

2024

CARBON CREDITS (CARBON FARMING INITIATIVE) ACT 2011

**CARBON CREDITS (CARBON FARMING INITIATIVE) AMENDMENT (2024
MEASURES NO. 2) RULES 2024**

DRAFT EXPLANATORY STATEMENT

Legislative Authority

Section 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) provides that the Minister may make legislative rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) is made under section 308 of the Act.

Section 166A(1) of the Act provides that the Regulator must publish on the Regulator's website any information that is held by the Regulator and specified in the legislative rules for the purposes of subsection (2). Section 166A(2) then provides that the legislative rules may specify information that is relevant to Australia meeting its obligations under any, or all of, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, the Paris Agreement, or any other international agreement.

Purpose

The *Carbon Credits (Carbon Farming Initiative) Amendment (2024 Measures No. 2) Rules 2024* (the Amendment Rule) amends the Principal Rule to insert a new Part 12 of the Rule. This Part contains provisions that promote greater transparency of Australian Carbon Credit Unit (ACCU) data by requiring publication of additional data and information on the Clean Energy Regulator (the Regulator) website. It is intended that the information will be included in the existing Emission Reduction Fund (ERF) Register (Project Register) on the Regulator's website.

The proposed amendment progresses implementation of recommendation 4¹ of the Independent Review of ACCUs (the Review) and strengthens the objects of the ACCU Scheme (the scheme) created under the Act) to reduce carbon emissions and comply with Australia's international obligations under the Paris Agreement. Additionally, consultation submissions from 2023 (see consultation section) were supportive of publishing additional project-level information as it would improve public trust and confidence in the scheme by allowing communities and carbon market stakeholders to assess, understand and manage potential project impacts and opportunities more effectively.

Background

The Act enables the crediting of greenhouse gas abatement from emissions reduction activities across Australia. Greenhouse gas abatement is achieved either by reducing or avoiding emissions, or by removing carbon from the atmosphere and storing it, consistent with Australia's international obligations under the UNFCCC and the Paris Agreement.

¹ Recommendation 4: 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.

4.1 The default should be that data be made public, including carbon estimation areas.

4.2 The government should explore using a national platform to share information and data about the scheme, in the spirit of continuous improvement.

The Act is supported by subordinate legislation, including the Principal Rule and methodology determinations (methods). The purpose of a method is to establish procedures for estimating abatement (emissions avoidance or sequestration) from eligible projects and rules for monitoring, record keeping and reporting. Methods ensure that emissions reductions are genuine—that they are both real and additional to business as usual.

The scheme is a key component of the government’s policy agenda to drive emissions reductions across the economy and meet its legislated targets of at least a 43% reduction in emissions by 2030 (based on 2005 levels), and net zero emissions by 2050.

In 2022, the Australian Government appointed an independent panel to review the integrity of ACCUs under Australia’s carbon crediting framework. The Review’s purpose was to advise the government on ways to strengthen the integrity of Australia’s carbon crediting framework in contributing to Australia’s emissions reduction targets, and to ensure the scheme maintains a strong and credible reputation supported by participants, purchasers and the broader community.

The Review concluded that the scheme arrangements are sound, incorporating mechanisms for regular review and improvement. The Review recommended several changes to clarify governance, improve transparency, facilitate positive project outcomes and co-benefits, and enhance confidence in the integrity and effectiveness of the scheme.

The Review recommended 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 (recommendation 4).

Impact and Effect

The Amendment Rule will enable additional scheme information and data to be published on the Regulator’s website. These changes form part of the Australian Government’s larger program of reforms of the scheme to bolster the integrity of ACCUs and ensure ACCUs and the carbon crediting framework continues to have a strong and credible reputation supported by participants, purchasers and the broader community. Greater transparency, achieved through publishing additional information, is intended to make the scheme more effective at achieving its objects to reduce carbon emissions and comply with Australia’s international climate change commitments and reporting obligations.²

Consultation

The Department of Climate Change, Energy, the Environment and Water (the department) released a discussion paper on 25 August 2023, outlining options for implementing several of the Review’s recommendations, including recommendation 4. Submissions closed on 3 October 2023 and 95 submissions were received. The Amendment Rule is informed by feedback received during this public consultation.

² Australia has reporting obligations under the Paris Agreement, including the submission of Biennial Reports and National Communications, as well as Biennial Transparency Reports.

Public consultation on the proposed Rule amendment to the Principal Rule was undertaken from x to y. X submissions were received in response to the consultation paper. [outline of submission feedback post consultation on Exposure Draft].

Regulatory Impact

The Review has been certified by the Office of Impact Assessment as an impact analysis assessment equivalent process (ref ID OBPR22-03828).

Details/ Operation

Details of the Amendment Rule is set out in Attachment A.

Schedule 1 of the Amendment Rule commences on the day after it is registered. However, the Amendment Rule also provides for a transitional period to operate for the first 6 months following commencement. During the transitional period, the Regulator is not required to publish any information that is already held by the Regulator on commencement or that is acquired by the Regulator during the transitional period.

Other

The Amendment Rule is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Rule is a legislative instrument for the purposes of the *Legislation Act 2003*.

ATTACHMENT A**Details of the Carbon Credits (Carbon Farming Initiative) Amendment (2024 Measures No. 2) Rules 2024****1. Name**

Section 1 provides that the name of the Amendment Rule is the *Carbon Credits (Carbon Farming Initiative) Amendment (2024 Measures No. 2) Rules 2024* (the Amendment Rule).

2. Commencement

This section provides for the Amendment Rule to commence the day after it is registered on the Federal Register of Legislation.

3. Authority

Section 3 provides that the Amendment Rule is made under sections 166A and 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act).

4. Schedules

Section 4 has the effect that the Amendment Rule amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (the Principal Rule) in the manner set out in the Schedule.

Schedule 1—Amendments

This Schedule sets out amendments to the Principal Rule.

Item 1 – After Part 11

This item inserts a new Part 12 of the Principal Rule, which sets out the details for publication of relevant the scheme information on the Regulator’s website. The proposed Amendments seek to enhance transparency over project information in the scheme.

Paragraph 1(a) requires the publication of a detailed list of activities relevant to the project that have been, are being, or are to be, carried out in accordance with the method determination (the method). This is in addition to the project description that is already required by the Act under paragraph 168(1)(c). The provision will ensure information on the abatement activities are publicly available and up-to-date as the project progresses. When registering a new project, a proponent would be expected to provide a full list of planned abatement activities that are intended to be implemented. At each stage of reporting, if planned activities change, an update would be expected to be made to the Project Register to reflect these changes.

Paragraph 1(b) requires the publication of a description of any suppression mechanisms identified in the baseline period relating to the registered project. This provision will provide additional information on how the land covered by a project area was managed prior to registering the ACCU project. This information is only required for projects with suppression mechanisms in the baseline period. An example of a suppression mechanisms can be the suppression of vegetation growth caused by feral and or domestic animals grazing. The project activity would be installing fences to exclude the feral animals.

Paragraph 1(c) requires the publication of the approved and current version of any estimation or measurement approach or model that is used to calculate carbon abatement under the registered project as enabled by the method. For example, a range of vegetation methods provide the ability for eligible projects to calculate carbon abatement using the Full Carbon Accounting Model (FullCAM) 2020; FullCAM 2016; or the Reforestation Modelling Tool (in conjunction with the CFI Mapping Tool and the Reforestation Abatement Calculator). The intent of this provision is to identify what version of the estimation or measurement approach or model approach is being used to calculate abatement across the crediting period of the project. Therefore, if the measurement or modelling approach changes, this would be updated.

Paragraph 1(d) requires the publication of the start and end dates of the crediting period for each project. Generally, the crediting period for an eligible offsets project is defined as; 25 years for a sequestration offsets project or 7 years for an emissions avoidance offsets project. For example, if a declaration of crediting period was made on 1 July 2025 for a sequestration offsets project with a crediting period of 25 years, the crediting period start, and end dates will be reflected on the Project Register as 1 July 2025 and 30 June 2050.

Paragraph 1(e) requires the publication of the project permanence period start date for sequestration offsets projects only. A permanence period can either be 25 or 100 years and is

chosen when a project is registered. Section 86A of the Act includes a definition for permanence period. While the end date is currently published on the Project Register, this provision ensures both the start and end date of a project permanence period will be published. Publication of both dates captures accurate information around when the project is issued ACCUs and/or when land is added to the project area.

Paragraph 1(f) requires the publication of the start date for the chosen tool or modelling approach used to calculate abatement for each carbon estimation area (CEA) of a project. The intent is to support additional analysis of sequestration over time for each CEA of a project. While the Regulator continuously improves their ICT systems to support publication of data, it is expected the Regulator will experience administrative difficulty in publishing a complete dataset immediately. Although the intent is to publish all modelling start dates against each CEA of a project, it may take additional time for the data to be collated and published due to the large volume of data to be published.

Paragraph 1(g) requires the Regulator to publish a link in the Project Register to any enforceable undertakings (see Part 23 of the Act) that are related to any projects the proponent or associated agents are involved in. Although this is already published on the Regulator's website under subsection 237(5) of the Act, publishing the link in the Project Register better informs the public with enforceable undertakings correlated to the agent/s and the related project/s.

Paragraph 1(h) requires the publication of the name of all agents, as defined under section 290 of the Act, or any other person who is significantly involved in the application or offsets reporting for the project, such as a person who has prepared an offsets report. The intent is to capture person-s who are substantially involved in the project. It is not intended to capture person-s who are contracted to undertake work on project land that is less consequential to project administration. For example, details of the person/agent who prepared an offsets report for a project should be published, whereas the details of a contracted fencer who is hired to build a boundary fence in the project area would not be required to be published.

Subsections 2 to 5 provides the Regulator cannot publish information, when specific circumstances may arise, as outlined under subsection 2(b). A request to exempt the publication of information only applies to the information in subsection (1) and outlined above. The exemptions are informed by stakeholder feedback and support for recommendation 4 of the ACCU Review.

There are two circumstances in which a project proponent or another person can make an exemption request to the Regulator. The first relates to withholding of information where it is required to protect or respect *Aboriginal tradition*, as defined by the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. This subsection aims to enable the exemption of the publication of information where it is required to protect against potential damage to the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships. Relevant ACCU project information required to be published through the Amendment Rule can be

withheld if the Regulator is satisfied that damage could be caused by release of information. For example, following an application process and the provision of evidence, the Regulator may grant the withholding of project activity details on harvesting of biomass from an Environmental Plantings project in accordance with traditional Aboriginal and/or Torres Strait Islander peoples practices and/or native title rights, due to the potential impact on men or women's business.

The second relates to withholding information where publication of the information may threaten, damage or cause harm to a *threatened ecological community* and *threatened species*, as defined by the *Environment Protection and Biodiversity Conservation Act 1999*. This subsection aims to enable the exemption of the publication of information where it is required to protect ecological communities or threatened species and, if the Regulator is satisfied that damage could be caused by release of information. For example, the release of details of an ACCU project activity which results in planting the required habitat for a particular threatened species could increase poaching risk of that threatened species.

The above definitions are intended to support and inform the Regulator's process for managing, considering and decision making on an exemption request. The Regulator may choose to seek advice from relevant experts in making the exemption decision. The Regulator must be satisfied that sufficient evidence of the circumstances are provided by the applicant in the approved written format, as determined by the Regulator. They may require the applicant to provide written evidence from the associated parties as evidence of engagement and consultation regarding the exemption request. The Regulator must take all reasonable steps to respond to an exemption request in writing within 30 days of receiving of request submission. If the Regulator decides to refuse an application, they must give written notice of the decision to the person who made the application.

Subsection 6 provides the Regulator with sufficient time to prepare for the publication of data required under subsection (1). During the first 6 months following commencement of the Amendment Rule, the Regulator is not required to publish existing information, or information acquired during those first 6 months, under subsection (1), but they may choose to do so.

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment (2024 Measures No. 2) Rules 2024

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Carbon Credits (Carbon Farming Initiative) Amendment (2024 Measures No. 2) Rules 2024 (Amendment Rule) amends the *Carbon Credits (Carbon Farming Initiative) Rule 2015* (Principal Rule) to introduce additional data and information publication requirements for the Clean Energy Regulator (Regulator) to publish on the Emission Reduction Fund Register on the Regulator's website. Specific exemptions are built into the Amendment Rule to ensure the human rights of scheme participants are protected and upheld.

Human rights implications

This Legislative Instrument engages the following rights:

- Protection against unlawful and arbitrary interference with privacy – Article 17 of the International Covenant on Civil and Political Rights (ICCPR).
- The right to enjoy and benefit from culture under Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Right to Privacy

Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence, and unlawful attacks on a person's reputation. The right to privacy includes respect for informational privacy, including in respect of storing, using and sharing personal information, and the right to control the dissemination of this information. It also provides that persons have the right to protection of the law against such interference or attacks. The rights contained in Article 17 of the ICCPR may be subject to permissible limitations where limitations are authorised by law and are non-arbitrary. For limitations to be non-arbitrary they must be reasonable, necessary and proportionate to a legitimate objective.

This Amendment Rule amends the Principal Rule to insert a new Part 12 of the Rule to introduce additional data and information publication requirements. The publication of this type of information is reasonable and necessary to provide transparency on the operation of the Australian Carbon Credit Units (ACCU) Scheme and is important in helping Australia meet its obligations under any, or all of, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement.

This instrument does not limit the prohibition on unlawful or arbitrary interference with privacy. The Amendment Rule builds upon existing provisions in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act) and provides a lawful basis for obtaining, storing and sharing

personal information appropriately. The provision and use of personal information occurs to the extent that it is necessary, reasonable and proportionate to administering the ACCU Scheme. Existing secrecy provisions in sections 270 to 284 of the Act do not authorise the release of personal information, and this restriction will be maintained by the Amendment Rule to ensure privacy of personal information is adequately protected.

The changes made to the Principal Rule do not limit the right to privacy, as they do not impact existing protections for personal information and are both lawful and non-arbitrary to the extent that personal information is used.

Right to enjoy and benefit from culture

Article 15 of ICESCR protects the right of all persons to take part in cultural life. The United Nations Committee on Economic, Social and Cultural Rights (the Committee) (General Comment 21, 2009) has stated that culture encompasses ‘ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions’.

The Committee has stated that cultural rights may be exercised by a person as an individual, in association with others, or within a community or group. The Committee has also stated that countries should guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life, which may be strongly communal, or which can only be expressed and enjoyed as a community by Indigenous peoples. Indigenous persons’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected. Countries must take measures to recognise and protect the rights of Indigenous persons to own, develop, control and use their communal lands, territories, and resources. Indigenous persons have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

The Amendment Rule protects the right of Aboriginal and/or Torres Strait Islander peoples to take part in their cultural life and to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions by allowing for exemptions of the publication of information where it is required to protect against potential damage to the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships.

Therefore, the Amendment Rule promotes the right in Article 15 of the ICESCR of all persons to take part in cultural life. It positively engages this right by promoting and encouraging participation by Aboriginal and/or Torres Strait Islander peoples in the ACCU Scheme, by providing for Aboriginal and/or Torres Strait Islander peoples to be involved (and have the final say) in decisions relating to the publication of culturally sensitive information, and by protecting the rights of Aboriginal and/or Torres Strait Islander peoples to continue to undertake traditional activities on their lands.

Conclusion

This Legislative Instrument is compatible with human rights because, to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate. Further, the Instrument positively engages the right to enjoy and benefit from culture.

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