimate than overestimate abatement.

2.2 Scheme Principles

The Scheme Principles proposed in the ACCU Review Discussion Paper do not have a clear function. From the ACCU Review report, it appears the original intent was for the Scheme Principles to assist in the interpretation of the OIS and relevant method requirements. The Independent Panel specifically pointed to International experience as providing useful guidance including the Integrity Council for the Voluntary Carbon Market's Core Carbon Principles, which the Panel indicated are 'consolidating views on best practice scheme principles and should be taken into account'.

As currently presented, it appears the proposed principles are intended to serve a similar function to the objects clause of the CFI Act (s 3): to clarify the purpose of the scheme and thereby guide interpretation of individual provisions. We do not consider that the proposal in the Discussion Paper would achieve this for three reasons:

a. the proposed Scheme Principles are too vague to serve as a proper guide to interpretation and administrative decision-making (they are 'motherhood statements');

b. it is unclear how each of the six proposed Principles are supposed to relate to one another and, accordingly, they encourage interest balancing rather than giving primacy to integrity; and

c. by including them in a Rule, they cannot serve as a guide to construction of the provisions of the enabling Act.

The original intent of the Scheme Principles would be better achieved by:

a. Amending s 3 of the CFI Act to ensure the legislation has an overarching object of helping Australia meet its international mitigation obligations by providing for:

    i. the issuance of high integrity carbon credits that represent real and additional abatement; and

    ii. measures that ensure the treatment of permanence risks with sequestration projects is conservative;

b. including a provision in the CFI Act that clarifies that, at all times, primacy must be given to integrity, defined as high confidence that the abatement that is credited under the scheme is real and additional, and that the treatment of permanence risks is conservative;

c. focus the principles on:

   i. clarifying the meaning of the OIS and how they address the six integrity risks associated with carbon offsets (additionality, measurement, project emissions, leakage, permanence and eligible abatement);

   ii. transparency, including making information publicly available in electronic format and ensuring it is accessible to non-specialised audiences, to enable scrutiny of mitigation activities; and

   iii. promoting third-party participation and consultation.

Overall we consider the Core Carbon Principles (CCPs)[2] as providing good guidance in relation to principles which need to be covered. In particular, we highlight the following CCPs.

- *Robust quantification of emission reductions and removals*: Robust quantification for GreenCollar means complete defensibility in reported carbon stocks and changes in carbon stocks. This is only possible through measurement that absolutely illustrates carbon that is stored and allows independent revisiting and verification of all credited sequestration.
- *Sustainable development benefits and safeguards*: The credibility and reputation of greenhouse gas offset schemes rests on safeguards and the availability of feedback and grievance redress mechanisms (FGRMs). Safeguards protect communities including Indigenous people as well ensuring there are no inadvertent negative environmental impacts.

In relation to specific proposed principles, we submit the following.

a. As pointed out in the ACCU review, transparency is key to confidence and should be a critical Scheme Principle. The CCPs require comprehensive and transparent information on all credited mitigation activities, including all necessary information 'to enable third parties to assess the social and environmental impacts of the mitigation activity and to replicate the GHG emission reduction or removal calculations (including baseline quantification), and assessment of additionality'.[3] The Scheme Principles should reflect this CCP.

b. The proposed principle of 'equitable access, participation, and benefit sharing' principle is unclear. The ACCU scheme should be focused on helping Australia to meet its international mitigation obligations through the generation of high integrity carbon credits. Including a principle that explicitly seeks to increase participation in, and benefits from, offset projects by a wide range of interested stakeholders is likely to lead to decision-makers to lose sight of the purpose of the scheme, and to trade integrity for increased uptake by particular groups. A preferable approach is to focus the 'participation principle' on ensuring that all interested parties have equal opportunities to participate in decision-making under the scheme, and encouraging the active engagement and participation in decision making related to the

[2] See: https://icvcm.org/the-core-carbon-principles/.

[3] ICVCM (2023) Core Carbon Principles 2023: Section 4 Assessment Framework, p 56.

ACCU scheme by communities and third parties, particularly Indigenous communities with interests in land on which projects are, or may be, undertaken. Alternatively, the approach taken in the CCPs could be used, which considers social and environmental safeguards rather than a positive principle and/or obligations which may not be fit for purpose in all instances.

c. The proposed 'environmental and regional sustainability' principle is cast as a positive obligation (i.e. to enhance land management and resilience to climate change). The preferable approach, which is consist with the CCPs, is to focus the proposed 'environmental and regional sustainability' principle on avoiding and mitigating perverse impacts by way of safeguards (ie. requiring consideration of potential perverse impacts of project activities on biodiversity, heritage and cultural values) rather than positive obligation (i.e. to enhance land management and resilience to climate change).

d. We oppose the inclusion of the proposed 'practicality principle' (maximise high quality abatement outcomes through usable and implementable activities that can be delivered at scale). The primary benefit of using a market mechanism like an offset scheme is that it allows for market forces, and the profit motive, to be utilised to find and realise the least cost sources of abatement. Encouraging scheme administrators to focus on 'scaleable' opportunities cuts across this logic, incentivising them to determine where the opportunities lie rather than letting the market find them. In the worst cases, this can lead administrators to prioritise supply over integrity.

3. Information publication requirements

We support the recommendation of the ACCU Review that:

> Provisions in the governing legislation should be amended to maximise transparency, data access and data sharing, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements. … The default should be that data be made public, including carbon estimation areas (CEAs).

The approach to scheme transparency should be guided by the CCP's provisions on transparency. The CCP's transparency principle is as follows.

> The carbon-crediting program shall provide comprehensive and transparent information on all credited mitigation activities. The information shall be publicly available in electronic format and shall be accessible to nonspecialised audiences, to enable scrutiny of mitigation activities.

This principle is supported by several key requirements, including that:

- the carbon-crediting program shall ensure that in relation to each mitigation activity that requests registration or that is registered, all relevant documentation relating to the mitigation activity is made publicly available; and

- carbon-crediting program shall ensure all relevant program documents are publicly available and have processes to ensure that where requests are made in relation to information that is missing from its website and/or registry, that information is provided and made public alongside other relevant public information.

These requirements include safeguards concerning confidentiality and proprietary, privacy and data protection restrictions.

3.1 Transparency in the method development process

The Discussion Paper suggests that:

a. anyone who submits an expression of interest (EOI) will receive advice on, and reasons for, the Integrity Committee's decision;

b. the Integrity Committee could periodically publish a de-identified record of the EOIs received and a summary of why EOIs were approved or rejected; and

c. commercially sensitive data would remain confidential, where requested.

These proposals are not consistent with the ACCU Review's recommendations or the CCP's provisions on transparency. The aim should be to promote maximum transparency and third party participation. To do this :

a. all EOI's should be published on a register maintained by the Integrity Committee;

b. all information relied on to support EOIs and method proposals should be published by the Integrity Committee;

c. the Integrity Committee should maintain a public registry that includes details of method consultations and opportunities to participate in method development processes;

d. the reasons for the Integrity Committee's decisions on EOIs and methods should be published in full;

e. Integrity Committee and Department should be required to publish all information relied on preparing methods and making decisions concerning methods; and

f. minutes of all Integrity Committee meetings should be published on the Committee's website within 3 weeks.

Allowing secrecy around method development will further undermine confidence in the scheme. In particular, claims of commercial confidentiality in relation to EOIs and method proposals should not be countenanced. The public cannot have confidence in a process where it is not allowed to see the information relied on to justify the creation of new methods.

3.2 Project information

The proposed approach to the release of project information should be strengthened to align with the ACCU Review's recommendations and the CCP's provisions on transparency. As discussed, the guiding principle should be that third parties should have the ability to replicate all abatement calculations and any relevant additionality assessments. Moreover, the Regulator should be obligated and resourced to actively promote scrutiny by providing information in usable forms and formats. At a minimum, the data published on projects must include:

a. all datasets and models relied on to undertake abatement calculations;

b. the location of all projects and carbon estimation areas;

c. offset reports;

d. audit reports;

e. management plans;

f. reports and other information relied on to demonstrate additionality under applicable methods; and

g. to reduce barriers to third party scrutiny:

    i. descriptions of all relevant project activities;

    ii. estimates of carbon stocks, and emissions and removals, associated with all sequestration projects (e.g. baseline carbon stocks and project carbon stocks);

    iii. instructions on the use of relevant models; and

    iv. details of the modelling assumptions made in estimating abatement, in a user-friendly format (e.g. tabulated).

3.3 ACCU holding information

The efficiency of the ACCU market, and faith in the ACCU scheme, will be significantly strengthened by publication of all information about units on the Australian National Registry of Emissions Units (ANREU). There is no public policy justification for withholding information or subjecting disclosures to size thresholds. For the same reason, facilities covered by the Safeguard Mechanism should be required to disclose the details of the units they rely on to meet their scheme obligations.

4. Australian Government purchasing of ACCUs

We support the ACCU Review recommendation that 'responsibility for Australian Government purchasing of ACCUs should be moved out of the CER and into another Australian Government body to avoid actual or perceived conflicts of interest'.

The Australian Government's role in purchasing ACCUs should be confined solely to the targeted acquisition of ACCUs from projects that prioritise significant biodiversity or cultural benefits. This should be confined to reforestation/revegetation and avoided clearing projects in areas that have previously been comprehensively cleared, where the projects will support threatened species and ecological communities.

5. Proponent-led method development process

We are broadly supportive of the proposed proponent-led method development process. There is the potential for non-government entities to develop more robust methods in a considerably shorter timeframe than the Department or Regulator. However, the tension will be in ensuring that the process does not result in the wasteful diversion of public and private resources to ill-informed, low integrity method proposals. This will require vigilance from the Integrity Committee and Department in the administration of the EOI process, and the willingness of both agencies to use external expertise to vet and assess proposals.

The ANU/UNSW team considers there to be a limited number of high integrity method opportunities remaining. Their view is that the main opportunities largely concern:

- refinements to the environmental plantings and human-induced regeneration methods to clarify ambiguities and confine the application of the methods to areas that have previously been comprehensively cleared;
- improving the existing avoided clearing of native regrowth method; and
- the potential creation of a new improved native forest management method for multiple-use public native forests.

Beyond these, the ANU/UNSW team considers there is relatively limited scope for new method developments, particularly ones that will generate significant abatement. Due to this, the ANU/UNSW team recommends Government consider reviewing the proponent-led method development process within 2-3 years to determine whether it is still necessary.

The following additional points should also be noted.

- Triage process needs to include clear steps (including hold points) and for the process to be managed in a way that avoids the Department and Integrity Committee becoming a bottleneck.
- There is a need for a culture in the Department and Integrity Committee that places as much emphasis on monitoring active methods and correcting identified integrity issues as there is on ensuring that new methods meet the integrity standards. This requires an open acceptance that errors will be made and a commitment to constantly monitor methods to identify integrity issues and take swift corrective action where issues are identified, including by moving proponents onto revised methods (where necessary). This approach will facilitate a more timely method development process that avoids delays caused by the unrealistic search for perfection from the outset, while also ensuring higher scheme integrity.
- There is potential for the Integrity Committee to draw on international methodologies to balance triage of methods against opportunities to test and learn from method application. The committee must be a facilitator of progress and an arbitrator of quality rather than a barrier to progress.

We provide the following comments on the details of the proposed process.

5.1 EOI process

The EOI process should be focused on the information required to assess likely compliance with the OIS and the proposed approach to public consultation. In other words, the EOI should be directly aligned with the proposed overarching purpose of the ACCU scheme: to help Australia meet its international mitigation obligations by providing for the issuance of high integrity carbon credits that represent real and additional abatement, and measures that ensure the treatment of permanence risks with sequestration projects is conservative.

Consistent with this, method proponents should be required to identify the main integrity risks associated with the proposal and describe the proposed approach to mitigating the identified risks. Failure of an EOI to openly and accurately identify likely integrity risks should be a key ground for immediate refusal.

The consultation paper focuses on 'current industry practice' in its discussion of additionality. However, current practice is not the only issue of relevance to additionality assessments. In naturebased offsets, climate variability is often a material integrity risk, as is the state of the stock at project commencement relative to its maximum capacity. The guiding principles in method development should include that sequestration-related offsets are inappropriate for use in situations where:

a. the relevant carbon stocks are likely to be at or near their maximum sustainable potentials under relevant land uses; and

b. natural variability in the stocks is significantly greater than the likely effects of management change.

These principles should be clearly articulated in the processes governing EOI and method assessments.

The proposed criteria for assessing EOIs includes several factors that should be irrelevant. Most notably, the following should not be used to assess whether EOIs are allowed to progress to the method development phase.

a. The abatement potential of the proposed method – as discussed, the role of the government in the ACCU scheme should be to ensure the methods have integrity, not preclude market activity because it is 'not big enough'. Accordingly, EOIs should not be rejected on the grounds the abatement potential is low, particularly given the uncertainty associated with any realistic abatement projections.

b. The likely uptake of the proposed method – same reason as above.

c. Opportunities for generating environmental, social, economic, and cultural co-benefits – this is crafted too broadly. Environmental, social, economic, and cultural co-benefits covers almost everything, meaning the Integrity Committee is left as the arbiter of the progression of method proposals based on an almost unfettered discretion. To the extent possible, the Integrity Committee should be confined to the technical function of determining whether methods meet the OIS and, most importantly, whether there is high confidence that a substantial proportion of the abatement that is likely to be credited under proposed methods will be real and additional, and the treatment of permanence risks is conservative.

d. Opportunities for increasing participation by First Nations people or regional communities – participation in projects by First Nations or other groups should not be a relevant consideration for the Integrity Committee. The Integrity Committee is not constituted to weigh interests and should be focused almost exclusively on the integrity of methods. Interest balancing is a function that should be reserved for Ministers who are accountable to Parliament and the electorate.

5.2 Transition to new or varied methods, including baselines

We support the creation of powers to enable proponents to be forced onto new methods and baselines in appropriate circumstances.

The Integrity Committee's role in transitional arrangements should be advisory only. The Committee should be required to provide advice on any proposed transitional arrangements and this advice should be made public. The Committee should also be able to provide advice to the Minister of its own volition on when transitional arrangements are warranted. Members of the public should also be explicitly entitled to ask the Committee to provide advice on a transition where integrity issues are identified.

6. Additional issues

6.1 Open standing

The ANU-UNSW ERF research team believes the regulation of markets should not be left exclusively to government regulators. Regulators can be captured and their ability to oversee market behaviour can be constrained by resource and capacity limitations.[4] It has long been recognised that allowing third parties to initiate enforcement proceedings to uphold the law, and to seek judicial review of administrative decisions, can help improve the effectiveness of regulatory systems.[5] Reflecting this, section 232 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010*) allows Courts to grant injunctions to prevent or restrain breaches of the law 'on application by the regulator or any other person'. These are what are known as open standing provisions – they allow third parties to seek relief in courts without needing to satisfy the normal 'standing' requirements, which require applicants to be a person directly affected, a person aggrieved or a person with a special interest.

The CFI Act does not contain open standing provisions. This is a significant oversight. Carbon offset markets are inherently complex and are almost defined by asymmetries of information, where sellers and regulators have substantially more information on the characteristics of what is being purchased than potential buyers. This leaves the markets vulnerable to fraud and manipulation. Open standing provisions will not provide a complete cure to this issue but they could lessen the scope for regulatory capture, maladministration and the manipulation of the market by self-interested players. Due to this, we recommend the CFI Act be amended to include open standing provisions to allow third parties to seek judicial review of administrative decisions made under the Act and to seek injunctions to restrain breaches of the Act.

GreenCollar does not take a position on this point but notes that if open standing provisions are included in the Scheme, these should be balanced with appropriate controls including provisions which mitigate the risk of frivolous or vexatious litigation.

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[4] Stigler, G. (1971) The Theory of Economic Regulation. Bell Journal of Economics and Management Science 2 (1), 3–21; Laffont, J-J., Tirole, J. (1991) The Politics of Government Decision Making: A Theory of Regulatory Capture. Quarterly Journal of Economics 106 (4), 1089–127; Carpenter, D., Moss, D. (eds) (2014) Preventing Regulatory Capture: Special Interest Influence and How to Limit It. Cambridge University Press, New York.

[5] Sax, J. (1971) Defending the Environment: A Strategy for Citizen Action. Alfred A. Knopf Inc., New York; Mossop, D. (1995) Citizen Suits — Tools for Improving Compliance with Environmental Laws. In: Gunningham, N., Norberry, J., McKillop, S. (eds), Environmental Crime: Proceedings of a Conference Held 1–3 September 1993, Hobart. Australian Institute of Criminology, Canberra; Australian Law Reform Commission (1985) Standing in Public Interest Litigation. ALRC Report No 27. Commonwealth of Australia, Canberra; Australian Law Reform Commission (1996) Beyond the Doorkeeper: Standing to Sue for Public Remedies. ALRC Report No 78. Commonwealth of Australia, Canberra.

6.2 Prohibition on the dissemination of false and misleading information about ACCUs and ACCU projects

Section 1041H of the *Corporations Act 2001* (Cth) makes it unlawful for a person to disseminate false or misleading information about a financial product, including ACCUs, in any context. The prohibition is in the following terms.

> A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

The broad scope of the prohibition beyond conduct associated with trade or commerce is warranted by the contagion effects associated with distorted financial markets.

To ensure the integrity of the ACCU market, we recommend that a similar prohibition be included in the CFI Act that makes it unlawful for any person to knowingly disseminate false or misleading information about ACCUs or ACCU projects.

Unlike s 1041H of the *Corporations Act 2001* (Cth), this provision should apply to the Commonwealth and Commonwealth agencies. APS employees and statutory office holders should also be made personally liable for breaches of the prohibition.

The ANU/UNSW team argues that the proposed prohibition is needed to stamp out the practice of government agencies and public servants knowingly disseminating false information when responding to criticisms of the scheme. This sort of behaviour brings the ACCU market and APS into disrepute, and is prone to misleading market participants.

While GreenCollar has seen no evidence of government agencies and public servants knowingly disseminating false information, it considers that consideration should be given as to whether the Corporations Act provision is adequate noting that ACCUs are financial products.

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Date: October 13, 2023

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