

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Climate Change and Energy, the Hon. Chris Bowen
MP

Carbon Credits (Carbon Farming Initiative) Act 2011

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

Legislative Authority

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

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

Purpose

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

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

¹ Recommendation 4: Provisions in the governing legislation should be amended to maximise transparency, data access and data sharing, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements.

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

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

Background

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

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

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

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

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

The Review recommended provisions in the governing legislation should be amended to maximise transparency, data-access and data-sharing, while enabling protection of privacy and commercial-in-confidence information, to support greater public trust and confidence in scheme arrangements (recommendation 4).

Impact and Effect

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

Consultation

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

The Department of Climate Change, Energy, the Environment and Water (the **Department**) released a discussion paper on 25 August 2023, outlining options for implementing several of the Review’s recommendations, including recommendation 4. Submissions closed on 3 October 2023 and 95 submissions were received. Public consultation on the proposed amendment to the Principal Rule was also undertaken from 16 September 2024 to 7 October 2024. Twenty-three submissions were received in response to the proposed amendment. The Amendment Rule is informed by feedback received during these public consultations. The text of the amendments did not change as a result of the second consultation, but implementation issues have been clarified in this explanatory statement, such as the agents referenced in paragraph 9A(1)(h) and the Clean Energy Regulator will take concerns raised in consultation into account when implementing the rule.

Regulatory Impact

The Department consulted the Department of the Prime Minister and Cabinet’s Office of Impact Analysis (the **OIA**) on the need for an Impact Assessment. The OIA advised that a detailed impact analysis was not required (ref ID OIA24-08056) as the Review has been certified by the OIA as an impact analysis assessment equivalent process (ref ID OBPR22-03828).

Details and Operation

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

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

Other

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

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

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

Section 1 – Name

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

Section 2 – Commencement

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

Section 3 – Authority

3. Section 3 provides that the Amendment Rule is made under sections 166A and 308 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*. The power to make rules under section 308 includes the power to amend or revoke rules that have already been made, with any doubt about this resolved by subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedules

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

Schedule 1—Amendments

This Schedule sets out amendments to the Principal Rule.

Item 1 – After Part 11

5. This item inserts a new Part 12 to the Principal Rule, which sets out the details for publication of certain scheme information already held by the Regulator on the Regulator’s website. The proposed amendments seek to enhance transparency over project information in the ACCU scheme.

Subsection 93A(1) – information to be published on Regulator’s website

6. New subsection 93A(1) specifies information to be published in relation to an eligible offsets project (see section 27 of the Act for provisions dealing with the declaration of eligible offsets projects).
7. Paragraph (1)(a) requires the publication of a detailed list of activities relevant to the project that have been, are being, or are to be, carried out during the project’s crediting period. This is in addition to the project description that is already required by the Act under paragraph 168(1)(c). This paragraph will ensure information on the abatement activities are publicly available and up-to-date as the project progresses.
8. Paragraph (1)(b) requires the publication of a description of any suppression mechanisms identified in the baseline period relating to the eligible offsets project, under an applicable method. This paragraph will provide additional information on how the land covered by a project area was managed prior to the declaration of the project as an eligible offsets project. This information is only required for projects with suppression mechanisms in the baseline period. An example of a suppression mechanism can be the suppression of vegetation growth caused by feral or domestic animals grazing. In this example, the project activity may be installing fences to exclude the feral animals.
9. Paragraph (1)(c) requires the publication of the name and current version of any estimation or measurement approach or model that is used to calculate carbon abatement in relation to the project. For example, a range of vegetation methods provide the ability for eligible projects to calculate carbon abatement using:
 - a. the Full Carbon Accounting Model (**FullCAM**) 2016;
 - b. FullCAM 2020; or
 - c. the Reforestation Modelling Tool (in conjunction with the CFI Mapping Tool and the Reforestation Abatement Calculator).

The intent of this paragraph is to identify what version of the estimation or measurement approach or model approach is being used to calculate abatement across the crediting period for the project. Therefore, if the measurement or modelling

approach changes, this would be updated. The particular tools are defined in the applicable methodology determinations relating to the projects. Information about the FullCAM tool and download options are here: <https://www.dccew.gov.au/climate-change/publications/full-carbon-accounting-model-fullcam>. The incorporation of such documents is provided for by subsections 106(8) and section 304 of the Act.

10. Paragraph (1)(d) requires the publication of the start and end dates of the crediting period for each project. Generally, the crediting period for an eligible offsets project is defined as 25 years for a sequestration offsets project or 7 years for an emissions avoidance offsets project. For example, if a declaration of crediting period was made on 1 July 2025 for a sequestration offsets project with a crediting period of 25 years, the crediting period start date and end date will be reflected on the Project Register as 1 July 2025 and 30 June 2050.
11. Paragraph (1)(e) requires the publication of the project permanence period start date for sequestration offsets projects only. A permanence period can either be 25 or 100 years and is chosen when a project is registered. Section 86A of the Act includes a definition for permanence period. While the end date is currently published on the Project Register, this paragraph ensures both the start and end date of a project permanence period will be published. Publication of both dates captures accurate information around when the project is issued ACCUs and/or when land is added to the project area.
12. Paragraph (1)(f) requires the publication of the start date for certain tools or modelling approaches used to calculate abatement for each carbon estimation area (CEA) of a project. The intent is to support additional analysis of sequestration over time for each CEA of a project.
13. Paragraph (1)(g) requires the Regulator to publish information that links a project to any enforceable undertakings (see Part 23 of the Act) relating to that project. Although this is already published on the Regulator's website under subsection 237(5) of the Act, publishing a link, such as a link in the Project Register, will better inform the public about enforceable undertakings connected to the agent/s and the related project/s.
14. Paragraph (1)(h) requires the publication of the name of all agents authorised for a purpose listed in subsection 290(1) of the Act or any other person who is significantly involved in the registration or administration of the project. The intent is to capture only those who are substantially involved in the project. For example, if a person engaged a company as an agent, it would be the name of the company that would be published rather than individuals working for that company. This is because the proponent has authorised the company rather than the people who work for the company. However, if the agent is an individual sole trader, the individual would be named. It is not intended to capture those contracted to undertake work on project land that is less consequential to project administration. For example, details of the person or agent who prepares an offsets report for a project should be published, whereas the

details of a contracted fencer who is hired to build a boundary fence in the project area would not be required to be published.

Subsection 93A(2) – exemptions to the publication of information under subsection (1)

15. Subsection 93A(2) provides that the Regulator must not publish information specified in subsection (1) if the project proponent or another person makes an application to the Regulator for non-publication and the Regulator is satisfied that certain circumstances, as outlined in paragraph (2)(b), exist. The exemptions are informed by stakeholder feedback and support for recommendation 4 of the ACCU Review.
16. Subparagraph (2)(b)(i) provides the first exemption relating to the non-publication of information where it is required to protect or respect Aboriginal tradition, as defined by the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. This subparagraph aims to create an exemption from publishing information that would otherwise be published in accordance with subsection (1) where the exemption is required to protect against potential damage to the body of traditions, observances, customs and beliefs of Aboriginal peoples generally, or of a particular community or group of Aboriginal peoples. This includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships. Relevant ACCU project information required to be published through the Amendment Rule can be withheld if the Regulator is satisfied that damage could be caused by release of information. For example, following an application process and the provision of evidence, the Regulator may grant the withholding of project activity details on harvesting of biomass from an environmental plantings project in accordance with traditional Aboriginal or Torres Strait Islander peoples' practices or native title rights, due to the potential impact on men's or women's business.
17. Subparagraph (2)(b)(ii) provides the second exemption relating to the non-publication of information where publication of the information may threaten, damage or cause harm to a threatened ecological community or threatened species, as defined by the *Environment Protection and Biodiversity Conservation Act 1999*. This subparagraph aims to create an exemption from publishing information that would otherwise be published in accordance with subsection (1) where the exemption is required to protect ecological communities or threatened species. The exemption would apply where the information, if published, may threaten, damage or cause harm to a threatened ecological community or threatened species. For example, the exemption may apply in circumstances where the release of details of an ACCU project activity which results in planting the required habitat for a particular threatened species could increase poaching risk of that threatened species.

Subsection 93A(3) – application for exemption from publication to be in writing

18. Subsection 93A(3) provides that an application under paragraph (2)(a) must be in writing and in a form that is approved in writing by the Regulator. The Regulator must be satisfied that sufficient evidence of the circumstances are provided by the applicant and may require the applicant to provide written evidence from associated parties as evidence of engagement and consultation regarding the exemption request.

Subsection 93A(4) – timing for decision by the Regulator

19. Subsection 93A(4) provides that the Regulator must take all reasonable steps to ensure that a decision on an application under paragraph (2)(a) is made within 30 days of the request being made.

Subsection 93A(5) – refusal of application under paragraph (2)(a)

20. Subsection 93A(5) provides that the Regulator must give written notice to the person who made an application under paragraph (2)(a) if the Regulator decides to refuse the application.

Subsection 93A(6) – compliance obligations of Regulator during transitional period

21. Subsection 93A(6) provides that during the transitional period (defined in subsection (7) as the period of 6 months beginning on the commencement of section 93A), the Regulator is not required to comply with subsection (1) in respect of information held by the Regulator on the date that section 93A commences or information acquired by the Regulator during the transitional period. The purpose of this subsection is to provide the Regulator with sufficient time to prepare for the publication of data under subsection (1). This will allow the Regulator to undertake any upgrades to its technological systems that may be necessary to manage the publishing of the relevant information captured by subsection (1).

Subsection 93A(7) – definitions

22. Subsection 93A(7) provides definitions that are intended to support and inform the Regulator's process for managing, considering and decision-making on an exemption request.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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

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

Overview of the Legislative Instrument

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

Human rights implications

This Legislative Instrument engages the following rights:

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

Right to Privacy

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

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

This Legislative Instrument limits the rights contained in Article 17 of the ICCPR, but not in any way which might result in the unlawful or arbitrary interference of a person's right privacy. The Amendment Rule builds upon existing provisions in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the **Act**) and provides a lawful basis for obtaining, storing and sharing personal information appropriately. The provision and use of personal information occurs to the extent that it is necessary, reasonable and proportionate to administering the ACCU Scheme. Existing secrecy provisions in Part 27 of the Act do not authorise the release of personal information, and this restriction will be maintained by the Amendment Rule to ensure privacy of personal information is adequately protected.

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

Right to enjoy and benefit from culture

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

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

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

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

Conclusion

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

Circulated by authority of the Minister for Climate Change and Energy

The Hon. Chris Bowen MP