EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 77

Issued by the Authority of the Parliamentary Secretary for Climate Change and Energy Efficiency

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)

Section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the CFI Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the CFI Act.

In addition, regulations may be made pursuant to the provisions of the CFI Act set out in Attachment A.

The CFI Act, together with the *Australian National Registry of Emissions Units Act 2011* and the *Carbon Credits (Consequential Amendments) Act 2011*, implements the Carbon Farming Initiative (the CFI). The CFI is a voluntary scheme that aims to provide incentives for the agricultural, forestry and landfill sectors to minimise greenhouse gas emissions or maximise carbon storage by altering their agricultural, forestry and landfill practices.

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)* (the Regulation) amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) to further support the implementation and administration of the CFI Act.

Background information about the CFI Act and the Regulation is set out in Attachment B.

A statement of the Regulation's compatibility with human rights is set out in Attachment C.

Details of the Regulation are set out in Attachment D.

Consultation

The CFI Act, the Principal Regulations and the Regulation reflect the outcomes of comprehensive consultation with stakeholders that has been ongoing since October 2010.

An exposure draft of the Regulation was released for public comment on 5 April 2012. Seventeen submissions were received. As a result of submissions received minor changes were made to the Regulation, and changes were made to this explanatory statement to more clearly explain key regulations.

Not all provisions in the Regulation were included in the exposure draft released for consultation. Consultation was not undertaken on minor, technical regulations or regulations that give mechanical effect to policies that have previously been the subject of stakeholder consultation, while extensive consultation had already occurred regarding the new activity included on the positive list.

The Government released exposure draft regulations on the positive and negative lists in August 2011. The Department received 37 submissions from industry, the public and other stakeholders on the exposure draft regulations.

After consideration of the submissions received and after further consultation with other agencies and industry groups, refinements were made to the positive list activity contained within the Regulation, consistent with the results of consultation.

The Domestic Offsets Integrity Committee (DOIC) considered the outcomes of consultation and further analysis prepared by the Department.

The DOIC has provided advice to the Minister that it is satisfied that the proposed activity is suitable for inclusion on the positive list because it is not common practice and meets the requirements of section 41(3) of the CFI Act.

Authority: Section 307 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*

Glossary

The following terms, abbreviations and acronyms are used throughout this explanatory statement.

Abbreviation	***Definition***
ACCU	Australian carbon credit unit
CFI	Carbon Farming Initiative
CFI Act	*Carbon Credits (Carbon Farming Initiative) Act 2011*
CDM	Clean Development Mechanism
Department	The Department administering the CFI Act, at time of making the Regulation, the Department of Climate Change and Energy Efficiency
DOIC	Domestic Offsets Integrity Committee
Greenhouse Friendly	The Australian Government's Greenhouse Friendly initiative
GGAS	The New South Wales Government's Greenhouse Gas Reduction Scheme and the Australian Capital Territory Government's Greenhouse Gas Abatement Scheme
ICCPR	International Covenant on Civil and Political Rights
JI	Joint Implementation
Kyoto ACCU	A type of ACCU, defined in section 5 of the CFI Act
Kyoto unit	An assigned amount unit, a certified emission reduction, an emission reduction unit, a removal unit or a prescribed unit issued in accordance with the Kyoto rules
Minister	The Minister administering the CFI Act, at time of making the Regulation, the Minister for Climate Change and Energy Efficiency
Non-CFI scheme	Any greenhouse gas offsets scheme other than the CFI or a prescribed non-CFI offsets scheme
Non-Kyoto ACCU	An ACCU other than a Kyoto ACCU
Person	Any of the following: an individual, a body corporate, a trust (meaning a trustee on behalf of a trust), a corporation sole, a body politic, a local governing body (section 5 of the CFI Act)
Prescribed non-CFI offsets scheme	A scheme prescribed in regulation 1.7 of the Principal Regulations (currently Greenhouse Friendly™, GGAS and VCS)
Principal Regulations	*Carbon Credits (Carbon Farming Initiative) Regulations 2011*
Project proponent	The person who is responsible for carrying out a project and has the legal right to carry out the project. If the project is a sequestration offsets project, the proponent must also hold the applicable sequestration right in relation to the project area or areas (section 5 of the CFI Act)
Registry	Australian National Registry of Emissions Units

Registry Regulations	*Australian National Registry of Emissions Units Regulations 2011*
Regulation	*Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)*
Regulator	Clean Energy Regulator
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Verified Carbon Standard

Attachment A

Sections of the CFI Act supporting the Regulation

The Regulation is supported by the following provisions of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the CFI Act):

- section 5 (definition of 'statutory authority'), which allows the regulations to prescribe an authority or body that is not a 'statutory authority' for the purposes of the CFI Act;
- paragraph 13(1)(d), which allows the regulations to specify the information that must accompany an application for a certificate of entitlement;
- paragraph 13(1)(e), which allows the regulations to prescribe the type of audit report that must accompany any application for a certificate of entitlement;
- subsection 13(2), which allows the regulations to provide that a project of a kind specified in the regulations is exempt from the requirement to provide a prescribed audit report with an application for a certificate of entitlement;
- paragraph 15(2)(h), which allows the regulations to specify further eligibility requirements for the issue of a certificate of entitlement;
- subsections 16(2A), 17(3A) and 18(3), which allow the regulations to provide for a reduction in unit entitlement for projects that are or were wholly or partly covered by a prescribed non-CFI offsets scheme;
- paragraphs 23(1)(c) and 23(1)(h), which allow the regulations to specify information and documents that must accompany an application for the declaration of an offsets project as an eligible offset project;
- subsection 29(1), which allows the regulations to empower the Regulator to vary a declaration made under section 27 of the CFI Act in relation to an offsets project (a declaration) so far as the declaration identifies the project area/s;
- subsection 30(1), which allows the regulations to empower the Regulator to vary a declaration so far as the declaration identifies the project proponent for a project;
- subsection 31(2), which allows the regulations to empower the Regulator to vary a declaration by removing a condition that all regulatory approvals must be obtained for the project before the end of the first crediting period for the project;
- subsection 32(1), which allows the regulations to empower the Regulator to revoke a declaration where the project proponent has applied for a revocation and has handed back any Australian carbon credit units (ACCUs) that have been issued;

- subsection 33(1), which allows the regulations to empower the Regulator to revoke a declaration where the project proponent has applied for a revocation and has not been issued with any ACCUs and to approve a form for making such an application;

- subsection 34(1), which allows the regulations to empower the Regulator to unilaterally revoke a declaration where the declaration was made subject to a condition that all regulatory approvals for the project must be obtained before the end of the first crediting period, and the Regulator is satisfied that the condition has not been met;

- subsection 35(1), which allows the regulations to empower the Regulator to unilaterally revoke a declaration if the Regulator is satisfied that the project does not meet a requirement that is set out in subsection 27(4) and specified for the purposes of paragraph 36(2)(b) of the CFI Act;

- subsection 36(1), which allows the regulations to empower the Regulator to unilaterally revoke a declaration where the project proponent for a project ceases to be a recognised offsets entity and 90 days pass after the cessation, and the person who, at the end of that 90 day period, is the project proponent is not a recognised offsets entity;

- subsection 37(1), which allows the regulations to empower the Regulator to unilaterally revoke a declaration where the person responsible for the project ceases to be the project proponent and 90 days pass after the cessation, and the person who, at the end of that 90 day period, is responsible for carrying out the project is not the project proponent for the project and a recognised offsets entity;

- subsection 38(1), which allows the regulations to empower the Regulator to unilaterally revoke a declaration where information that is false or misleading in a material particular has been given to the Regulator in relation to a project in specified circumstances;

- paragraph 41(1)(a), which allows the regulations to specify kinds of projects that pass part of the additionality test;

- subsection 41(4A), which allows the regulations to provide that paragraph 41(1)(b) (which provides that an offsets project passes part of the additionality test if the project is not required to be carried out be or under a law of the Commonwealth, a State or a Territory) does not apply to a requirement of a kind specified in the regulations;

- subsections 44(5) and 45(5), which allow the regulations to provide that a person specified in, or ascertained in accordance with, the regulations holds an eligible interest in an area of land;

- paragraph 55(1)(c), which allows the regulations to specify a kind of offsets project that is a Kyoto offsets project;

- subsection 56(1), which allows the regulations to specify a kind of offsets project that is an excluded offsets project;

- subsection 57(2), which allows the regulations to provide for the adjustment of the calculation of unit entitlement, the net total number of ACCUs issued and the duration of reporting and crediting periods where an offsets project is restructured;

- paragraphs 61(1)(c) and (d), which allow the regulations to specify the information and documentation that must accompany an application for recognition as an offsets entity;

- subparagraph 69(1)(b)(ii), which allows the regulations to specify a period as the first crediting period for a project that is not a native forest protection project;

- paragraph 70(4)(b), which allows the regulations to specify a period as the subsequent crediting period for a project that is not a native forest protection project;

- paragraph 76(4)(a),which allows the regulations to prescribe the manner and form of an offsets report;

- paragraphs 76(4)(b) and (d), which allow the regulations to specify the information and documentation that must accompany an offsets report;

- paragraph 76(4)(c), which allows the regulations to prescribe the type of audit report that must accompany an offsets report;

- subsection 76(5), which allows the regulations to specify a kind of project that is exempt from the requirement to provide a prescribed audit report with an offsets report;

- subsections 81(3) and 82(4) and paragraphs 90(1)(d) and 91(1)(d), which allow the regulations to prescribe what is a 'significant reversal' of a removal of carbon dioxide for the purposes of certain notification and relinquishment requirements;

- subsection 85(2), which allows the regulations to require the project proponent of an eligible offsets project to notify the Regulator of a matter;

- paragraphs 117(1)(d) and (e), which allow the regulations to specify the information and documentation that must accompany an application for endorsement of a proposal for the variation of a methodology determination;

- paragraph 128(2)(c), which allows the regulations to specify the information that must accompany a request that the Regulator approve the application of a specified methodology determination to the project with effect from the start of the reporting period;

- subsection 139(1), which allows the regulations to empower the Regulator to revoke the declaration of an eligible offsets project where there are two or more project proponents, a nomination for a nominee was made and is no longer in force, and the Regulator is not provided with a nominee within 90 days;

- paragraph 153(2)(b) and subsection 153(3), which allow the regulations to specify the manner in which a declaration of the transmission of ACCUs by operation of law must be made and the evidence of transmission that must accompany the declaration;

- paragraph 157(1)(d), which provides for the regulations to specify conditions to be fulfilled before a Kyoto ACCU may be exchanged for a Kyoto unit;

- subsection 157(2), which sets out the steps the Regulator must take in order to exchange a Kyoto ACCU for a Kyoto unit;

- subsection 179(6), which provides that the regulations may, for the purposes of the section, specify how the market value of an ACCU is to be ascertained;

- subsection 191(1), which allows the regulations to require a person to make a record of specified information and to retain that record or a copy of the record for 7 years;

- subsection 192(2), which allows the regulations to require a person to retain a record or a copy of a record that was used to prepare an offsets report for 7 years;

- paragraph 197(2)(a), which allows the regulations to prescribe the form of identity card that is to be issued to a person who has been appointed as an inspector for the purposes of the CFI Act;

- paragraphs 214(9)(c) and (d), which allow the regulations to specify the information and documentation that must accompany a request that the Regulator reimburse a person for reasonable costs incurred by the person in complying with a notice to arrange a compliance audit;

- subsection 260(1), which allows the regulations to specify procedures in relation to meetings and resolutions of the Domestic Offsets Integrity Committee;

- subsection 304(1), which allows the regulations to make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing as in force or existing at a particular time or from time to time;

- section 305, which allows the regulations to make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator; and

- section 307, which allows the Governor-General to make regulations prescribing matters required or permitted by the CFI Act and matters necessary or convenient to be prescribed for carrying out or giving effect to the CFI Act.

Attachment B

Background information

The CFI enables crediting of greenhouse gas abatement in the land sector. Greenhouse gas abatement is achieved by:

- Reducing or avoiding emissions, for example, through capture and destruction of methane emissions from landfill or livestock manure; or
- Removing carbon from the atmosphere and storing it in soil or trees, for example, by growing a forest or farming in a way that increases soil carbon.

Australian carbon credit units (ACCUs) are issued in respect of abatement generated by these activities. ACCUs can be sold into a variety of domestic markets; Kyoto ACCUs can be exchanged for internationally recognised Kyoto units and exported overseas, and are eligible for surrender under the carbon pricing mechanism.

Abatement activities are undertaken as eligible offsets projects. The processes involved in establishing and operating an eligible offsets project are set out in the *Carbon Credits (Carbon Farming Initiative) Act* 2011 (CFI Act), and include the following requirements:

- the project proponent must satisfy the fit and proper person test and become recognised as an offsets entity;
- the project must be covered by a methodology determination;
- the project must be declared by the Clean Energy Regulator (Regulator) to be an eligible offsets project for the purposes of the CFI Act. The Regulator must not declare that the offsets project is an eligible offsets project unless the Regulator is satisfied that the project meets the criteria specified in subsection 27(4) of the CFI Act;
- the project must be undertaken in accordance with the applicable methodology determination; and
- reports on the conduct of the project must be independently audited and submitted to the Regulator at least every five years and not more than annually.

The Principal Regulations deal with:

- electronic notice requirements;
- declarations of eligible offsets projects;
- the activities that are included in, and excluded from, the CFI (the 'positive' and 'negative' lists);

- classification of projects;
- the recognition of offsets entities;
- the transition of projects covered by certain prescribed non-CFI offsets schemes;
- applications for endorsement of a methodology proposal;
- designation of nominee accounts; and
- procedures of the Domestic Offsets Integrity Committee.

This Regulation amends the Principal Regulations by inserting or amending provisions that deal with:

- the processes for applying for an ACCU;
- the calculation of unit entitlement;
- the process for applying for declaration as an eligible offsets project;
- the variation, revocation and restructure of an eligible offsets project;
- the additionality test;
- ascertaining who holds an 'eligible interest' in an area of land;
- specifying the length of a crediting period;
- auditing, reporting, notification and record-keeping requirements;
- clarification of when the relinquishment of ACCUs is required;
- the processes for applying for the variation of a methodology determination and the application of a varied methodology determination to a project;
- the transmission of ACCUs by operation of law;
- the conditions and processes for the exchange of Kyoto ACCUs for Kyoto units;
- how the market value of a Kyoto ACCU is to be ascertained for relinquishment purposes;
- monitoring processes; and
- the information and documents that must accompany an application for the reimbursement of the costs of a compliance audit.

Attachment C

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 Regulation 2012 (No. 1)

The *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1)* (the Regulation) 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 Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) by inserting provisions dealing with, among other things:

- the processes for applying for Australian carbon credit units (ACCUs);
- the calculation of unit entitlement;
- modifying the activities that are included in the Carbon Farming Initiative (CFI);
- the variation, revocation and restructure of eligible offsets projects;
- eligible interests in an area of land;
- crediting periods;
- auditing, reporting, notification and record-keeping requirements;
- the processes for applying for a variation of a methodology determination and the application of a varied methodology determination to an eligible offsets project;
- the transmission of ACCUs by operation of law; and
- the information and documents that must accompany an application for the reimbursement of the costs of a compliance audit.

Human rights implications

The Regulation engages Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR). Article 17(1) of the ICCPR provides for the right of every individual to be protected

against arbitrary or unlawful interference with the individual's privacy. The term 'privacy' has not been defined by international human rights law but it is generally accepted that it encompasses 'information privacy'—the right to privacy of information about a particular individual. An interference with an individual's privacy will not be considered 'unlawful' if it is authorised by a law that complies with the provisions, aims and objective of the ICCPR and specifies in detail the precise circumstances in which such interferences may be permitted. An interference with an individual's privacy will not be considered 'arbitrary' if it is reasonable in the particular circumstances and the law is in accordance with the provisions, aims and objectives of the ICCPR.[1]

The Regulation engages the right to privacy because the Regulation:

- requires a person to provide specified information when applying for a certificate of entitlement. It is necessary to require an applicant for a certificate of entitlement to provide the information specified in the regulation so that the Clean Energy Regulator (the Regulator) can decide whether the criteria for issuing a certificate of entitlement in the *Carbon Credits (Carbon Farming Initiative Act 2011* (the CFI Act) are satisfied.

- imposes various notification requirements on a recognised offsets entity and a project proponent. These requirements will assist the Regulator to monitor whether a recognised offsets entity remains a fit and proper person for the purposes of the CFI Act and whether an eligible offsets project is on-track.

- requires a project proponent to keep particular records and provide the Regulator with specified information about the conduct of an eligible offsets project. It is essential to the integrity of the CFI that a project proponent keeps records and provides reports about an eligible offsets project so that the Regulator is able to verify claims made by the proponent about the success of the project.

- authorises the Regulator to require further information from a person who applies for a variation to a declaration that a project is an eligible offsets project or to revoke a declaration that a project is an eligible offsets project. The Regulator needs the power to require an applicant for a variation or revocation of an eligible offsets project to provide further information in relation to that application in order to make a decision about the application. The power to require further information must be exercised in accordance with section 288 of the CFI Act, which requires the Regulator to ensure that an applicant is only required to provide further information that is relevant to the matter to which the application relates and that the power is exercised in a reasonable way.

All these requirements are reasonable and the Regulation is therefore not 'arbitrary' within the meaning of Article 17(1) of the ICCPR.

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[1] Human Rights Committee, General Comment 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17)

Furthermore, the Regulation does not authorise an unlawful interference with an individual's privacy because the Regulation adequately specifies the circumstances in which information may be collected. Moreover, the Regulator is required to handle all personal information in accordance with the Privacy Act 1988 and is bound by the secrecy provisions in the *Clean Energy Regulator Act 2011*. The Regulation is therefore compatible with Article 17(1) of the ICCPR because it does not unlawfully or arbitrarily interfere with an individual's privacy.

Conclusion

The Regulation is compatible with human rights because it does not limit any human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

MARK DREYFUS
Parliamentary Secretary for Climate Change and Energy Efficiency

Attachment D

Details of the Regulation

Section 1 Name of regulation

1. Section 1 provides that the name of the Regulation is the *Carbon Credits (Carbon Farming Initiative) Amendment Regulation 2012 (No. 1).*

Section 2 Commencement

2. Section 2 provides that the Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 Amendment of Carbon Credits (Carbon Farming Initiative) Regulations 2011

3. Section 3 provides that the Regulation amends the *Carbon Credits (Carbon Farming Initiative) Regulations 2011* (the Principal Regulations) in the manner set out in Schedule 1.

Schedule 1 - Amendments

Items [1]-[11]: Regulation 1.3 - Definitions

4. These items insert several new definitions into regulation 1.3 of the Principal Regulations, and make several consequential amendments.

Definition of 'accounted for'

5. The *Carbon Credits (Carbon Farming Initiative) Act 2011* (CFI Act) allows abatement since 1 July 2010 to be credited as long as it has not already been credited or 'accounted for' in other ways. This avoids the possibility of abatement being 'double counted' under more than one scheme, and helps projects transition from pre-existing offsets schemes such as the New South Wales Government's Greenhouse Gas Reduction Scheme and the Australian Capital Territory Government's Greenhouse Gas Abatement Scheme (GGAS); and the Commonwealth Government's Greenhouse Friendly™ initiative.

6. The definition of abatement that has been 'accounted for' is used in the regulations which specify information and documentation that must be included in an application for a declaration of eligible offsets project and in an offsets report; regulations which set out record-keeping requirements for those purposes; regulations that specify how to calculate credits (unit entitlement) for projects transitioning from other schemes (see paragraphs 38-49); and those that specify further requirements to be met before the Regulator will issue a certificate of entitlement.

7. The definition of 'accounted for' includes abatement that has been traded, including through forward contracts, regardless of whether credits were issued or the contract has since been rescinded.

8. Abatement that occurs after the closure of the other scheme is not captured by these provisions, even if sold under forward contract. For example, abatement generated in 2014 that was previously contracted for use under GGAS could not be used to meet offsetting obligations under GGAS, since those obligations would have ceased in mid-2012. The abatement may therefore be credited under the CFI without the possibility of double counting.

9. Some large resource projects are required to offset their emissions as a condition of their approval by the relevant state government. In most cases, these emissions are also covered from 1 July 2012 by the carbon pricing mechanism. It is not the intention of the no-double counting regulations that companies should effectively have to pay twice for the same emissions. The definition of 'accounted for' therefore allows such projects to receive ACCUs for abatement occurring after 1 July 2012. This means entities can use the same offsets project to meet their obligations under pre-existing state or territory approval conditions, for example, and under the carbon pricing mechanism.

Definition of 'certified copy'

10. This regulation provides that, for all cases other than for Division 4.1 (for which a different meaning of 'certified copy' is prescribed – see paragraphs 130-132), a certified copy of a document is one that has been certified as a true copy by a person mentioned in Schedule 2 to the *Statutory Declarations Regulations 1993*. If the application is made from overseas, the copy must be certified as a true copy by:

- an Australian embassy, Australian High Commission or Australian consulate (other than a consulate headed by an honorary consul); or

- by a competent authority under the Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents done at The Hague on 5 October 1961.

11. Information about 'competent authorities' can be found at www.hcch.net.

Definition of 'non-CFI scheme'

12. A 'non-CFI offsets scheme' is a greenhouse gas abatement schemes that is not carried out under the CFI Act and is not a 'prescribed non-CFI offsets scheme'. This definition is used in the regulations which set out the requirements for a project that is covered by a non-CFI scheme that is not a prescribed non-CFI offsets scheme.

13. Prescribed non-CFI schemes are schemes for which there are special transitional arrangements, including Greenhouse Friendly and GGAS. These arrangements are designed to facilitate the closure of these schemes.

Definition of 'Aboriginal person' and 'Torres Strait Islander'

14. These definitions are relocated from subregulation 4.7(4) of the Principal Regulations.

Item [12]: Regulation 1.8A - Specified statutory authorities

15. This item inserts new regulation 1.8A in the Principal Regulations.

16. The definition of 'statutory authority' in section 5 of the CFI Act does not include an authority or body that is established by or under a law of the Commonwealth, a State or a Territory and that is specified in the regulations. New regulation 1.8A specifies various indigenous organisations established under State legislation for this purpose. For the reasons explained below, the effect of regulation 1.8A is that the process for applying for a sequestration offsets project to be declared to be an eligible offsets project will be the same for the specified authorities or bodies as it is for most other owners of freehold land.

17. In broad terms, the Regulator cannot declare that a sequestration offsets project is an eligible offsets project if the project area is, or any of the project areas are, Crown land in a State or Territory unless the applicant has obtained the necessary certificate from the Crown lands Minister of that State or Territory (paragraph 27(4)(h) of the CFI Act). In such a case the Crown lands Minister would also hold an eligible interest in the land, and would therefore have to consent, in writing, to the making of the application (paragraph 27(4)(k) and subsection 44(4) and 45(2)). The definition of 'Crown land' in section 5 of the CFI Act includes land that is the property of a 'statutory authority'. The definition of 'statutory authority' in section 5 of the CFI Act excludes certain indigenous organisations established under Commonwealth legislation. This allows indigenous organisations established under Commonwealth legislation that own freehold land to undertake projects without the consent of the Crown lands Minister, like any other owner of freehold land.

18. The effect of new regulation 1.8A is that corresponding indigenous organisations established under State legislation will also not come within the definition of 'statutory authority' and consequently that freehold land held by such organisations is not Crown land merely because the organisation was established under State legislation.

Item [13]: Regulations 1.11-1.13 - Audit report requirements

19. This item, which deals with prescribed audit reports, inserts new regulations 1.11 – 1.13 into Part 1 of the Principal Regulations.

1.11 and 1.12 Prescribed audit reports

20. A project proponent must provide a prescribed audit report to the Regulator with an offsets report or an application for a certificate of entitlement unless the project is of a kind that is specified in the regulations as exempt from these requirements (subsection 13(1) and 76(4) of the CFI Act). These audit reports are intended to provide assurance that genuine abatement has occurred during the reporting period. These regulations prescribe the requirements for prescribed audit reports.

21. The audit itself must be a reasonable assurance engagement, which is a type of audit in which the audit team leader seeks to provide a reasonable assurance conclusion about the matters being audited. The conclusion drawn in the audit report may not be adverse or inconclusive. The Regulator must be satisfied of the evidence provided to support an application

for a certificate of entitlement, including through the prescribed audit report as set out in paragraphs 35-36 below.

22. The audit must be led by a Category 2 or 3 registered greenhouse and energy auditor (as defined in the *National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2010*) and must be conducted in accordance with the relevant requirements of the *National Greenhouse and Energy Reporting Act 2007* and the *National Greenhouse and Energy Reporting (Audit) Determination 2009.*

23. The audit must assess whether:

- the project is in accordance with the declaration that the project is an eligible offsets project under section 27 of the CFI Act. The declaration identifies the project proponent, the location of the project area, the crediting period for the project, the applicable methodology determination, whether the project has operated or continues to operate under a prescribed non-CFI offsets scheme and whether any conditions apply with respect to regulatory approvals;

- the project meets the requirements of the CFI Act, for example that the project meets scheme eligibility requirements and that abatement has not been double-counted; and

- the project proponent has met the requirements specified in the applicable methodology determination for undertaking and monitoring the project, and estimating and reporting project abatement.

1.13 Projects exempt from audit report requirements

24. Paragraph 13(1)(e) of the CFI Act provides that an application for a certificate of entitlement must be accompanied by a prescribed audit report. However, subsection 13(2) provides that the regulations made provide that a project of a kind specified in the regulations is exempt from this requirement.

25. Similarly, paragraph 76(4)(c) of the CFI Act provides that an offsets report about a project for a reporting period must be accompanied by a prescribed audit report. However, subsection 76(5) enables the regulations to provide that a project of a kind specified in the regulation is exempt from this requirement.

26. New regulation 1.13 specifies the kinds of projects that are exempt from the requirements that an application for a certificate of entitlement or an offsets report must be accompanied by a prescribed audit report. The effect of new regulation 1.13 is that small (that is, a project that is likely to abate less than 2,500 tonnes of greenhouse gases per annum over the reporting period) non-Kyoto projects are only required to submit a prescribed audit report once. For subsequent periods, no prescribed audit report is required. This is to reduce auditing costs for small projects.

27. If a proponent has more than one project under the same methodology determination, the combined abatement will be taken into account when determining whether the total abatement

is likely to be less than 2,500 tonnes of carbon dioxide abatement annually. .This is to prevent projects being split into multiple small projects to avoid or minimise audit requirements.

Item [14]: Part 2 – Issue of Australian Carbon Credit Units in Respect of Offsets Project

28. This item inserts Part 2, which deals with the issue of ACCUs, in the Principal Regulations.

Division 2.1—Certificate of entitlement

2.1 Application for certificate of entitlement

29. A project proponent must apply for a certificate of entitlement in order to receive ACCUs. The certificate specifies the number of ACCUs the project proponent is entitled to receive for the reporting period.

30. The application must be in writing and in the approved form; it must nominate the Registry account to be specified in the certificate and be accompanied by a prescribed audit report and the offsets report for the project for the reporting period (paragraphs 13(1)(a), (b), (c), (e) and (f) of the CFI Act).

31. The application must also be accompanied by the information specified in this regulation (paragraph 13(1)(d)). This information is intended to assist the Regulator to decide whether the criteria for the issue of a certificate of entitlement set out in subsection 15(2) of the CFI Act have been met. The criteria include:

- that the applicant is a recognised offsets entity (paragraph 15(2)(a));
- that the applicant was the project proponent during the reporting period (paragraph 15(2)(b));
- that the reporting period is included within a crediting period (paragraph 15(2)(c));
- if the project is a prescribed native forest protection project—that the reporting period is the first reporting period for the project (paragraph 15(2)(d));
- if the declaration is subject to the condition that all regulatory approvals must be obtained for the project before the end of the first crediting period—that the condition has been met (paragraph 15(2)(e));
- that the applicant is not subject to any relinquishment requirements (paragraph 15(2)(f));
- that the applicant is not liable to pay any amount for non-compliance with a relinquishment requirement (paragraph 15(2)(g)); and
- that any other eligibility requirements specified in the regulations have been met (paragraph 15(2)(h)).

32. The Regulator has the power to request further information in relation to the application, if necessary, and may refuse to consider an application, or to take any further action on an application, if that further information is not provided (section 14). Any further information requested must be relevant to the application, and the power to request that further information must be exercised in a reasonable way (section 288 of the CFI Act).

2.2 Issue of certificate of entitlement-eligibility requirements

33. New regulation 2.2 provides further eligibility requirements for the issuance of a certificate of entitlement. The effect of the regulation is that an application for a certificate of entitlement must be accompanied by information about abatement that has already been credited, registered or accounted for, and ACCUs cannot be claimed for this abatement.

34. The use of the term 'registered' captures the process under GGAS, where abatement is recognised when credits for that abatement are registered on the GGAS registry. For other carbon offset schemes, abatement is recognised when credits are issued or generated.

35. Unless the project is exempt (regulation 1.13), the Regulator will issue a certificate of entitlement if the audit report provides reasonable assurance that the eligible offsets project conforms to the applicable methodology determination, and that all project eligibility requirements continue to be met.

36. The Regulator must be satisfied that the evidence provided to support the application for a certificate of entitlement (for example, through the offsets and prescribed audit reports, and any verification of information with the administrator of another offsets scheme) is sufficient to enable the unit entitlement to be accurately calculated. If the Regulator is not satisfied that the information provided is correct, then no certificate of entitlement will be issued as this risks the issuance of ACCUs where abatement may not have occurred or double counting of abatement.

37. The meaning of 'accounted for' is provided for in items [2] and [11] of this Regulation (see paragraphs 5-9 above, and paragraphs 38-49 below).

<u>Division 2.2—Unit entitlement for projects affected by a prescribed non-CFI offsets scheme</u>

38. To help projects transition from prescribed non-CFI offsets schemes, the CFI Act allows for crediting of abatement from 1 July 2010, so long as the abatement has not already been credited, registered or accounted for under another scheme. Avoiding double counting of abatement is important for the integrity and credibility of the CFI.

39. These regulations in this Division ensure there is no double counting of abatement that has already been credited, registered or accounted for under such schemes, for example GGAS. The Commonwealth Government may in the future prescribe other offset schemes including those established as a condition of state government approvals.

40. Abatement that is generated under offsets schemes outside the CFI may be recognised through the registration or creation of carbon offsets credits, or may be recognised ('accounted for') in other ways.

41. The regulations to avoid double counting will not allow:

- abatement that has been issued, registered, generated or credited, but remains unsold, to be swapped for ACCUs;

- abatement committed for sale or use under an arrangement such as a forward contract to be exchanged for ACCUs, even if these arrangements are rescinded (unless the abatement occurs after the scheme has ceased operation – see paragraph 8);

- credits that have been used, transferred or sold, to be bought back and swapped for ACCUs;

- abatement that has been used or is committed for use to offset greenhouse gas emissions to be swapped for ACCUs.

42. In other words, these regulations will not allow a person to receive ACCUs if theyrescind, reverse or swap out of contracts or other arrangements to have their abatement credited, issued, generated, registered, recognised, sold, used or otherwise accounted for under another offsets scheme.

43. There are different equations for calculating the amount of abatement that has already been accounted for under different types of projects. This is because, under the CFI Act, there are different ways of calculating the unit entitlement for sequestration, emissions reductions and native forest projects.

44. Sequestration in trees and soils is typically cumulative, so abatement from sequestration projects is calculated as the increase in abatement since the previous reporting period. For this reason, equations for sequestration projects need to take account of the abatement credited in previous reporting periods whereas those for emissions reduction projects do not.

2.3 Sequestration offsets projects other than native forest protection projects

45. The equations for sequestration offsets projects are designed to ensure that the total ACCUs issued under the CFI Act and any other non-CFI offsets scheme do not exceed total sequestration.

46. For sequestration offsets projects other than native forest protection projects, the formula for unit entitlement takes account of the difference between what would have been credited under the CFI Act in total, had the project always been under the methodology determination (‘notional CFI credits’), and what has already been credited under all schemes (‘credits under the CFI’ + ‘abatement under prescribed non-CFI’).

47. The formula in this regulation will ensure that, if a project has in the past received more generous crediting under another scheme than it would have under the CFI Act, it will only ever receive the same number of units in total from both schemes as if it had been credited solely under the CFI Act.

2.4 Native forest protection projects

48. For native forest protection projects, the CFI Act provides for the calculation of the expected abatement to be generated under the project and ACCUs to be evenly issued over the years of the crediting period. Other schemes may issue or have issued credits in a lump sum up front. The formula contained in regulation 2.4 will net out any difference between the total of credits that would be issued under the CFI Act and any credits already issued under another scheme, and (where the total under the CFI Act is more generous) issue the difference evenly over the remaining years of the crediting period.

2.5 Emissions avoidance offsets project

49. For emissions avoidance offsets projects, the unit entitlement for a reporting period is reduced by the number of units issued under another scheme for that reporting period.

Items [15]-[16]: Amendments to Regulation 3.1 - Eligible Offsets Project application

50. These items omit paragraphs 3.1(1), (n), (o), (p) and (q) from the Principal Regulations and make consequential changes. These paragraphs required the applicant to provide information that is already contained within the Regulator's records, or that is to be determined by the Regulator.

Items [17]-[23]: Amendments to Regulation 3.1 – Eligible Offsets Project application

51. These items are technical amendments to align the drafting of subregulations 3.1(3) and (4) of the Principal Regulations with the more detailed provisions contained in this Regulation which provide how abatement is accounted for under another offsets scheme.

Item [24]: Variation and revocation of eligible offsets projects

52. This item inserts Divisions 3.2 and 3.3, which deals with the variation and revocation of eligible offsets projects, in Part 3 of the Principal Regulations.

Division 3.2—Voluntary variation of declaration of eligible offsets project

53. A project proponent can apply to vary the project area or the proponent identified in the declaration made under section 27 of the CFI Act. If such a declaration is subject to a condition that all regulatory approvals must be obtained for the project before the end of the first crediting period, the proponent can apply to the Regulator to vary the declaration by removing the condition.

54. The regulations in this Division deal with the voluntary variation of a declaration of eligible offsets project, and are made for subsections 29(1), 30(1) and 31(2) of the CFI Act *[regulation 3.6]*.

55. The Regulator may only vary a declaration under this Division if an application for the variation has been submitted by the project proponent, the nominee of multiple project

proponents or an agent of the project proponent or nominee (section 290 of the CFI Act) *[regulation 3.8(2)(a)]*.

56. An application must be in the approved form, contain contact details and information to identify the relevant project and a declaration that all information in the form is accurate *[regulation 3.9]*.

57. The Regulator has the power to request further information in relation to the application *[regulation 3.10]*. Any further information requested must be relevant to the application, and the power to request that further information must be exercised in a reasonable way (section 288 of the CFI Act).

58. An application can be withdrawn at any time and doing so does not prevent the applicant from making a fresh application *[regulation 3.11]*.

59. The Regulator is required to take all reasonable steps to decide an application within 90 days after the application was made, unless the Regulator requires the applicant to give further information, in which case the Regulator is required to take all reasonable steps to ensure that a decision is made within 90 days after the giving of that information *[regulation 3.12]*. However, a decision made after this time will not be invalid.

60. A variation to a declaration takes effect from the date it is made or, with the agreement of the applicant, an earlier specified date *[regulation 3.13]*.

61. The Regulator will notify the applicant and, if the project is a sequestration offsets project, the relevant land registration official, of a variation to a declaration by providing a copy of the variation *[regulation 3.14]*. This is to enable a notification to be placed on the relevant land title that would alert anyone taking an interest in the project land that the land may be affected by obligations under the CFI Act.

62. The Regulator will notify the applicant in writing if the application is refused *[regulation 3.15]*. A decision to refuse to vary an eligible offsets project declaration is a reviewable decision within the meaning of the CFI Act (section 240).

3.16 Voluntary variation of declaration of eligible offsets project—project area

63. An eligible offsets project declaration must identify the project area or areas for an eligible offsets project in accordance with regulation 3.3 of the Principal Regulations. 'Project area', in relation to an offsets project, means 'an area of land on which the project has been, is being, or is to be, carried out' (section 5 of the CFI Act).

64. The project area is included in the Register of Offsets Projects, used in the calculation of abatement in relation to the project, and, in the case of a sequestration offsets project, identifies the areas of land that could be made subject to a carbon maintenance obligation.

65. This regulation empowers the Regulator to vary a declaration in relation to an offsets project so far as the declaration identifies the project area or areas.

66. The Regulator must not vary a declaration unless it is satisfied that the whole project, as varied, would meet the eligibility criteria set out in section 27 of the CFI Act. For instance, the Regulator must be satisfied that the applicant has the legal right to carry out the project and, if the project is a sequestration offsets project, has the written consent of any eligible interest holders.

67. The application for the variation must be accompanied by the information and documentation specified in this regulation. This information and documentation is intended to assist the Regulator to decide whether the criteria for making a declaration set out in section 27 of the CFI Act have been met in relation to any project area to be added to the declaration.

68. For any project area that will cease to be part of one project, and will become part of a second project as a result of a restructure under section 57 of the CFI Act and the regulations within Division 3.13 of the Principal Regulations, the application must also contain an estimate of the number of ACCUs that would be issued under Part 2 of the Act for any sequestration on the relevant area (calculated at the time of restructure) for which an offsets report has not yet been submitted.

3.17 Voluntary variation of declaration of eligible offsets project—project proponent

69. New regulation 3.17 empowers the Regulator to vary a declaration in relation to an offsets project so far as the declaration identifies the project proponent for the project.

70. The 'project proponent' for a project is the person who is responsible for carrying out the project, has the legal right to carry out the project and, in relation to a sequestration offsets projects, holds the applicable carbon sequestration right in relation to the project area (section 5 of the CFI Act).

71. The project proponent could change for a variety of reasons, including because the project area is sold, the owner of the project area has contracted another person to conduct an offsets project on their land, or the carbon sequestration right has been assigned to another person.

72. New regulation 3.17 specifies that the application for the variation must be accompanied by the information and documentation specified in this regulation. This will assist the Regulator to verify that the applicant is the project proponent.

73. The Regulator may also require the new project proponent to give security to the Commonwealth in relation to the fulfilment of any relinquishment requirements imposed on the applicant under the CFI Act.

3.18 Voluntary variation of declaration of conditional eligible offsets project—removal of condition

74. If, at the time of making an eligible offsets project declaration, the Regulator is not satisfied that all regulatory approvals have been obtained for the project, the Regulator must make the declaration subject to the condition that all regulatory approvals must be obtained before the end of the first crediting period for the project (section 28 of the CFI Act). Section 5

of the CFI Act provides that the term 'regulatory approval', in relation to an offsets project, means an approval, licence or permit (however described) that:

a) relates to, or to an element of, the project; and

b) is required under a law of the Commonwealth, a State or Territory that relates to:

(i) land use or development; or

(ii) the environment; or

(iii) water.

75. A certificate of entitlement cannot be issued in relation to an eligible offsets project unless the Regulator is satisfied that any condition relating to regulatory approvals has been met (paragraph 15(2)(e) of the CFI Act). If the condition has been met, the project proponent may apply to the Regulator for the condition to be removed from the declaration.

76. New regulation 3.18 empowers the Regulator to vary a declaration in relation to an offsets project by removing a condition that all regulatory approvals must be obtained for the project before the end of the first crediting period for the project. The Regulator may only remove the condition if satisfied that the condition has been met.

77. The application for the variation must be accompanied by the information specified in this regulation. This information is designed to assist the Regulator to decide whether the condition has been met.

Division 3.3—Revocation of declaration of eligible offsets project

78. The regulations in this Division deal with the revocation of a declaration of eligible offsets project, and are made for subsections 32(1), 33(1), 34(1), 35(1), 36(1), 37(1), 38(1) and 139(1) of the CFI Act *[regulation 3.19]*. If a declaration of eligible offsets project is revoked, the project ceases to be an eligible offsets project under the CFI Act.

79. The Regulator must notify the project proponent and, if the project is a sequestration offsets project, the relevant land registration official, of the revocation of the declaration by providing a copy of the revocation. This is to enable the removal of any notification placed on the relevant land title *[regulation 3.20]*.

80. An application for voluntary revocation of a declaration that a project is an eligible offsets project can be made at any time.

81. If no ACCUs have been issued in respect of the project, or the project is an emissions avoidance offsets project, the declaration may be revoked *[regulation 3.24]*.

82. If ACCUs have been issued, and the project is a sequestration offsets project, the declaration may only be revoked if an appropriate number of units are handed back before the application is made. If Kyoto ACCUs were issued in relation to the project (and have not

previously been relinquished), then the same number of Kyoto ACCUs must be handed back; similarly, if non-Kyoto ACCUs were issued in relation to the project, then the same number of non-Kyoto ACCUs must be handed back *[regulation 3.23]*.

83. If the project is an emissions avoidance project, the proponent is not required to hand back ACCUs. This is because permanence obligations do not apply to this type of project.

84. An application for a voluntary revocation must be made in an approved form *[regulation 3.21]*. The project proponent, a nominee of multiple project proponents or an agent of a project proponent or a nominee may make the application. The application must contain contact details and information to identify the relevant project, and a declaration that all information in the form is accurate. The application must also include information about the number and type of ACCUs issued in respect of the project (if any) and confirmation that the appropriate number and type of ACCUs have been relinquished (if necessary) *[regulation 3.22]*. This information will be cross checked against the Regulator's records.

85. The Regulator has power to request further information in relation to the application, if necessary, and may refuse to consider an application, or to take any further action on an application, if that further information is not provided *[regulation 3.24A]*. Any further information requested must be relevant to the application, and the power to request that further information must be exercised in a reasonable way (section 288 of the CFI Act).

3.25 Unilateral revocation of declaration of eligible offsets project - consultation requirement

86. New regulation 3.25 requires the Regulator to consult the project proponent prior to unilaterally revoking a declaration. The project proponent will have 28 days after the date of the notice to make submissions about the proposed revocation.

3.26 Unilateral revocation – eligibility requirements not met

87. New regulation 3.26 empowers the Regulator to unilaterally revoke a declaration in relation to an offsets project if satisfied that the project does not meet the eligibility requirements set out in this regulation.

88. The effect of this regulation is that the Regulator has power to unilaterally revoke a declaration if:

- the project is no longer carried out in Australia;
- the project is no longer covered by a methodology determination or does not meet such requirements as are set out in the methodology determination in accordance with paragraph 106(1)(b) of the CFI Act;
- the project starts to use harvested native forest materials; or
- the project fails to meet the eligibility requirements (if any) specified in the Principal Regulations.

89. The requirements that a project must pass the additionality test and not be an excluded offsets project (paragraphs 27(4)(d) and (m) of the CFI Act) are not included in this regulation. The effect of this is that a project that, at the time the declaration was made, passes the additionality test and is not an excluded offsets project, will continue to be eligible for the duration of the project's crediting period despite any subsequent change to regulations that affect whether the project passes the additionality test or is an excluded offsets project. However, if the project proponent for the project applies to the Regulator for a subsequent crediting period, the Regulator could only make the determination if the project passes the additionality test (section 74(3)(d) of the CFI Act).

90. If a methodology determination expires, is revoked or is varied, projects may also continue applying it for the remainder of the crediting period. However, changes to a project may result in the methodology no longer being applicable, and a unilateral revocation could occur in these situations.

3.26A Unilateral revocation – all other cases

91. New regulation 3.26A empowers the Regulator to unilaterally revoke a declaration in relation to an offsets project for a reason mentioned in the table if the relevant requirements mentioned in the table are met.

92. The effect of item 1 of the table is that the Regulator may unilaterally revoke a declaration in relation to an offsets project if satisfied that a condition that all regulatory approvals must be obtained before the end of the first crediting period has not been met.

93. The effect of item 2 of the table is that the Regulator may unilaterally revoke a declaration in relation to an offsets project if the project proponent ceases to be a recognised offsets entity. The Regulator may cancel the recognition of a person as an offsets entity in the circumstances described in subsection 65(1) of the CFI Act and regulation 4.12 of the Principal Regulations.

94. The declaration can only be revoked if, 90 days after the project proponent ceases to be a recognised offsets entity, the person that is the project proponent at the end of that time period is not a recognised offsets entity. This gives a project proponent that ceases to be a recognised offsets entity 90 days during which to sell or otherwise transfer the project to someone who can participate in the scheme**.**

95. The effect of item 3 of the table is that the Regulator may unilaterally revoke a declaration in relation to an offsets project if the person responsible for carrying out the project ceases to be the project proponent (for example, because the person sells or transfers the legal right to carry out the project).

96. The declaration can only be revoked if, after 90 days, the person who is responsible for carrying out the project is not the project proponent and is not a recognised offsets entity. In effect, this gives a person who buys an offsets project 90 days to become a recognised offsets entity.

97. The effect of item 4 of the table is that the Regulator may unilaterally revoke a declaration in relation to an eligible offsets project if a person has provided false or misleading information to the Regulator in or in connection with an application, in an offsets report or in a notification under Part 6 of the CFI Act.

98. The effect of item 5 of the table is that Regulator may unilaterally revoke a declaration in relation to an eligible offsets project if there has been a failure of multiple project proponents to nominate a nominee.

99. There may be some circumstances where more than one person has the responsibility and legal right to carry out a project and holds the carbon sequestration right, for example, a married couple or a partnership. In these circumstances, the multiple project proponents may jointly nominate one member of the group to represent the group in relation to applications made under the CFI Act, the operation of Registry accounts and the service of documents (section 136 of the CFI Act). ACCUs can only be issued in respect of multiple project proponents if such a nomination is in force (subsection 141(4)).

100. A nomination ceases if it is revoked by a member of the group or if the nominee ceases to be a member of the group (subsections 136(5) and (6)). If the nomination ceases, and no new nomination is made within 90 days, the Regulator may revoke the declaration. In effect, the multiple project proponents have 90 days to nominate a new member to represent the group.

Items [25]-[32]: Regulation 3.28 Specified offsets projects

101. Paragraph 41(1)(a) provides that for the purposes of the CFI Act, an offsets project passes the first part of the additionality test if the project is of a kind specified in the regulations. The Regulator must not declare that an offsets project is an eligible offsets project unless the project passes the additionality test (paragraph 27(4)(d) of the CFI Act). The list of projects that have been specified for the purposes of paragraph 41(1)(a) of the CFI Act is known as the 'positive list'. These items insert the diversion of mixed solid waste from landfill as an additional activity on the positive list.

102. Mixed solid waste is waste that contains both putrescible and non putrescible materials. The diversion of the putrescible component from mixed solid waste only applies to putrescible waste that would otherwise have been deposited in a landfill.

103. The diversion of green waste – such as garden green waste, street tree prunings, wood waste, manure or bedding from intensive livestock management or any other material that would not usually go to landfill – is not part of a mixed solid waste project.

104. Diversion of putrescible waste will only be eligible until 1 July 2012 as emissions from waste entering landfill after this date will be covered by the carbon pricing mechanism and no longer eligible to generate offsets.

Item [33]: Regulation 3.29 Additionality test – requirements under other laws

105. This item inserts new regulation 3.29 in the Principal Regulations. It deals with the operation of the additionality test.

106. A project will only pass the second part of the additionality test if the project is not required to be carried out by or under a law of the Commonwealth, a State or a Territory (paragraph 41(1)(b) of the CFI Act). However, paragraph 41(1)(b) of the CFI Act does not apply to a requirement of a kind specified in the regulations (subsection 41(4A) of the CFI Act).

107. New regulation 3.29 provides that paragraph 41(1)(b) of the CFI Act does not apply to the following kinds of requirements:

- Requirements resulting from a conservation covenant. Once landholders enter into a conservation covenant with a government body, certain activities may become required by law. However, because landholders voluntarily enter into conservation covenants, activities conducted under them are still potentially additional and should therefore be excluded from the application of paragraph 41(1)(b) of the CFI Act.

- Requirements to offset emissions for which a person will also be liable under the *Clean Energy Act 2011* or any of its associated provisions. If a person had to pay to offset their emissions under a law of the Commonwealth, a State or a Territory, and then pay again for the emissions under the carbon pricing mechanism, they would pay twice for the same emissions. This is not in keeping with the reasons why paragraph 41(1)(b) was included in the CFI Act.

Item [34]: Division 3.9—Eligible interest in an area of land

108. This item inserts new Division 3.9 in the Principal Regulations, which specifies the circumstances in which a person is taken to hold an eligible interest in an area of land.

3.30 Land transferable to an Aboriginal land council

109. The consent of all persons with an 'eligible interest' in a project area must be obtained before the Regulator can declare that a sequestration offsets project is an eligible offsets project (paragraph 27(4)(k) of the CFI Act). Section 5 of the CFI Act provides that the term 'eligible interest', in relation to an area of land, has the meaning given by section 44, 45 or 45A.

- In relation to Torrens system land, a person holds an eligible interest in the land if the person holds a registered legal estate or interest in the land, or any registered mortgage or charge over such an interest. If the land is Crown land or land rights land, the Crown lands Minister holds an eligible interest in the land, unless the land is freehold land rights land.

- The Crown lands Minister holds an eligible interest in Crown land that is not Torrens system land, unless the land is exclusive possession native title land or freehold land rights land. Any person with a legal estate or interest in the land, where the estate or interest came into existence as a result of a Crown grant or was created under legislation, or a mortgage or charge over such an interest, also holds an eligible interest.

110. Persons specified, or ascertained in accordance with, the regulations also hold an eligible interest in the area of land for the purposes of the CFI Act. This regulation identifies persons who have an 'eligible interest' in an area of land for the purposes of the CFI Act.

111. The effect of new regulation 3.30 is that an Aboriginal land council will hold an eligible interest in relation to any land it has successfully claimed to be land rights land under a law of the Commonwealth, a State or a Territory, but which has not yet been registered on a Torrens system of land registration. This is to prevent disadvantage to Aboriginal people merely because final registration of land under the Torrens system, which is an administrative formality, can take a very long time and, in some cases, years.

Items [35] and [36]: Excluded offsets projects – specified tree planting

112. These items make technical amendments to align the reference to water access entitlements in paragraphs 3.37(8)(a) and (b) with the drafting used in the rest of this Division, and the definitions in regulation 3.34 of the Principal Regulations.

Item [37]: Division 3.13—Restructure of eligible offsets projects

113. This item, which deals with the restructure of eligible offsets projects, inserts new Division 3.13 in the Principal Regulations.

3.38 General

114. The CFI Act provides for a project area to be transferred between eligible offsets projects, for example if a landholder purchases part of their neighbour's reforestation project. It also provides for a project area to be separated from the original project, for example if part of a reforestation project that has been declared to be an eligible offsets project is sold to a new project proponent.

115. The regulations in this new Division provide for the Regulator to adjust the crediting and reporting requirements for sequestration projects where part of the project area is transferred to another project or becomes a new stand-alone project. They also ensure that permanence requirements run with the land.

116. This regulation provides that the Division is made for subsection 57(2) of the CFI Act.

117. Several terms used in this Division are defined in subsection 57(1) of the CFI Act.

- The *relevant area* is an area of land that is moved from one project to a second project through a variation to a section 27 declaration.
- The *transferor offsets project* is the project of which the relevant area was initially part.
- The *transferee offsets project* is the project of which the relevant area is a part following the restructure.

3.39 Adjusting the net total number of Australian carbon credit units

118. In very general terms, ACCUs do not need to be relinquished if an area of land constituting part of a sequestration offsets project that has been declared to be an eligible offsets project is transferred to another eligible offsets project and remains subject to permanence

requirements. Instead, the transferee project proponent will become responsible for the permanence of ACCUs issued in relation to the transferred area. This allows for the smooth transition of an area or areas of land from one sequestration offsets project to another.

119. New regulation 3.39 allows the Regulator to adjust the 'net total number' of ACCUs issued in relation to a transferee or transferor offsets project. The net total number of ACCUs issued in relation to an offsets project is required for working out relinquishment requirements in relation to a sequestration offsets project.

120. The Regulator must also take into consideration any ACCUs that could be issued for the relevant area at the time of the transfer, but which have not yet been issued. This includes an estimate of credits for any abatement that has been included in an offsets report, but for which no certificate of entitlement has been issued. It also includes any abatement that has happened on the relevant area between the last report for the transferor offsets project and the date the restructure of the project areas occurred.

121. The determination will be amended once an application for a certificate of entitlement is submitted to the Regulator for the transferor offsets project for the reporting period covering the restructure, and any previous reporting periods for which no such application had been submitted. The effect of the amendment is that the Regulator will incorporate into the determination the actual number of ACCUs issued in relation to the relevant area, rather than an estimate.

3.40 Adjusting crediting period – transferee offsets project

122. A crediting period is the period during which the applicable methodology determination and the risk of reversal buffer cannot be changed without the consent of the project proponent. The crediting period for a project provides certainty to the project proponent and any investors in the project that a project will remain an eligible offsets project within the meaning of the CFI Act for that period of time, subject to eligibility requirements being met. This means that an eligible offsets project can continue to operate for the remainder of the crediting period, even if the applicable methodology determination has been revoked or amended, or the kind of project has been removed from the 'positive list' and therefore no longer passes the additionality test.

123. New regulation 3.40 provides for the duration of the crediting period for the transferee offsets project to be amended.

124. The end date of the crediting period for the transferee offsets project may be aligned with the end date of the crediting period for the transferor offsets project. Whether it is amended will depend on whether the project, as it stands immediately following the restructure, would qualify for a subsequent crediting period.

- If the transferee offsets project would qualify for a subsequent crediting period, the end date of its crediting period will align with the end date of whichever of the transferee or transferor offsets project's crediting period began later. This is to recognise that the project still complies with all of the relevant eligibility requirements.
    - For example, Mary and Graham are neighbours. Both Mary and Graham have

environmental planting projects under the same methodology determination, which have a 15 year crediting period. Graham started his project in 2010, so his crediting period goes until 2025. Mary started her project in 2012 so her crediting period goes until 2027. Mary decides she wants to sell half of her land. Graham decides to buy it from her and add it to his project. The crediting period for Graham's expanded project will now end in 2027. This is because Mary's crediting period started later than Graham's, the project activity remains on the positive list and the methodology determination remains current.

- If the transferee offsets project would not qualify for a subsequent crediting period, the end date of its crediting period will align with the end date of whichever of the transferee or transferor offsets project's crediting periods began earlier. This is so that a project operating under a methodology determination which has since been replaced cannot extend its crediting period, and therefore the time it can continue using the methodology determination, by incorporating a small area of a project that has a crediting period that commenced later than the crediting period to which the rest of the project is subject.

  – For example, if Mary and Graham were using a methodology determination that had been replaced by a newer version, Mary could keep using the old methodology determination until 2027 and Graham could use the old methodology until 2025 (until the end of their crediting periods). Graham sells Mary half of his land. Mary wants to keep running the expanded project. Because the methodology is no longer current, the crediting period for the expanded project will end when Graham's crediting period would have ended, in 2025.

125. If the project is aligned with the earlier crediting period, this would mean the whole transferee offsets project, including the original project area, will be subject to this crediting period. This is the case even if the resulting period is shorter than the crediting period specified for the project under sections 69 or 70 of the CFI Act, or regulations made for the purpose of these sections.

126. In future, this regulation may be amended to take into account whether the risk of reversal buffer number, as determined in accordance with any regulations made for subsection 16(2), matches that applied to the transferee offsets project.

3.41 Adjusting reporting period – transferee offsets project

127. New regulation 3.41 provides for the duration of a reporting period for the transferee offsets project. The effect of the regulation is that the reporting period of the transferee offsets project will end no more than five years after the end of the previous reporting period for either the transferee offsets project or the transferor offsets project, whichever is earlier.

128. The transferor offsets project and the transferee offsets project will both report on the relevant area for the period of time within the reporting period the relevant area was a part of the project.

129. It is expected that, generally, the project proponent of a transferor offsets project will end a reporting period immediately before the restructure. This will simplify arrangements for

the transfer of project areas, including the transfer of records. It will be important to ensure that relevant records are transferred to enable the project proponent of the transferee offsets project to meet their record-keeping, reporting or auditing obligations under the CFI Act and associated Regulations.

Items [38] and [39]: Application for recognition as an offsets entity

130. The new definition of 'certified copy' under regulation 1.3 is applicable for all cases where a certified copy of a document is required, other than for the purposes of Division 4.1. For this Division only, the documentation requirements for proof of identity purposes mirror those in the *Australian National Registry of Emissions Units Regulations 2011* ('Registry Regulations').

131. Item [38] would replace paragraph (a) of the definition of 'certified copy'. This paragraph lists the categories of persons who can, for the purposes of the Registry Regulations, certify a copy of a document as a true copy. This list generally accords with the list of certifiers accepted by the Australian Taxation Office. Paragraph (a) applies when the copies that are required to be certified are located within Australia. The persons who can certify that such copies are true must also be located within Australia.

132. Item [39] would make a technical amendment to paragraph (b)(ii) of the definition of 'certified copy'. Paragraph (b) applies when the copies to be certified are located overseas. This item corrects the reference to the Convention Abolishing the Requirement for Legalisation for Foreign Public Documents and inserts a note explaining where the text of that Convention is located.

Items [44]-[45]: Proof of identity - Aboriginal person and Torres Strait Islanders

133. Paragraph 61(1)(c) of the CFI Act provides that an application for recognition as an offsets entity must be accompanied by information that is specified in the regulations. Item [44] provides that, where the applicant is a body corporate that is an Aboriginal and Torres Strait Islander corporation, the application must be accompanied by the body's Indigenous Corporation Number within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. This mirrors requirements under the Registry Regulations.

134. Item [45] is a technical amendment. It omits the definitions of *Aboriginal person* and *Torres Strait Islander* from subregulation 4.7(4). This is because these definitions are now incorporated in regulation 1.3.

Item [46]: Parts 5 and 6 of the Principal Regulations

135. This item inserts new Parts 5 and 6, which deal with crediting periods and reporting and notification requirements, into the Principal Regulations.

PART 5—CREDITING PERIODS

5.1 First crediting period

136. The crediting period for a project provides certainty that a project will remain eligible under the CFI for a period of time, subject to eligibility requirements being met. This means that a project can continue to operate for the remainder of its crediting period, even after a methodology determination has been revoked or amended, or the kind of project has been removed from the 'positive list', and would therefore not pass the additionality test.

137. For a project other than a native forest protection project, the crediting period is seven years unless another period is specified in the regulations (paragraph 69(1) of the CFI Act).

138. New regulation 5.1 provides that, for an eligible offsets project that is a reforestation project or that establishes forest on non-forest land by seeding or planting, the first crediting period is 15 years.

139. A longer crediting period is justified for these projects because estimation methods are well established, and the activity has a long payback period.

5.2 Subsequent crediting period

140. New regulation 5.2 provides that the subsequent crediting period for an eligible project that is a reforestation project or a project that establishes forest on non-forest land by seeding or planting is 15 years.

PART 6—REPORTING AND NOTIFICATION REQUIREMENTS

Division 6.1—Offsets reports

141. An offsets report assists the Regulator to determine whether a project is on track and whether any action needs to be taken in relation to it. The Regulator will use the report to confirm emissions and removals over the reporting period, consider or commence information gathering and/or project monitoring arrangements, determine (in conjunction with an audit report) whether or not to issue ACCUs and, if so, how many, and assess the need to take action to vary or revoke a project.

6.1 Manner and form of offsets reports

142. Paragraph 76(4)(a) of the CFI Act provides that an offsets report about a project for a reporting period must be given in the manner and form prescribed by the regulations. New regulation 6.1 provides that an offsets report must be in the form approved in writing by the Regulator. This will be available from the Regulator's website. Reports must be posted or sent electronically (including by fax) to the Regulator.

6.2 Information for offsets reports - general

143. Paragraph 76(4)(b) of the CFI Act provides that an offsets report about a project must set out the information specified in the regulations. New regulation 6.2 specifies the information that must be set out in an offsets report.

144. The effect of new regulation 6.2 is that an offsets report must identify the project and the applicable methodology determination. It must contain all of the calculations used to determine the net abatement amount for the project, as required by the applicable methodology determination; it must show that the project has been implemented in accordance with the methodology determination; whether the project is consistent with any regional natural resource management plan that covers the project area; whether the project is covered by a prescribed non-CFI offsets scheme (and thus subject to no-double counting provisions); and must include any other information or documentation required to be submitted in the report under the applicable methodology determination.

145. An offsets report must be submitted within three months of the end of the relevant reporting period and be accompanied by a prescribed audit report (paragraphs 76(4)(c) and (e) of the CFI Act). Requirements for a prescribed audit report, and the circumstances in which a person is exempted from the requirement to submit a prescribed audit report, are set out in regulations 1.11 to 1.13.

146. An application for a certificate of entitlement must be accompanied by an offsets report for the relevant reporting period. Requirements in relation to an application for a certificate of entitlement are set out in regulation 2.1.

147. Subsequent reporting periods commence from the end of the preceding reporting period, and may be any period between 12 months and five years (subsection 76(2)). The offsets report should indicate when the project proponent expects the next reporting period for the project to end. This will point to the timeframe within which the Regulator should expect to receive the next offsets report, however the proponent may revise their reporting period at any time.

6.3 Information for offsets reports – projects affected by a prescribed non-CFI offsets scheme

148. Special rules apply about the information that must be set out in an offsets report if the project is also covered by a prescribed non-CFI offsets scheme, such as Greenhouse Friendly, GGAS or the Verified Carbon Standard (VCS).

149. New regulation 6.3 specifies that an offsets report about such a project must include information and documentation about crediting, registration and/or accounting for abatement under the other scheme. For a sequestration offsets project, this includes information relating to crediting and/or accounting for abatement that happened prior to the reporting period in question. This is to ensure that there is no double counting of this abatement under both the CFI Act and the other scheme. The information included in the offsets report as a result of this regulation will be used for the calculation of unit entitlement under regulations 2.3, 2.4 or 2.5.

6.4 Documentation for offsets reports

150. Paragraph 76(4)(d) of the CFI Act provides that an offsets report about a project for a reporting period must be accompanied by such other documents as are specified in the regulations. New regulation 6.3 specifies that an offsets report must be accompanied by any documentation that is required to be submitted under the applicable methodology determination, as well as by documentation that supports the information about crediting, registration and/or accounting for abatement under a prescribed non-CFI offsets scheme, as mentioned above.

151. The project proponent must authorise the Regulator to contact the administrator of any applicable prescribed non-CFI offsets scheme to verify the information and documentation provided. As provided for in regulation 2.2, if the Regulator is not satisfied that the information will lead to an accurate calculation of abatement that is eligible for crediting, no ACCUs will be issued.

Division 6.2—Notification requirement

6.10 Notification requirement – significant reversal

152. The CFI Act requires a project proponent to notify the Regulator in writing of certain events which cause (or are likely to cause) a significant reversal of the sequestration of carbon achieved by an offsets project, including where there has been (or is likely to be) a reversal of sequestration due to a natural disturbance (such as a bushfire) or the conduct of another person (sections 81 and 82 of the CFI Act). These notification requirements only apply if the reversal is, under the regulations, taken to be a significant reversal.

153. New regulation 6.10 describes the circumstances in which a reversal of the removal of carbon dioxide from the atmosphere is taken to be significant.

154. For these purposes, a significant reversal of the removal of carbon dioxide from the atmosphere occurs where the event causing the reversal (e.g. a bushfire) affects more than five per cent of the project area or 50 hectares (whichever is lesser). If the event causing the reversal affects five per cent or less of the project area, or less than 50 hectares (whichever is lesser), then the reversal is not significant, and the proponent need not notify the Regulator of the event.

6.11 Notification requirement

155. Subsection 85(2) of the CFI Act provides that the regulations may make provision requiring a person who is the project proponent for an eligible offsets project or a recognised offsets entity to notify the Regulator of a matter. New regulation 6.11 specifies when a project proponent or a recognised offsets entity is required to notify the Regulator of various matters.

156. If a project proponent discovers an error in a previously submitted offsets report, the proponent must notify the Regulator within 90 days of discovering the error.

157. Similar to the notification requirements for significant reversal under regulation 6.10, subregulation 6.11(3) provides that if a reversal of abatement is deliberately caused, and that

reversal is on an area covering more than five per cent of the project area or 50 hectares (whichever is lesser), the project proponent must notify the Regulator. This will alert the Regulator of any potential need for relinquishment or a carbon maintenance obligation in advance of the end of the reporting period, which may otherwise be up to five years away.

158. Subregulation 6.11(4) requires a recognised offsets entity to notify the Regulator if there is any change to the entity's name, business name, trading name or contact details. It also requires a recognised offsets entity to notify the Regulator of any change with respect to meeting the criteria for recognition in section 64 of the CFI Act. These criteria include that the applicant is a fit and proper person to be a recognised offsets entity; if the applicant is an individual—that the person is not an insolvent under administration; and if the applicant is a body corporate—that the applicant is not an externally-administered body corporate.

Item [47]: Regulation 7.1A Requirement to relinquish – significant reversal

159. This item inserts new regulation 7.1A, which provides for the meaning of 'significant reversal' in Part 7 of the CFI Act, in the Principal Regulations.

160. This regulation also defines 'significant reversal' as above, for the purposes of determining whether ACCUs need to be relinquished as a result of a significant reversal of sequestration otherwise than due to natural disturbance or the action of others (section 90), or where the significant reversal is due to natural disturbance or the action of others and the project proponent has not taken reasonable steps to mitigate the effect of that event (section 91).

Item [48]: Regulations 9.2 and 9.3 – methodology determination variations

161. This item inserts new provisions, which provide for the variation of a methodology determination and requests to approve the application of a varied methodology determination to a project, into the Principal Regulations.

9.2 Application for endorsement of proposal for variation of a methodology determination

162. Methodology determinations underpin the operation of projects under the CFI Act. A methodology determination is a legislative instrument that can be varied by the Minister.

163. A variation might be sought, for instance, because new scientific evidence supports refinements to the carbon estimation models set out in the original methodology determination. A variation may also be sought to expand the coverage of a methodology determination to account for new technologies or management practices.

164. The Minister must not vary a methodology determination unless the variation has been assessed and endorsed by the Domestic Offsets Integrity Committee (DOIC) (subsection 114(2) of the CFI Act). Any person may apply to the DOIC for endorsement of a specified proposal for the variation of a methodology determination, including persons other than the original methodology applicant. An application for endorsement of a variation proposal must be in the approved form, which is available from the Department's website.

165. The effect of paragraphs 117(1)(d) and (e) of the CFI Act is that an application to the DOIC for endorsement of a proposal for the variation of a methodology determination must be accompanied by such information and documents as are specified in the regulations.

166. New regulation 9.2 provides that an application must be accompanied by information about the methodology determination that is the subject of the application, and the reasons why it should be varied. An application must also be accompanied by the information and the documents specified for making such an application under section 116 of the Act in the *Guidelines for Submitting Methodologies,* published by the Department and as in force from time to time. At the time the Regulation was made, the guidelines were available from the Department's website at www.climatechange.gov.au.

167. The DOIC has the power to require further information, and may refuse to consider an application for endorsement of a variation proposal if this information is not provided (section 118 of the CFI Act).

168. A variation to a methodology determination takes effect when it is made, or at a later time specified in the variation determination. However, the original determination continues to apply to existing offsets projects unless the Regulator approves otherwise (sections 126 and 130 of the CFI Act).

9.3 Request to approve application of methodology determination to a project with effect from the start of a reporting period

169. Only one methodology determination can be used to estimate abatement over a reporting period for an eligible offsets project. This is known as the 'applicable methodology determination'. That determination will apply until the end of the project's crediting period unless the Regulator approves otherwise. This is the case even if the determination is varied, expires or is revoked (section 125, 126 and 127 of the CFI Act).

170. A project proponent can apply for the Regulator to approve the application of a specified methodology determination to the project with effect from the start of a reporting period. This approval might be sought, for instance, if a different or varied methodology determination would result in more accurate and higher abatement estimates.

171. This regulation specifies the information and documents that must accompany a request to approve the application of a methodology determination to a project with effect from the start of a reporting period.

172. A request must be in the approved form which is available from the Regulator's website. The request must identify and describe the project, identify the methodology determination that the applicant seeks to apply to the project, and include confirmation that the project meets the requirements of that methodology determination.

173. The Regulator has power to require further information, and may refuse to consider a request if this information is not provided (section 129 of the CFI Act).

Item [49]: Parts 11, 17, 18 and 19 of the Principal Regulations

174. This item inserts new Parts 11, 17, 18 and 19, which deal with the transmission of ACCUs by operation of law, record-keeping requirements, identity cards and reimbursement of costs associated with compliance audits, in the Principal Regulations.

PART 11—AUSTRALIAN CARBON CREDIT UNITS

11.1 Transmission of Australian carbon credit units by operation of law

175. The transmission of ACCUs by operation of law means that there is a legal requirement for the transfer. This may occur, for example, for the purposes of the *Bankruptcy Act 1966*, Chapter 5 of the *Corporations Act 2001* (which relates to external administration of corporations), the *Proceeds of Crime Act 2002* or the law relating to wills, intestacy and deceased estates. A transmission of an ACCU by operation of law is of no effect, however, until the Regulator transfers the unit in accordance with section 153 of the CFI Act. Within 90 days of the transmission, the transferee must give the Regulator a written declaration of transmission, together with evidence of the transmission. This regulation specifies how the declaration of transmission must be made and the evidence of transmission that must accompany it.

176. The declaration must set out the serial numbers of the ACCUs transmitted, the name, contact and Registry details of the transferor and transferee and a brief description of the circumstances that resulted in the transmission (for example, the bankruptcy or death of the transferor). If the transferee does not already have a Registry account, the declaration must be accompanied by a request to open an account.

177. The declaration must also be accompanied by a certified copy of a document showing transmission of the title to the ACCU to the transferee. For example, if the transmission occurs on the making of a court order, a certified copy of the court order must be provided; if the transmission occurs by reason of the death of the transferor, a certified copy of the probate of the will or letters of administration of the estate should be provided.

11.5 and 11.6 Exchange of Kyoto ACCUs – conditions and required steps

178. The CFI Act provides for Kyoto ACCUs to be exchanged for units created under the Kyoto Protocol. This enables internationally recognisable abatement to be exported, giving abatement providers access to a larger carbon market. Each type of Kyoto unit is subject to different arrangements for acceptance into the various carbon markets around the world. Proponents should research their options carefully before requesting exchange of Kyoto ACCUs for Kyoto units, as this exchange cannot be subsequently reversed.

179. Regulation 11.5 sets out the conditions that must be fulfilled for this exchange of units to take place, and regulation 11.6 sets out how the exchange is to be done.

180. Abatement that occurs during the Kyoto Protocol's first commitment period (that is, up to the Kyoto abatement deadline, as defined in section 5 of the CFI Act and regulation 1.5 of the Principal Regulations) may receive a Kyoto unit generated for the first commitment period.

181. Any Kyoto ACCU may be exchanged for an assigned amount unit, and this is a relatively straightforward exchange.

182. A Kyoto ACCU generated for abatement from a sequestration offsets project may be exchanged for a removal unit. Removal units are issued into Australia's Kyoto accounts for net removals of greenhouse gases from activities under Article 3.3 of the Kyoto Protocol (afforestation, reforestation and deforestation). A Kyoto ACCU generated for abatement from an emissions avoidance project may not be exchanged for a removal unit.

183. If an eligible offsets project is also certified as a joint implementation project under the Kyoto Protocol, a Kyoto ACCU generated by that project may also be exchanged for an emission reduction unit. The office responsible for the approval of Australian participation in joint implementation projects is Australia's National Authority for the Clean Development Mechanism (CDM) and Joint Implementation (JI). At the time this regulation was made, this office sits within the Department of Climate Change and Energy Efficiency.

184. Approval by Australia (the 'host party' for the project) is one step in the international acceptance of a project as a joint implementation project. The proponent must also secure approval of the project from an 'investor party' – another developed country with a target under the Kyoto Protocol – and pay an administrative fee to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC), which acts as an international secretariat for joint implementation projects. Once these steps have been fulfilled, the UNFCCC Secretariat will issue an international transaction log project identifier for the project. This identifier must be provided to the Regulator. Without this identification, the international transaction log (the computer system that manages all transactions of Kyoto units) will not allow an emission reduction unit to be created.

185. In accordance with the Kyoto rules, an emission reduction unit is created by converting an assigned amount unit or a removal unit through amendments to the original unit's serial number. Similar to the provisions for the exchange of Kyoto ACCUs for removal units, if a Kyoto ACCU has been generated for abatement from a sequestration offsets project and the proponent requests its exchange for an emission reduction unit, that emission reduction unit must have been created through the conversion of a removal unit. If a Kyoto ACCU has been generated from abatement from an emissions avoidance project and the proponent requests its exchange for an emission reduction unit, that emission reduction unit must have been created through the conversion of an assigned amount unit.

PART 15—RELINQUISHMENT OF ACCUS

15.4 Market value of Kyoto ACCUs

186. Section 179 of the CFI Act provides for the imposition of a penalty for non-compliance with a relinquishment requirement. The penalty is worked out by multiplying the net number of units to be relinquished by the 'prescribed amount'. The 'prescribed amount' is the greater of $20 or 200 per cent of the market value of the ACCU. Subsection 179(6) provides that regulations may provide that the 'market value' of an ACCU is to be ascertained in accordance with the regulations.

187. This regulation links the 'market value' of a Kyoto ACCU with the market value of carbon units issued under the *Clean Energy Act 2011* (the Clean Energy Act). The market value of a Kyoto ACCU is defined as being equivalent to the price fixed for carbon units by the Clean Energy Act for the fixed price years of the carbon pricing mechanism (see section 100 of the Clean Energy Act) and the average auction price of carbon units during the flexible price period.

PART 17—RECORD-KEEPING AND PROJECT MONITORING REQUIREMENTS

17.1 Record-keeping requirements – general

188. The record-keeping requirements established by the CFI Act and the Principal Regulations are a key component of the monitoring and enforcement mechanisms under the scheme, and are designed to reinforce compliance obligations and ensure the overall integrity of the scheme. The purpose of this regulation is to ensure that project proponents retain accurate, complete and appropriate records of information provided to the Regulator, which may be inspected and audited.

189. New regulation 17.1 specifies the information a project proponent must record to meet the record-keeping requirements under section 191 of the CFI Act.

190. The project proponent must keep a record of:

- all correspondence with the Regulator regarding an eligible offsets project;
- all information (including data) that an applicable methodology determination requires to be recorded;
- information about the project proponent's legal right to carry out a project, including ownership of the project area or other legal arrangement such as a contract or lease, as varied from time to time, and ownership of carbon sequestration rights associated with the project area, as varied from time to time etc. If the project is on exclusive possession native title land, the project proponent does not need to show evidence of the legal right to carry out the project or the carbon sequestration rights as the CFI Act deems the registered native title body corporate to be the project proponent in this case (section 48 of the CFI Act);
- decisions the project proponent has made in relation to obligations under the CFI Act and Regulations and the reasoning behind such decisions;
- material information about project variations, including in relation to changes in project area, the project proponent and whether regulatory approvals have been obtained;
- material information about all regulatory approvals obtained in relation to the project, including identity of issuer and date of issue;
- all offsets reports and prescribed audit reports;

- material information about any uncertainties associated with data used to determine abatement, including the information, processes and procedures used to derive any uncertainty estimates;

- any assumptions made in abatement calculations and the processes and procedures used to derive the assumptions;

- any event that has the potential to significantly impact abatement generation (either an increase or decrease) from what would normally be expected from the project;

- organisational structures and decision making authorities and any material changes to the company's corporate structure and organisational boundaries if the proponent is not an individual;

- all processes and procedures used to collect, document and process the data used in determining abatement from the project; and

- information about any crediting, registration or accounting of abatement under an offsets scheme other than the CFI (i.e. both prescribed non-CFI offsets schemes and any other carbon offsets scheme).

191. The records must show the proponent has complied with the Regulator's requirements, the CFI Act and Principal Regulations, and the applicable methodology determination.

192. The original or copy of the record must be kept for seven years after the making of the record. This is consistent with financial recordkeeping requirements for companies under the *Corporations Act 2001*. Civil penalties may apply if a person does not comply with the requirements.

17.2 Record-keeping requirements – preparation of offsets report

193. New regulation 17.2 specifies that if a project proponent makes a record of particular information and used that information to prepare an offsets report, the project proponent must retain the record or a copy of the record for seven years after the offsets report was given to the Regulator.

194. The purpose of this regulation is to ensure that project proponents retain accurate, complete and appropriate records of information provided to the Regulator, which may be inspected and audited.

PART 18—MONITORING POWERS

18.1 Identity cards

195. Inspectors may enter premises in specified circumstances for the purpose of determining whether the CFI Act or the associated provisions (including the Principal Regulations) have been complied with, or substantiating information provided under the legislation. The Regulator

is required to issue identity cards to inspectors, and the cards must be in the prescribed form (subsection 197(2) of the CFI Act).

196. New regulation 18.1 prescribes the form an identity card issued to an inspector appointed under section 196 of the CFI Act must take.

197. The identity card must identify the person as an inspector for the purposes of Part 18 of the CFI Act. The card must contain an expiry date and a statement that the person is authorised to exercise powers under Part 18 of the CFI Act.

PART 19—AUDITS

19.1 Compliance audits – requirements for reimbursement

198. If the Regulator has reasonable grounds to suspect that a person has contravened, is contravening, or is proposing to contravene, the CFI Act or the associated provisions (including the Principal Regulations), the Regulator may require the person to arrange for a registered greenhouse and energy auditor to audit the person's compliance with the relevant legislation (section 214 of the CFI Act). The Regulator may reimburse a person for reasonable costs incurred in complying with this requirement if the audit report does not indicate that there is evidence of non-compliance with the legislation, and the Regulator is satisfied that the person would suffer financial hardship if the person was not reimbursed (subsection 214(8)).

199. This regulation specifies the information and documentation that must accompany a request for the reimbursement of certain compliance audit costs.

200. A request for reimbursement of audit costs must be in writing and contain the information and documentation specified in this regulation, including evidence of the costs incurred in complying with the audit requirement, a statement of the financial hardship caused by compliance with the requirement, a copy of the audit report and a signed declaration that the information and documentation supplied meets the requirements of this regulation and is accurate. The provision of false or misleading information in this respect is an offence.

Items [50] and [51]: Amendments to Part 26 of the Principal Regulations

201. These amendments to the Principal Regulations renumber the Part and regulations dealing with the Domestic Offsets Integrity Committee, to align numbering with the CFI Act.